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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: A-00113589, Application of County of Lebanon Transit Authority, For approval of the suspension of a series of crossings involving the Cornwall Industrial Track of Consolidated Rail Corporation located in the City of Lebanon, Lebanon County. C-00970106, South Lebanon Township Board of Supervisors v. Consolidated Rail Corporation Complainant states it has received numerous complaints about the crossing at South Lincoln Avenue, mainly regarding ruts and deep holes causing damage to vehicles.

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

C-00970128 Pennsylvania Department of Transportation v. Consolidated Rail Corporation Complainant concerned about the safety of at-grade crossing at State Route 2003, L.R. 38016 at State Drive. Complainant says crossing is sunken with rotting timbers breaking out. Due to location on an over vertical curb, a driver is not aware of the crossing's poor condition until it is too late. Further Hearing.

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Harrisburg, Pennsylvania  
October 8, 1997

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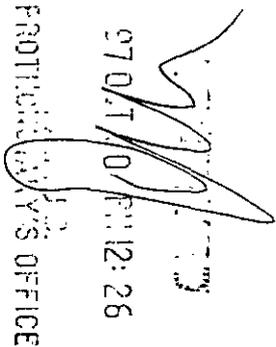
Pages 196 to 256, inclusive

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BEFORE

## THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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4 In re: A-00113589, Application of County of Lebanon  
5 Transit Authority, For approval of the suspension  
6 of a series of crossings involving the Cornwall  
7 Industrial Track of Consolidated Rail Corporation  
8 located in the City of Lebanon, Lebanon County.  
9 C-00970106, South Lebanon Township Board of  
10 Supervisors v. Consolidated Rail Corporation  
11 Complainant states it has received numerous  
12 complaints about the crossing at South Lincoln  
13 Avenue, mainly regarding ruts and deep holes  
14 causing damage to vehicles.  
15 C-00970107, City of Lebanon v. Consolidated Rail  
16 Corporation Complainant is concerned about the  
17 condition of crossings on the Cornwall Industrial  
18 Track of Conrail at the following locations in  
19 the City of Lebanon: Willow Street, Cumberland  
20 Street, Chestnut Street, Walnut Street, 12th  
21 Street, 10th Street, 9th Street, 8th Street.  
22 Complainant states it has received complaints  
23 from the public that crossings are causing damage  
24 to their vehicles.  
25 C-00970128 Pennsylvania Department of  
Transportation v. Consolidated Rail Corporation  
Complainant concerned about the safety of at-grade  
crossing at State Route 2003, L.R. 38016 at State  
Drive. Complainant says crossing is sunken with  
rotting timbers breaking out. Due to location on  
an over vertical curb, a driver is not aware of  
the crossing's poor condition until it is too  
late. Further Hearing.

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Stenographic report of hearing held in  
Hearing Room 3, North Office Building,  
Harrisburg, Pennsylvania,

Wednesday,  
October 8, 1997  
at 10:00 o'clock a.m.

- - - - -

## BEFORE

HERBERT S. COHEN, ADMINISTRATIVE LAW JUDGE

## APPEARANCES:

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

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

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

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

SAM WEISS, JR., ESQUIRE  
802 Walnut Street  
Lebanon, Pennsylvania 17042  
Appearing on behalf of City of Lebanon

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

1 APPEARANCES: (Continued)

2 JOHN LOVENGOOD, ESQUIRE  
3 600 South 5th Street  
4 Lebanon, Pennsylvania 17042  
5 AND

6 JOHN J. VAN SHURA, JR., ESQUIRE  
7 P. O. Box 16001  
8 Reading, Pennsylvania 19640  
9 Appearing on behalf of Metropolitan Edison  
10 Company d/b/a GPU Energy

11 DANIEL J. BIRSIC, ESQUIRE  
12 One Gateway Center, 9 West  
13 Pittsburgh, Pennsylvania 15222  
14 Appearing on behalf of R. J. Corman Railroad  
15 Company/Allentown Lines, Inc.

16 - - - - -

17 HOLBERT ASSOCIATES  
18 EUGENE W. HOLBERT, RPR  
19 P. O. Box 6144  
20 Harrisburg, Pennsylvania 17112-0144  
21  
22  
23  
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1 JUDGE COHEN: Let's go on the record. This is the  
2 time set for further hearing in the matter of the  
3 application of County of Lebanon Transit Authority and the  
4 complaints of South Lebanon Township Board of Supervisors  
5 versus Conrail, City of Lebanon versus Conrail,  
6 Pennsylvania Department of Transportation versus Conrail,  
7 at Docket Numbers A-00113589 C-00970106, C-00970107 and  
8 C-00970126.

9 Appearances this morning have been entered by the  
10 following: Gina M. D'Alfonso for the Pennsylvania  
11 Department of Transportation, David Eaton, Esquire on  
12 behalf of Conrail, John Herzog, Esquire on behalf of the  
13 PUC Bureau of Transportation and Safety, Paul Kilgore,  
14 Esquire on behalf South Lebanon Township and Sam Weiss, Jr.  
15 on behalf of City of Lebanon; Tim Sheffey on behalf of the  
16 County of Lebanon Transit Authority, John Lovengood on  
17 behalf of Met Ed, doing business as GPU Energy and John J.  
18 Van Shura, Esquire on behalf of Met Ed doing business as  
19 GPU Energy, and Daniel J. Birsic, Esquire on behalf of  
20 R. J. Corman Railroad Company/Allentown Lines, Inc. The  
21 last hearing in this matter --

22 MR. KILGORE: Your Honor, if I could, I don't think  
23 you mentioned 0010901, which has been consolidated with  
24 this matter.

25 JUDGE COHEN: Would you state that for the record.

1 Perhaps you could just recite it.

2 MR. KILGORE: That's the Wilhelm Avenue case which  
3 has been combined by order, A-00109001.

4 JUDGE COHEN: 00109901.

5 MR. KILGORE: 00109001.

6 JUDGE COHEN: Thank you. At the conclusion of the  
7 August 5, 1997 hearing, I stated the following: Basically,  
8 that the instant matter will remain open until October 1 at  
9 which time counsel for Conrail would advise the parties and  
10 Administrative Law Judge what the status of the Corman  
11 negotiations are at that time.

12 And then I said that a further hearing, if any,  
13 either on Corman negotiations or the Wilhelm Avenue if any,  
14 will be held on October 8. A briefing schedule will be  
15 deferred pending further clarification of those matters.  
16 Mr. Eaton, I believe you indicated you have some matters to  
17 put on the record.

18 MR. EATON: Yes. I am told that Conrail and R. J.  
19 Corman, I forget the correct name of Allentown Lines, Inc.,  
20 entered into an agreement as of October 3rd under which,  
21 subject to certain conditions, the portions of the Cornwall  
22 industrial tract which are involved in the proceedings  
23 before you are to be conveyed to Corman.

24 That is with the exception I think of the Willow  
25 Street crossing which remains as Conrail's. The other

1 crossings are within the territory being conveyed to Corman  
2 or to be conveyed to Corman.

3           We have prepared a form of stipulation between the  
4 two parties, that is, Conrail and Corman, for use in this  
5 proceeding but it has been subject to some minor  
6 supplementation and with your permission I will return to  
7 the office following the conclusion of this hearing, have  
8 it retyped so that it's in entirely smooth form and provide  
9 copies both to you and to the parties here who wish  
10 copies.

11           I have draft copies here but they do not include the  
12 revisions which are being made to it. With that, my  
13 expectation is that the principal interest in the  
14 disposition of the crossings which are the subject matter  
15 before you passes from Conrail to Corman.

16           However, I do have Conrail's engineer here who  
17 examined most of if not all of the crossings. Not all of  
18 the crossings; most of the crossings at issue yesterday and  
19 who I will call upon to testify as to his observations of  
20 those crossings.

21           You raised a question as to Wilhelm Road which is a  
22 fairly substantial project involving as current plans call  
23 for, a shifting of the track of the Cornwall industrial  
24 track from its current alignment to the alignment of a  
25 former railroad which paralleled it a short distance away,

1 perhaps 150 or 200 feet to the west.

2           That realignment will require the moving of about  
3 one mile of track and would require the construction of a  
4 new crossing structure over Wilhelm Road on the new  
5 alignment prior to the moving of the track with removal of  
6 the existing crossing structure following activation of the  
7 new track.

8           If, in fact, that line of railroad is going to  
9 remain idle for a sufficient period, then I would think it  
10 would be possible to remove the existing structure and  
11 replace it with a new structure in the existing alignment  
12 with an ultimate savings in the cost that it would take to  
13 tear up about a mile of railroad, relocate it with the  
14 grading which would be necessary.

15           There would be, I think, some significant saving  
16 there and that saving, I think, should redound to the  
17 benefit of all of those who have heretofore agreed to  
18 contribute to the cost of that project.

19           Conrail had agreed to contribute \$50,000.00 towards  
20 that project and that's an obligation that Corman has  
21 agreed to assume. But again, Corman and South Lebanon  
22 Township may need time in which to discuss the likely cost  
23 of the project if it can be revised and the allocation of  
24 that cost in light of the changed circumstances.

25           Is there any question remaining as to what Conrail

1 and Corman between them have done and as to what we see as  
2 the issues remaining relative to Wilhelm Road?

3 MR. SHEFFEY: Your Honor, if I may, will the  
4 parties --

5 JUDGE COHEN: Identify yourself for the record.

6 MR. SHEFFEY: I am Tim Sheffey on behalf of COLT.  
7 With respect to the crossings that COLT is involved with,  
8 is COLT going to be entitled to receive a copy of the  
9 agreement between Corman and Conrail so that we know what  
10 these conditions are that you have told me are there?

11 MR. EATON: I was advised yesterday that there are  
12 provisions of that agreement as to which there is a  
13 confidentiality agreement and so I would not contemplate  
14 that a copy of the whole agreement would be provided to  
15 you.

16 I have tried to include in the form of stipulation,  
17 those features which I would think would be of interest to  
18 the municipalities that are concerned and I certainly  
19 intend that a copy of the stipulation be provided to all  
20 parties. I don't think that entirely answers your  
21 question. But --

22 MR. SHEFFEY: I'd like to interpose an objection.  
23 We believe on behalf of COLT that we are entitled a full  
24 copy of the agreement. Otherwise, we don't know what's  
25 there, what's not there, how we are being precluded and how

1 to proceed further in this matter.

2 We would ask that if we are not going to be able to  
3 receive that entire proceeding, the entire document be  
4 presented to you in an in-camera conference and you make a  
5 determination as to what can be provided appropriately to  
6 COLT.

7 JUDGE COHEN: Well, if it's in a rate case, the  
8 parties sign a confidentiality agreement. And those  
9 parties that need to know would have access to the record  
10 that goes down is out in two forms; confidential form and  
11 non-confidential form.

12 MR. EATON: I just propose, for example, that the  
13 consideration being paid for the line is a matter between  
14 the two parties. It appears in the agreement and it's not  
15 an issue which is of concern to any other party.

16 JUDGE COHEN: Perhaps counsel would agree to that.  
17 It seems to me that they be would only be interested in the  
18 matters that affect them. If some form of an affidavit is  
19 presented that this is a true and correct copy of the  
20 document, that would serve their purposes.

21 MR. EATON: I would suggest that the objection is  
22 premature pending receipt of the proposed stipulation which  
23 I would think should allay any concerns as to the things  
24 that Mr. Sheffey's concerned about and that is, who is  
25 responsible. Who is the responsible party. That I think

1 will be made sufficiently clear. As far as --

2 JUDGE COHEN: As far as maintenance for various  
3 crossings.

4 MR. WEISS: Sam Weiss for the City of Lebanon. For  
5 the record, City of Lebanon will not agree to be bound by  
6 any stipulation between Conrail and Corman; certainly none  
7 that we have seen. Certainly none that's contingent,  
8 certainly none that's subject to certain confidentiality  
9 provisions.

10 In addition, it seems to me that Conrail was the  
11 owner of the subject line at the time these petition,  
12 complaints were filed.

13 They were the owner of the line at the time of the  
14 last hearing. They are the owner of the line today.  
15 Accordingly, it's appropriate, I believe, for us to  
16 concentrate on Conrail's duties. What they do vis-a-vis  
17 Corman is something that's subject to their agreements and  
18 really, in my view, should be none of our business at this  
19 time, especially since it's not finalized.

20 Seems to me we are getting into an area of a red  
21 herring and I don't want any doubt that the city in some  
22 way is going to agree that Conrail may assume the -- Corman  
23 may assume the responsibilities of Conrail's obligations  
24 for these corresponding with the agreement or implied or  
25 explicit of the City of Lebanon.

1 MR. KILGORE: If I could --

2 MR. EATON: I'd like to be heard on one aspect of  
3 that. It's incorrect to state that a blanket statement  
4 that Conrail is the owner of this line. Corman has an  
5 equitable ownership interest as of last Friday.

6 JUDGE COHEN: Was consideration passed between the  
7 parties?

8 MR. EATON: I think there's a binding agreement. It  
9 could be specifically enforced based upon what I have seen  
10 of it.

11 MR. WEISS: There is no evidence to that  
12 whatsoever. Counsel will need agreement. They are not  
13 willing to provide the agreement. They aren't provided the  
14 agreement and right now that's not before you, with  
15 respect.

16 JUDGE COHEN: Let me ask this. Assuming there's  
17 agreement, as you stated, when, time-wise would Corman  
18 start operating this line if at any time at all?

19 MR. BIRSIC: Your Honor, Dan Birsic. Corman's  
20 intentions in, assuming that the agreement of sale is  
21 ultimately consummated, is to ultimately run this line.  
22 The timing of that is somewhat depending upon other  
23 economic factors, which right now it has no control over.

24 It is negotiating with primarily Alcoa in connection  
25 with a continuing service on that line, although

1 realistically, I could not tell you today nor could R. J.  
2 Corman, exactly when that will occur. It is their  
3 intention to activate the line and for them to purchase  
4 this simply for salvage value assuming the potential, some  
5 of the spans which are outlined in the agreement of sale  
6 doesn't make any economic sense for them to do anything but  
7 to proceed, although the timing of that is, it could be a  
8 year.

9 MR. KILGORE: May I interpose an objection -- on  
10 behalf of South Lebanon Township. Paul Kilgore -- to the  
11 introduction of any stipulation whatsoever. I concur with  
12 Mr. Weiss as to his objections.

13 On that basis, additionally, the responsible party  
14 should be the one who has adequate coverage and adequate  
15 security to ensure that the line is run properly and that  
16 the PUC orders are complied with.

17 We have had absolutely no testimony from the  
18 purchaser whatsoever. If you recall, at the hearing, the  
19 last hearing, the individual testified for Conrail; did not  
20 work for Corman.

21 The testimony provided at the last hearing is there  
22 is no economic feasibility for this line and that  
23 therefore, there should be a suspension at the very least.  
24 As far as Wilhelm Avenue removal of the bridge and  
25 reconstructing it within the same line, the township

1 objects to that plan of attack.

2           It should be a suspension, if that's the  
3 reactivation, the line, the structure, superstructure of  
4 that bridge should be removed at the expense of Conrail.  
5 That's our position.

6           JUDGE COHEN: All right.

7           MR. HERZOG: I am going to pass on this. Our  
8 interest as a bureau is limited. These were not our  
9 complaints. They were complaints by the township, the  
10 City, PennDOT. We are in the status of various crossings.  
11 Our engineers will not put testimony on the record on this  
12 regarding status of those crossings.

13           At that point in time Conrail is responsible for, I  
14 agree with counsel that there's nothing tangential in the  
15 evidence that would indicate that Conrail is not the  
16 responsible party and a bird in hand is worth two in the  
17 bush in trying to assign costs and project  
18 responsibilities.

19           MR. VAN SHURA: John Van Shura representing Met Ed/  
20 GPU. Our purpose in being here is to make sure that the  
21 order that was issued in 1993 with respect to our  
22 facilities, and that are primarily at the Wilhelm Avenue  
23 location, that we have both distribution and transmission  
24 facilities located either at the bridge or near that  
25 structure and it's our position that if any of our

1 facilities have to be relocated, moved in any way, et  
2 cetera, that we be fully compensated for any such removal  
3 that would be required or relocation that would be required  
4 of us, particularly with respect to transmission  
5 facilities.

6 JUDGE COHEN: Ms. D'Alfonso?

7 MS. D'ALFONSO: Thank you. PennDOT's interest is  
8 the at grade crossings since specifically the state roads  
9 that are involved in the complaints. I have heard nothing  
10 today that would change our position as testified to  
11 earlier.

12 It is still the opinion of the department that the  
13 crossings and the appurtenances should be removed and  
14 crossings suspended until such time as R. J. Corman is  
15 assured that they will be operating and they do have a  
16 customer.

17 As to Wilhelm Avenue, the department's opinion would  
18 be based upon statements of counsel until we know that  
19 bridge can be removed, realign the road and the department  
20 is certainly willing to work with the township and has told  
21 the township if a bridge needs to be built in the future  
22 that it could be built in the future but right now let's  
23 get the realignment of Wilhelm Avenue and get a safer  
24 passage for motor vehicles.

25 MR. EATON: I am not certain what I heard from Mr.

1 Kilgore, but he concluded with removal of a structure at  
2 the expense of Conrail. If that was a reference to Wilhelm  
3 Avenue Bridge, that is not consistent with the agreement  
4 between Conrail and South Lebanon Township nor with the  
5 orders that have been entered insofar as I know, have not  
6 yet been rescinded or overruled relative to Wilhelm Road.

7 With respect to operations on the line, my  
8 expectation, which probably isn't worth much more than the  
9 breath it took to say it, is that the quit claim of this  
10 line to Corman will take place within the month. The  
11 conditions which I am aware of are minor administrative  
12 conditions, none of which is likely to cause a problem and  
13 I think it's a matter of having the deed drafted and  
14 circulated for the necessary executions.

15 JUDGE COHEN: Let me throw this out.

16 MR. EATON: What I am thinking is if that occurs,  
17 any order entered here against Conrail is one which Corman  
18 will assume responsibility for in any event, as a  
19 consequence of this agreement.

20 JUDGE COHEN: I was thinking, tell me if I am right  
21 or wrong. If, in fact, there is a final transaction  
22 between Conrail and Corman, and I make an order could I  
23 make the order binding on successors and assigns of  
24 Conrail?

25 MR. EATON: Sure.

1 JUDGE COHEN: I think I can do that.

2 MR. EATON: I think it was great if you would also  
3 relieve Conrail of responsibilities once that occurs.

4 JUDGE COHEN: My recollection of the last hearing is  
5 that somebody said I think -- again, correct me if I'm  
6 wrong -- that it wasn't economically feasible, told you  
7 that it wasn't economically feasible for them to get  
8 involved with this line.

9 MR. EATON: I think that was said but that was said  
10 by those without an economic interest in the possible  
11 transportation.

12 MR. SHEFFEY: Since we are testifying by counsel,  
13 the Conrail report that they submitted to abandon the line  
14 also indicated that it was not economically feasible to  
15 operate the line.

16 MR. KILGORE: Exhibit 1.

17 JUDGE COHEN: All right. Mr. Birsic, do you want to  
18 wind it up? Or have you said your peace?

19 MR. BIRSIC: I guess, Your Honor, with respect to  
20 the issue as to the feasibility, obviously everyone has a  
21 different view of what is economical and what is not simply  
22 because Conrail may have a position that they don't think  
23 it's feasible. Any other party may hold that.

24 That doesn't necessarily mean that any other --  
25 someone may have a different idea. Entrepreneurs have

1 always gone into areas where people haven't thought there  
2 was anything to be made and it turns out they are very well  
3 run.

4 As far as the initial feasibility issue I don't  
5 think simply because Conrail has submitted a report that  
6 was consistent with their intentions perhaps at the time,  
7 that it wasn't feasible. I don't think it necessarily  
8 should be binding on anybody who intends to purchase that  
9 land, and we intend to run it.

10 JUDGE COHEN: All right. I guess we are going to  
11 move ahead now. Seems to me it would be proper for Conrail  
12 to put their engineer on and we'll get the latest overview  
13 of the conditions existing at these various crossings.

14 MR. HERZOG: One bookkeeping matter. Lebanon  
15 Township Rails to Trails advised this Commission in June  
16 that they wanted to be included in this matter, Wilhelm  
17 Avenue. I didn't get a service list on the notice of  
18 hearing, on the amended notice of hearing that went out on  
19 September 25th and I was wondering if, in fact the Rails to  
20 Trails group was advised of this hearing?

21 JUDGE COHEN: I do not know.

22 MR. KILGORE: I was faxed a service list from the  
23 initial order and they were on that service list. I would  
24 assume they are on the service list, once they are on it,  
25 for all of it. They were on the service list for the

1 initial order that went out combining the two matters.

2 MR. HERZOG: You are referring to the August order?

3 MR. KILGORE: That's correct.

4 MR. HERZOG: Those are done by separate bureaus  
5 within this Commission. Sometimes things get crossed.

6 MS. D'ALFONSO: Your Honor, I don't know if they  
7 received official notice from the Commission but our  
8 district office had been in conversations with them and  
9 they were aware of the hearing scheduled for today.

10 JUDGE COHEN: They were aware of the hearing.

11 FROM THE FLOOR: There's something on there about  
12 Mrs. Sheaffer, from Senator Brightbill's office trying to  
13 set up a meeting between PennDOT and Rails to Trails last  
14 Friday, because I was canceled. So they were aware of it.

15 JUDGE COHEN: Brightbill was on the service list.

16 MR. HERZOG: John Wengert would be the --

17 MR. WEISS: Wengert, W-e-n-g-e-r-t.

18 JUDGE COHEN: I don't believe it is on the September  
19 25 notice that went out.

20 MR. KUHN: I am Curt Kuhn, South Lebanon Township.  
21 Marie Sheaffer with Senator Brightbill's office also called  
22 me last week about a meeting. We tentatively did set it up  
23 for Friday but she wasn't aware that Mr. Bush broke his  
24 leg. He called me back and canceled the meeting. We  
25 wanted to meet before today's hearing so she was aware

1 there was a hearing.

2 Mr. Wengert could not be here today because he's out  
3 of town.

4 JUDGE COHEN: Thank you. Appreciate your help.  
5 He's not on the list of the September 25, 1997 order but  
6 apparently gave insight.

7 MS. D'ALFONSO: On behalf of PennDOT, I don't feel  
8 compelled that we make sure that the Rails to Trails group  
9 is, indeed made an official party and that their name and  
10 address is included on the service list for all future  
11 communications for the Commission.

12 JUDGE COHEN: I will take care of it.

13 MS. D'ALFONSO: Thank you.

14 JUDGE COHEN: Off record.

15 (Discussion off the record.)

16 JUDGE COHEN: We are we ready to proceed, Mr. Eaton,  
17 with Conrail's engineer. Before we do that, where else are  
18 we going to --

19 MR. KILGORE: I have Mr. Kulp here to testify on  
20 behalf of Wilhelm Avenue.

21 MS. D'ALFONSO: It depends on what we hear.

22 MR. EATON: Mark Sawyer.

23 JUDGE COHEN: Good morning, sir.

24 MARK WALTER SAWYER, called as a witness, having been  
25 duly sworn, was examined and testified as follows:

1 JUDGE COHEN: Thank you. State your full name and  
2 please spell your last name.

3 THE WITNESS: Mark Walter Sawyer, S-a-w-y-e-r.

4 JUDGE COHEN: Thank you, sir.

5 DIRECT EXAMINATION

6 BY MR. EATON:

7 Q Mr. Sawyer, you have previously identified  
8 yourself on this record as an engineer for Conrail and just  
9 to refresh everybody's recollection, will you tell us what  
10 your official title is and generally what your duties are?

11 A I currently, my title is principal engineer,  
12 public improvements and I help coordinate and facilitate  
13 public improvement projects, roadways and bridges in the  
14 State of Pennsylvania for Conrail.

15 Q And you are a registered engineer?

16 A Yes, I am.

17 Q At the time of this last hearing you testified, I  
18 think, that you had not had an opportunity to visit the  
19 various crossings involved here. Am I correct on that? Is  
20 that correct?

21 A Right.

22 Q Have you had an opportunity to do that since the  
23 last hearing?

24 A Yes, I did. I visited many of the crossings  
25 yesterday.

1 Q Before I go on, do we have any PennDOT  
2 photographs with us?

3 MS. D'ALFONSO: It wasn't PennDOT's. It was either  
4 the township or the city.

5 MR. EATON: It was the city with the big poster  
6 board. Do we have the city's poster board exhibit?

7 MR. WEISS: They were left here last time. There  
8 was a packet of photos that was supplied but the exhibit  
9 was left here, I think.

10 JUDGE COHEN: I have them if you want to use these.

11 MR. EATON: Have those been marked so they may be  
12 made reference to?

13 JUDGE COHEN: Not mine.

14 MR. EATON: They are labeled on the front so I can  
15 do it that way.

16 MR. KILGORE: Your Honor --

17 JUDGE COHEN: I think the whole packet was marked, I  
18 believe, Lebanon Exhibit Number 1.

19 MR. KILGORE: Your Honor, if I may, on behalf of  
20 South Lebanon Township, I'd interpose an objection to the  
21 testimony. The record was held open for two reasons. One  
22 was the hearing on the Corman negotiation or the Wilhelm  
23 Avenue Bridge. It was not held open for this rehashing of  
24 the crossings.

25 JUDGE COHEN: Well, it's an update.

1 MR. EATON: It's rebuttal.

2 MR. HERZOG: The bureau joins in the objection. The  
3 fact that Mr. Sawyer didn't visit the crossings for 20  
4 years prior to the August hearing, that's his problem and  
5 that's Conrail's problem. I don't feel like listening to  
6 his testimony today because he didn't visit crossings for  
7 20 years.

8 MR. WEISS: And the city is unprepared to rebut his  
9 testimony. We weren't prepared to come today with rebuttal  
10 testimony about what the crossings looked like yesterday.  
11 That was closed.

12 JUDGE COHEN: I'll have to sustain the objection and  
13 I'll have to refer back to my admonition in the transcript  
14 that I read into the record; Corman matter and the Wilhelm  
15 Avenue Bridge are the subjects of today's hearing. If he  
16 wanted to testify anything about that, we'll let him.

17 MR. EATON: You sustained the objection?

18 JUDGE COHEN: Yes, I did.

19 MR. EATON: Okay. Exception.

20 JUDGE COHEN: Noted. All right, then. Do we have  
21 any testimony?

22 MR. EATON: I am going to ask him a few more  
23 questions.

24 JUDGE COHEN: All right.

25 BY MR. EATON:

1 Q Mr. Sawyer, are you acquainted with or familiar  
2 with any negotiations that have been ongoing between  
3 Conrail and R. J. Corman Allentown Lines, Inc.?

4 A Yes. There's been ongoing negotiations for  
5 various business matters including sales of various branch  
6 lines of which the Cornwall Industrial track was involved.

7 Q And have you knowledge as to whether an agreement  
8 has been entered into relative to a portion of the Cornwall  
9 Industrial Track.

10 MR. WEISS: Objection, Your Honor.

11 MR. EATON: The question is only whether he has  
12 knowledge; hardly time for the objection.

13 MR. WEISS: Okay. Withdraw the objection.

14 JUDGE COHEN: Thank you.

15 THE WITNESS: I have received a computer message,  
16 E-mail message at work from Conrail management that indeed  
17 an agreement has been executed, a sales agreement.

18 BY MR. EATON:

19 Q Do you know the date of that execution?

20 A I believe it's October 3rd.

21 Q Are you familiar with the portion of the track  
22 which is the subject of that agreement?

23 A Yes.

24 MR. WEISS: Objection. Withdraw the objection.

25 Sorry.

1 BY MR. EATON:

2 Q Can you tell us what this is with mile post  
3 limits?

4 A We sold --

5 MR. WEISS: Here I will object, Your Honor. First  
6 of all, I object because it's hearsay. Second I object  
7 because of the best evidence rule. There is a written  
8 agreement that he's referring to and the agreement would  
9 speak for itself if they give it to us. The idea that  
10 they'll be able to get into evidence bits and pieces of an  
11 agreement that we have already objected to is clearly out  
12 of line.

13 JUDGE COHEN: I'll sustain the objection. I agree  
14 that the document itself would be the best evidence.

15 BY MR. EATON:

16 Q Do you know when settlement on the sale is  
17 anticipated?

18 A I believe that is referenced in the agreement and  
19 I don't recall what the closing would be.

20 Q Can you say whether or not settlement is  
21 contemplated within the current calendar year?

22 A I believe it is.

23 Q Have the discussions between Conrail and Corman  
24 disclosed any intent of Corman as to the disposition of the  
25 portion of the Cornwall Industrial track which it is

1 acquiring?

2 MR. WEISS: Same objection, Your Honor. Asking for  
3 hearsay. Discussions that he overheard and best evidence  
4 rule that would be what the parties have agreed to, the  
5 best evidence of that.

6 MR. EATON: With respect to that objection, there is  
7 absolutely no reason to expect that any agreement between  
8 Conrail and Corman is going to disclose what Corman's  
9 intent as to the use of the line is. Certainly Corman has  
10 expressed an intent in the course of its negotiations with  
11 Conrail and if this witness has knowledge of that express I  
12 see no reason why he can't testify to it.

13 MR. WEISS: It's calling for hearsay what Corman  
14 said to him or to Conrail. He does work for Corman.

15 MR. KILGORE: Corman is not a party.

16 MR. EATON: Offered for the truth of the fact they  
17 are or aren't going to operate. It's only to establish the  
18 fact that they have represented whether they will or will  
19 not operate.

20 MR. WEISS: Who cares if they did represent --

21 MR. EATON: Because this crossing's going to have to  
22 continue to exist if there's testimony.

23 MR. WEISS: Conrail's going to take care of them as  
24 far as we are concerned. If Conrail --

25 JUDGE COHEN: Can I hear the question again?

1 (The question was read by the Court Reporter.)

2 JUDGE COHEN: He can answer what that intent is, if  
3 he does know --

4 MR. SHEFFEY: On behalf of COLT I'd like to  
5 interpose an objection at this time. Mr. Sawyer's  
6 testimony is that he received an E-mail. He's not  
7 testified that he's been present for any discussions or any  
8 of the negotiations.

9 And until we understand what he's been present for,  
10 we would suggest that there's not been a proper foundation  
11 laid for him to testify and answer that question.

12 MR. KILGORE: Again, I have an objection because  
13 these are out of court statements not by a party; shouldn't  
14 be allowed.

15 JUDGE COHEN: Well, I'll have to sustain the  
16 objection again.

17 BY MR. EATON:

18 Q Can you tell us whether or not information such  
19 as that referred to a moment ago is delivered to you in the  
20 course of your duties as principal engineer for Conrail?

21 A Yes. I have been privy to certain documents and  
22 correspondence and phone calls.

23 Q Is that information which is provided for you and  
24 upon which you must rely in pursuing your study?

25 A Reliable information as far as I am concerned.

1 Q I ask the, its sustaining of the objection.

2 JUDGE COHEN: Well, let me note that he received  
3 some information from certain transactions. We'll let it  
4 go this time.

5 MR. WEISS: He can't testify to what somebody else  
6 told him.

7 JUDGE COHEN: Well that's true.

8 MR. WEISS: That's what he's asking for.

9 MR. EATON: He can testify to an intent expressed if  
10 he sets forth --

11 MR. KILGORE: That's absolutely hearsay.

12 JUDGE COHEN: The person that raises the intent  
13 should be here to tell us what it's all about.

14 BY MR. EATON:

15 Q With respect to Wilhelm Road, have there been any  
16 further discussions since the last hearing with South  
17 Lebanon Township relative to the existing agreement for the  
18 replacement of the Wilhelm Road crossing structure?

19 A Discussions between Conrail and South Lebanon  
20 Township?

21 Q Yes.

22 A None to my knowledge.

23 Q If there had been such discussions, can you say  
24 whether or not you would be the appropriate person to  
25 participate in those discussions?

1 A In regard to the PUC order that's in effect for  
2 that?

3 Q Yes.

4 A Yes.

5 Q And can you say at the present time whether  
6 Conrail contemplates any application to revise the order  
7 heretofore entered relative to Wilhelm Road?

8 A Does Conrail foresee any revision to the --

9 Q No. Does Conrail contemplate asking for a  
10 revision?

11 A Conrail doesn't. Perhaps, the purchaser of the  
12 rail line may.

13 MR. KILGORE: Objection to that comment.

14 JUDGE COHEN: All right.

15 MR. EATON: That's all.

16 JUDGE COHEN: Off the record.

17 (Discussion off the record.)

18 JUDGE COHEN: On the record. The order referenced  
19 by Mr. Eaton and Mr. Sawyer is the recommended decision of  
20 now Chief Administrative Law Judge Robert Christianson at  
21 Docket Number A-00109901 dated June 18, 1993.

22 MR. HERZOG: Your Honor, that's not totally  
23 correct. The order was adopted by the Public Utility  
24 Commission ALJ Christianson's recommended decision on  
25 September 9, 1993 and that order was entered on September

1 15, 1993.

2 JUDGE COHEN: Thank you.

3 MR. KILGORE: That's correct.

4 MR. EATON: I offer the witness for cross  
5 examination.

6 JUDGE COHEN: Mr. Sheffey?

7 MR. SHEFFEY: I have no questions, your Honor.

8 MR. WEISS: City of Lebanon has no questions.

9 MR. KILGORE: South Lebanon Township doesn't have  
10 any.

11 MR. HERZOG: Bureau of Transportation and Safety has  
12 none.

13 MR. VAN SHURA: Metropolitan Edison Company has  
14 none.

15 MS. D'ALFONSO: PennDOT has no question.

16 JUDGE COHEN: Mr. Birsic?

17 MR. BIRSIC: No questions, Your Honor.

18 JUDGE COHEN: Thank you.

19 MR. KILGORE: I would call Mr. Kulp.

20 CURTIS E. KULP, called as a witness, having been  
21 duly sworn, was examined and testified as follows:

22 JUDGE COHEN: State you full name and spell you last  
23 name.

24 THE WITNESS: Curtis, with a c, E. Kulp, K-u-l-p.  
25

DIRECT EXAMINATION

1

2 BY MR. KILGORE:

3 Q Mr. Kulp, you have testified at a prior hearing  
4 in this matter?

5 A Yes, I did.

6 Q And does your position remain manager of South  
7 Lebanon Township, Lebanon County, Pennsylvania?

8 A Yes.

9 Q And as manager, are you responsible for  
10 coordinating projects of the township?

11 A Yes, I am.

12 Q Does one of those projects include the Wilhelm  
13 Avenue Bridge project?

14 A Yes, it is.

15 Q And just for clarification of this particular  
16 proceeding, Wilhelm Avenue project refers to what bridge?

17 A The Conrail bridge going over Wilhelm Avenue.

18 Q And Wilhelm Avenue traverses between what two  
19 roads in Lebanon County?

20 A It connects South Lincoln Avenue and proceeds  
21 westwardly to Cornwall Road.

22 MR. KILGORE: May I approach the witness, please?

23 JUDGE COHEN: Yes.

24 BY MR. KILGORE:

25 Q I am showing you what has been marked as Conrail

1 Exhibit 1 at the prior hearing. There's a map, Exhibit A.

2 Does that map show the Wilhelm Avenue bridge?

3 A Yes, it does.

4 Q If you will note we are talking about the  
5 Cornwall industrial line which is a dotted line on that  
6 particular exhibit, does that traverse Wilhelm Avenue on  
7 that map?

8 A Yes.

9 Q The current -- the existing plans for the  
10 realignment of the bridge were represented by David Eaton  
11 this morning. Were those recommendations accurate about  
12 aligning the track on a preexisting line immediately east  
13 of the Cornwall industrial line of replacement of the  
14 bridge, widening of the road and reconstructing the bridge  
15 at a new location?

16 A Basically, yes.

17 Q Is that correct?

18 A Yes.

19 Q That project had an estimated cost of what, Mr.  
20 Kulp?

21 A About 1995, the cost was projected at \$1.2  
22 million.

23 Q And that particular project shared cost by the  
24 township and the state was what?

25 A Township would pay 20 percent, state would pay 80

1 percent. With Conrail --

2 Q And when I --

3 A -- Conrail contribution of \$50,000.00.

4 Q And when I say the state, I am referring to  
5 PennDOT?

6 A Correct.

7 Q The use of that road now is within the township.  
8 Did you conduct a traffic count?

9 A Yes, I did.

10 Q I show you what's being marked as Township  
11 Exhibit 8. We had seven exhibits at the prior hearing.  
12 Can you identify that exhibit, please.

13 A This is a traffic count that the township did on  
14 Wilhelm Avenue underpass on 7/17 from 7:00 a.m. to 7/18,  
15 7:00 a.m. which our traffic count indicates 5,120 vehicles  
16 going underneath the bridge and also reflects the secretary  
17 going back in her records to 1986 concerning reportable  
18 accidents at the underpass bridge on Wilhelm Avenue with  
19 Conrail.

20 MR. KILGORE: I offer Exhibit 8. I offer Exhibit 8  
21 into into evidence.

22 JUDGE COHEN: It will be admitted with no  
23 objection.

24 (South Lebanon Township Exhibit No. 8 was produced  
25 and marked for identification and admitted in  
evidence.)

1 BY MR. KILGORE:

2 Q Mr. Kulp, did you have various pictures taken of  
3 the bridge and the road structure?

4 A Yes, I did. I directed the chief of police of  
5 our police department to take pictures of the underpass.

6 (South Lebanon Township Exhibit No. 9 was produced  
7 and marked for identification.)

8 BY MR. KILGORE:

9 Q I show you what's marked South Lebanon Township  
10 Exhibit 9. Can you identify that picture, please.

11 A Yes. That's a picture of roadway at Wilhelm  
12 Avenue approaching the one lane underpass. That is looking  
13 eastwardly from Cornwall Road to South Lincoln Avenue.

14 Q And the roadway in the foreground of the picture  
15 is two lanes?

16 A Correct.

17 Q And the Wilhelm Avenue bridge is --

18 A One lane.

19 Q You will see the telephone power lines in that  
20 picture?

21 A Correct.

22 Q Were those power lines contemplated being moved  
23 under the existing plans?

24 A No.

25 Q Were there any transmission lines and

1 transmission boxes contemplated being moved under the  
2 existing plan when you had to realign the track, to your  
3 knowledge?

4 A I don't think so, no.

5 MR. KILGORE: Offer Exhibit 9 into evidence.

6 JUDGE COHEN: It will be admitted.

7 (South Lebanon Township Exhibit No. 9 was admitted  
8 in evidence.)

9 (South Lebanon Township Exhibit No. 10 was produced  
10 and marked for identification.)

11 BY MR. KILGORE:

12 Q I show you what has been marked as Exhibit 10.

13 Is this also looking east looking closer to the Wilhelm  
14 Avenue bridge?

15 A That is correct. It's a closer view of the  
16 bridge looking eastwardly.

17 MR. KILGORE: Offer Exhibit 10 into evidence.

18 JUDGE COHEN: It will be admitted.

19 (South Lebanon Township Exhibit No. 10 was admitted  
20 in evidence.)

21 MR. EATON: As I understand it Exhibit 9 was also  
22 facing east?

23 MR. KILGORE: That's correct.

24 (South Lebanon Township Exhibit No. 11 was produced  
25 and marked for identification.)

BY MR. KILGORE:

1 Q I am showing you what's been marked for  
2 identification purposes as Exhibit 11. Can you identify  
3 the picture, please.

4 A Okay. This, again, is a picture of Wilhelm  
5 Avenue. Further away is a picture of Conrail bridge over  
6 Wilhelm Avenue facing westwardly.

7 Q You are looking to the west?

8 A That is correct.

9 MR. KILGORE: Offer Exhibit 11 into evidence,  
10 please.

11 MR. EATON: Objection. I am not quite clear what  
12 the purpose of these exhibits is. My understanding is that  
13 we are exploring Wilhelm Avenue another time because  
14 Conrail has advised that it has abandoned this track and  
15 therefore, the question at issue is whether any bridge  
16 replacement project is necessary.

17 The fact is that Corman has acquired the line and  
18 intends to use it and so the issue of whether a bridge is  
19 necessary really doesn't exist.

20 MR. KILGORE: A bridge is necessary for that usage.

21 JUDGE COHEN: We have to hear the ramifications of  
22 the agreement and make a judgment on that aspect of it.  
23 There's nothing before us right now.

24 MR. KILGORE: That's correct and the issue with the  
25 pictures is to show the condition of the bridge as it

1 exists today for your determination as to its hazards.

2 JUDGE COHEN: If that goes to -- we are not here to  
3 determine that the bridge has to be removed. There's a  
4 Commission order to that effect. The only issue remaining  
5 is what is to be done in connection with the removal, not  
6 whether removal is required.

7 MR. KILGORE: This hearing is for the consideration  
8 of the Wilhelm Avenue Bridge and I think it's perfectly  
9 relevant.

10 JUDGE COHEN: I'll let it go.

11 MR. KILGORE: There is no dispute that the bridge  
12 has to come out? Conrail doesn't --

13 JUDGE COHEN: The Commission is going to get an up  
14 to date view of the conditions surrounding the bridge.

15 MR. KILGORE: I again offer Exhibit 9 into evidence  
16 -- I am sorry Exhibit 11.

17 JUDGE COHEN: It will be admitted. The objection is  
18 overruled.

19 (South Lebanon Township Exhibit No. 11 was admitted  
20 in evidence.)

21 MR. EATON: I am objecting to 9, 10 and 11.

22 JUDGE COHEN: Overruled, exception is noted.

23 (South Lebanon Township Exhibit No. 12 was produced  
24 and marked for identification.)

25 BY MR. KILGORE:

1 Q The final picture, that is Exhibit 12. I ask you  
2 to identify Exhibit 12, Mr. Kulp.

3 A Again, this is a picture of Wilhelm Avenue, a  
4 closer picture of the bridge, Conrail bridge over Wilhelm  
5 Avenue again, looking westwardly.

6 Q Do these pictures fairly and adequately represent  
7 the roadway and the bridge that exists today, Mr. Kulp?

8 A Yes. They do. They were just taken a short  
9 period ago.

10 Q Mr. Kulp, are there any storm water problems with  
11 respect to the existing structure and roadway?

12 A Yes, there is.

13 Q What are those, Mr. Kulp?

14 A Right now, the low point of that whole area is  
15 right underneath the bridge. Whenever we have a rain, a  
16 snowstorm or whatever, the water lays under there. In the  
17 winter time it freezes up.

18 That's part of the problem why we have accidents  
19 there because the water lays there, cars going through,  
20 they lose control, or two cars want to stop, say one of  
21 them decides no -- both decide not to give right-of-way.

22 Sometimes you have, they brake and they hit each  
23 other. They hit the embankment or they hit the bridge,  
24 itself. So this is quite a problem.

25 Q Under the bridge, there is a low point of the

1 road?

2 A That is correct.

3 Q Mr. Kulp, is the Lebanon High School football  
4 field located in the vicinity of this road?

5 A It's just west -- northwest of the bridge.

6 Q And is there entrance onto Wilhelm Avenue from  
7 the school, Lebanon City School property onto at this  
8 location?

9 A Yes, there is. I would say approximately 300  
10 feet there's a driveway into Lebanon High School.

11 Q The Lincoln Avenue road, is that -- describe that  
12 road to us, please.

13 A Lincoln Avenue is one of the main arteries  
14 through South Lebanon Township. Along Lincoln Avenue, the  
15 hospital is located, VA, Cedar Crest High School is  
16 located, South Hills Park which is a 102 acre park,  
17 municipal owned park by South Lebanon Township.

18 All that traffic from those locations, a lot of  
19 them, if they are proceeding into the City of Lebanon, they  
20 will utilize the underpass to egress and ingress to those  
21 facilities.

22 Q Is there a housing development at the northwest  
23 corner of Lincoln Avenue and Wilhelm Avenue?

24 A Yes.

25 Q Was that housing development fully implemented

1 back in 1993?

2 A It started about early '90s and it's almost full  
3 now, yes.

4 Q Do you know approximately how many home sites are  
5 in this development?

6 A I believe the subdivision was for 59 houses.  
7 There's probably about 55 in right now.

8 Q The Cornwall Road which is the other intersecting  
9 road of Wilhelm Avenue, can you describe that road to us  
10 please?

11 A That's the main artery, basically, that people  
12 who live in the borough of Cornwall travel to get to the  
13 site and vice versa. It's well traveled.

14 Q Now, with respect to the existing PUC order, the  
15 deadline was for the end of this year to have plans and  
16 specifications for the removal of the bridge and  
17 realignment. Is that correct?

18 A I believe, and I think the PUC might be able to  
19 give a little more information.

20 MR. EATON: I can't quite hear.

21 THE WITNESS: We right now, the PUC hearing right  
22 now is, yes, we are supposed to have drawings, approved  
23 drawings to the PUC by the end of the year. This is, I  
24 believe, our second or third extension on that PUC hearing  
25 decision because of basically the uncertainty of what's

1 going to happen with Wilhelm Avenue and the Conrail  
2 bridge.

3 Q And what, at what time did that uncertainty  
4 crystallize for the township?

5 A I believe it was in '95 when we got a letter from  
6 Conrail stating that they were going to abandon, abolish  
7 said line. I don't recall the exact date. I believe it  
8 was '95, December of '95.

9 Q Was that the petition to abandon the line filed  
10 with the Interstate Commerce Commission?

11 A Yes, it was.

12 Q Particularly, Exhibit 1 for the prior hearing?

13 A I don't recall what exhibit it was.

14 MR. EATON: Conrail's Exhibit 1.

15 MR. KILGORE: That's Conrail's Exhibit 1.

16 BY MR. KILGORE:

17 Q The project cost you have testified to already.  
18 Should the township merely have to widen the road and raise  
19 the road and install storm water, what would that cost be  
20 rather than --

21 A Projected cost is \$200,000.00.

22 Q Rather than?

23 A \$1.2 million for a new bridge.

24 Q And again, would that cost be your understanding  
25 of that cost would be shared 20 percent local municipality

1 and 80 percent PennDOT?

2 A Yes.

3 Q What is the township's position with respect to  
4 the bridge, given the testimony at the prior hearing that  
5 Alcoa has requested Conrail remove the track on their  
6 property and there's been no service on that line in excess  
7 of two years?

8 A Considering that Conrail has petitioned for the  
9 line to be abandoned, abolished, considering there's no  
10 remote possibility of service, our position is Conrail  
11 should pay the total costs to remove the bridge, bridge  
12 structures and the track.

13 Q And is Alcoa, was Alcoa the last remaining  
14 service on that line?

15 A They were the last and only service on that line.

16 Q Last and only service?

17 A Yes.

18 Q Does the township, is it the township's opinion  
19 that there is a need to make this two lane road to improve  
20 its condition?

21 A Yes.

22 Q Is this a fatality waiting to happen, Mr. Kulp?

23 A Yes, it is. By the record I give you there's  
24 accidents there every year and we have already had one  
25 fatality some time ago. A gentleman jumped off the bridge

1 and killed himself.

2 MR. KILGORE: That's all I have.

3 JUDGE COHEN: Mr. Sheffey?

4 MR. SHEFFEY: No questions.

5 MR. WEISS: City of Lebanon has no questions.

6 JUDGE COHEN: Mr. Herzog?

7 MR. HERZOG: No questions, Your Honor.

8 JUDGE COHEN: Mr. Eaton?

9 MR. EATON: Not many.

10 CROSS EXAMINATION

11 BY MR. EATON:

12 Q Mr. Kulp, you said a couple of times that the  
13 township share of a 1.2 million project is 20 percent. Am  
14 I correct?

15 A That is correct.

16 Q That's 20 percent less \$50,000.00 to be  
17 contributed by Conrail, is it not?

18 A Yes, that is correct.

19 Q It's an agreement that was entered into prior to  
20 the initial hearing on the Wilhelm Avenue structure?

21 A Correct.

22 Q And has that agreement been changed in any way?

23 A No.

24 Q It still prevails?

25 A Correct.

1 Q You stated that you have been advised that  
2 Conrail had notified I think you said ICC -- it may have  
3 been the Surface Transportation Board -- of its exemption  
4 for abandonment of the line. Am I correct on that?

5 A Correct.

6 Q Have you any notice or knowledge of any  
7 application by Corman to allow operations on the line?

8 A No.

9 Q Did you not say that Corman has not applied for  
10 renewed operations on the line, can you?

11 A No.

12 Q And am I correct that the issue that we have to  
13 resolve here is not whether the Wilhelm Avenue crossing  
14 structure should be removed. There has been general  
15 agreement that it should, is there not?

16 A Correct.

17 Q And that has been concurred in by Conrail as  
18 well, has it not?

19 A I believe so, yes.

20 Q All right. And then the question is what is the  
21 scope of the project involved in the removal of that  
22 structure, is it not?

23 A The issue is do we need to replace the existing  
24 bridge with another bridge or can we just remove it and  
25 that's the end of it.

1 Q And further if the existing bridge must be  
2 replaced, may it be replaced on the existing alignment or  
3 must it be replaced on a different alignment to Alcoa  
4 continued rail traffic. Is that not true?

5 A I believe it could be replaced on the existing  
6 line structure.

7 Q That's because there's no rail traffic on that  
8 line this week. Am I correct?

9 A That is correct.

10 Q And you don't know whether there will be rail  
11 traffic on that line next week?

12 A No. I have got a letter from Alcoa that says  
13 they are not interested in rail service.

14 Q They were not interested in rail service from  
15 Conrail, is that not correct?

16 A That is correct.

17 Q And you have no idea whether they are interested  
18 in rail service from Corman. Is that correct?

19 MR. KILGORE: Objection. He's asking for  
20 speculation of this witness.

21 MR. EATON: I asked what he knows.

22 JUDGE COHEN: Overruled. He has no idea.

23 MR. EATON: That's all.

24 JUDGE COHEN: Thank you, Mr. Eaton.

25 MR. VAN SHURA: I am sorry. Metropolitan Edison

1 does have a question, If I may run through two or three.

2 JUDGE COHEN: All right.

3 BY MR. VAN SHURA:

4 Q Mr. Kulp when we were back looking at the  
5 pictures and they were being identified, did you testify  
6 that no power facilities would have to be relocated or  
7 removed?

8 A From my engineers, that's what they are telling  
9 us, yes.

10 Q Can you tell me what that testimony is based  
11 upon?

12 A What their --

13 Q From your engineers?

14 A Our engineers have stated that those lines do not  
15 have to be removed.

16 Q By those lines, you mean -- what lines are you  
17 talking about?

18 A Transmission lines.

19 Q Okay. Because there is a transmission line, 69  
20 KV line located close to the facilities.

21 A Right. That does not have to be removed.

22 Q And the steel pool?

23 A Correct.

24 Q There are also distribution facilities?

25 A Yes.

1 Q Near the structure.

2 A Uh-huh.

3 Q Or the bridge?

4 A Correct.

5 Q Poles owned by Bell Atlantic who I believe  
6 they're a party, but they aren't present today. With  
7 Metropolitan Edison distribution lines located on those  
8 poles. Did you mean to testify that they also would not  
9 have to be --

10 A I no. I just mean the transmission. I am not  
11 sure about the distribution. That, we haven't gotten to  
12 that end of it. There could be a possibility we are going  
13 to have to shift to that.

14 MR. VAN SHURA: Your Honor, I --

15 BY MR. VAN SHURA:

16 Q When I say distribution facilities that has yet  
17 to be gotten into, you mean we have to, we are looking  
18 towards a final plan?

19 A Final plan for the bridge does not show those  
20 lines being changed. We did not engineer the removal of  
21 the bridge, widening the road, if that's our option.

22 Q As far as you know --

23 A We have not engineered the -- if we don't put a  
24 bridge in we have not engineered that, you know. Taking  
25 the bridge out, widening the road, putting your storm water

1 facilities in and all that stuff.

2 Q So --

3 A I would most likely if they don't show  
4 replacement now, they probably would not show replacement  
5 after we did that.

6 Q Show replacement on what?

7 A On where he put the brink in. Basically the same  
8 concept.

9 Q There's no final plan that I am aware of. Is  
10 there a final plan that you are aware of?

11 A No.

12 Q Showing --

13 A Preliminary plans.

14 Q Preliminary plans?

15 A Yes.

16 Q So if I understand this correctly, then, your  
17 engineers, these are the South Lebanon Township engineers  
18 that --

19 A Buchart-Horn who is engineering this. They are  
20 not our engineers but they are the engineers for this  
21 project.

22 Q Have they advised you that the transmission  
23 facilities, both the steel pole and the line would not have  
24 to be removed?

25 A Yes.

1 Q Or relocated?

2 A And I believe Mr. Pritchard can verify that, who  
3 is the engineer for PennDOT.

4 Q Okay. But you also just testified that we don't  
5 have a final plan?

6 A No. We do not have final plans. This is a --

7 Q Without a final plan how can we be sure that Met  
8 Ed's transmission facilities are not going to be affected?

9 A Again, I am going on what the engineer is saying,  
10 preliminary plans do not show the lines being removed.

11 MR. VAN SHURA: Okay, Your Honor. I am not sure  
12 Metropolitan Edison has a copy of these preliminary plans.  
13 I guess we would reserve the right to get a copy of them  
14 and make that determination.

15 JUDGE COHEN: Very well.

16 MR. VAN SHURA: Just one minute, Your Honor.

17 JUDGE COHEN: Surely.

18 BY MR. VAN SHURA:

19 Q Mr. Kulp, have you reviewed the recommended  
20 decision, I guess, that was issued by Judge Christianson?  
21 In this proceeding?

22 A Some time ago I did. I haven't.

23 Q Okay. There is testimony, there is reference to  
24 testimony and reference to the transcript that of course,  
25 the former Met Ed witness had described in detail that Met

1 Ed facilities would be involved. And Your Honor, this is  
2 located at page 5 of Judge Christianson's recommended  
3 decision and also that there were concerns centered around  
4 the 80 foot steel tower?

5 A Uh-huh.

6 Q Met Ed was concerned about having the railroad  
7 track coming closer to the power line.

8 MR. KILGORE: If I may interject, that particular  
9 recommended order required the township to submit final  
10 design and then for an assessment of costs after that  
11 point. I believe the township would have no objection to  
12 that being the same recommended decision by your, in your  
13 matter, in this matter today, should the -- should you  
14 decide the bridge is to be removed and the road widened and  
15 at some later time if it has to be rebuilt, so be it.

16 But obviously there would have to be final design  
17 plans and a proceeding to assign costs. And I would assume  
18 that if there had to be removal of the transmission lines  
19 that that would be part of the overall project.

20 That particular plan involved the movement of a  
21 track also, not just removal of a bridge.

22 JUDGE COHEN: Thank you.

23 MR. VAN SHURA: But until we have a final plan, Your  
24 Honor, we can't assume that there will or won't be removal  
25 of the track and that ergo that our facilities will or will

1 not be affected.

2 JUDGE COHEN: Yes.

3 MR. VAN SHURA: And also on page 8 of Judge  
4 Christianson's recommended decision, either the findings of  
5 fact, finding number 7, details that Met Ed facilities will  
6 be affected by the changes at the crossing while Bell  
7 facilities might be so affected.

8 MR. KILGORE: Again, that was based on, in part, I  
9 believe in total on the fact that the track was being moved  
10 to the east which would have affected the lines, the  
11 transmission lines. That, I believe, is what is referenced  
12 in that finding of fact.

13 JUDGE COHEN: Thank you, Mr. Kilgore.

14 MR. VAN SHURA: I'd make the same comments to that  
15 statement, also, Your Honor.

16 JUDGE COHEN: Thank you. Ms. D'Alfonso?

17 MS. D'ALFONSO: I have no questions.

18 JUDGE COHEN: Mr. Birsic?

19 MR. BIRSIC: Yes.

20 BY MR. BIRSIC:

21 Q Mr. Kulp you testified I understood that the  
22 basis for the filing of the petition to reopen was as a  
23 result of the fact that Conrail had advised you that they  
24 were going to abandon this direct?

25 A That is correct.

1 Q And is it safe to say that that's essentially the  
2 only condition which has changed that between the time the  
3 original order was entered that would cause you to file  
4 this petition to reopen?

5 A Well, we petitioned, I believe it was 1993, to  
6 get this matter resolved. Here we are four years later, we  
7 still don't know if we really need a bridge there or not.

8 Q Is it safe to say if Conrail had not advised you  
9 that they intended to abandon that track, would you have  
10 filed the petition to open?

11 A If we didn't know Conrail was going to abandon  
12 service, we would have had to build the bridge because the  
13 service would have been continued to Alcoa and we would  
14 have needed a bridge.

15 MR. EATON: I can't hear. If you could keep your  
16 voice up.

17 THE WITNESS: Basically, what I said was if we know  
18 there's service to someone in that line, yes, we are going  
19 to need a bridge. If there's no service whatsoever on that  
20 line, there's no use building a bridge.

21 BY MR. BIRSIC:

22 Q But if Conrail changes its business plan with  
23 respect to the treatment of that track or it's sold to a  
24 third party, who then comes in and expresses an intention  
25 and takes steps, the purposes of reactivating that line, is

1 there any reason that the original order in any fashion  
2 should be modified?

3 Other than perhaps because the track may remain  
4 unused for a time frame which would give enough time for  
5 that bridge to be demolished and reconstructed on the same  
6 line as opposed to modified?

7 A The time frame, there's a lot of variables.  
8 That's a hard question to answer. What's your time frame?

9 Q I believe I asked the question.

10 A All right. You know, so you keep saying you are  
11 going to have service of the line. If there's service to  
12 that line then we have to put a bridge in. If there's no  
13 service to the line, what's the use putting a bridge in?

14 Q Correct. But if Conrail at this stage, or any  
15 other third party purchaser comes in and wants to activate  
16 that line, at this stage, to modify the plans, is --

17 MR. WEISS: Your Honor, I'm going to object to any  
18 more of these speculative questions. If this is, if that  
19 is, if the other thing. One of the problems with the  
20 Corman Conrail thing, if we have some bacon, we can have  
21 some bacon and eggs. If we have some eggs -- too many ifs.

22 JUDGE COHEN: We don't know what's going to happen.

23 MR. WEISS: He doesn't know what's going to happen,  
24 if something --

25 JUDGE COHEN: If I make an order, then circumstances

1 might still change.

2 MR. KILGORE: In addition, Your Honor, two exhibits,  
3 6 and 7 quite clearly indicate that Alcoa has no intention  
4 of continuing service. Exhibit 6 was addressed to the  
5 chairman.

6 MR. EATON: I object to counsel characterizing what  
7 the evidence has been. You have to rely on the record.

8 JUDGE COHEN: It's in the record and we'll take that  
9 into account. The objection is sustained.

10 BY MR. BIRSIC:

11 Q In summary, as far as timing, the petition to  
12 reopen, was the fact that the bridge is going to be --  
13 Conrail advised --

14 MR. KILGORE: Objection.

15 JUDGE COHEN: Let him finish the question.

16 MR. BIRSIC: That Conrail advised the township that  
17 they intended to abandon the line.

18 MR. KILGORE: I object. It outlines the reasons why  
19 it was filed.

20 MR. BIRSIC: Why can't we explore with the witness  
21 what their business is of their --

22 JUDGE COHEN: I have not read the petition. As far  
23 as I know, the record speaks for itself. The petition  
24 stated the reasons for the township wanting to reopen.

25 BY MR. BIRSIC:

1 Q Is there any reason why the petition was filed?

2 A Judge, should I --

3 MR. KILGORE: You can answer the question.

4 THE WITNESS: The question, we need to know whether  
5 there's going to be service to that line, whether we need  
6 to build a bridge or not. That's basically what it comes  
7 down to.

8 BY MR. BIRSIC:

9 Q Correct, but the question was is the sole basis  
10 for filing the petition to reopen was the fact that Conrail  
11 advised you that they were going to abandon the line. That  
12 was the condition for this change resulting in your filing  
13 the petition.

14 MR. WEISS: You have already testified. Note my  
15 objection, please. He already answered that one of the  
16 reasons was Conrail's abandonment. The other reason was  
17 they were getting sick and tired of waiting to get this  
18 thing done for four years while Conrail monkeys around.

19 MR. EATON: Motion to strike that. It is  
20 intemperate in the first place and in the second place,  
21 Conrail has not monkeyed around. Conrail has lost its  
22 business. It has sold the line.

23 JUDGE COHEN: We recognize the township wants to  
24 bring this matter to a head. And we would like to get done  
25 by the end of year. All right.

1 MR. EATON: That's a simple --

2 JUDGE COHEN: Any other questions?

3 MR. BIRSIC: I have no other questions, Your Honor.

4 JUDGE COHEN: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. KILGORE:

7 Q Mr. Kulp was the township aware that Alcoa  
8 intended not to use the line again prior to filing the  
9 petition to reopen?

10 A Yes.

11 MR. KILGORE: That's the only question I have.

12 JUDGE COHEN: Recross?

13 RECROSS EXAMINATION

14 BY MR. BIRSIC:

15 Q What was the basis for your statement? That  
16 Alcoa did not intend to continue?

17 A Because they gave us a letter stating they are  
18 not going to, they are not interested in continuing  
19 service.

20 Q With who?

21 A With Conrail.

22 Q With Conrail? So if a third party came in, that  
23 letter doesn't necessarily speak to whether or not they  
24 would be willing to do business with a third party?

25 MR. KILGORE: I object. The letter speaks for

1 itself.

2 JUDGE COHEN: Sustained.

3 MR. EATON: You raised the subject.

4 MR. BIRSIC: No other questions, Your Honor.

5 JUDGE COHEN: All right. You are busting to say  
6 something. Go ahead. Do you want to say something?

7 MR. EATON: I don't think I have anything more  
8 useful to say than much of what's been said this morning  
9 so, no.

10 JUDGE COHEN: We want constructive comments. All  
11 right. Off the record.

12 (Discussion off the record.)

13 MR. HERZOG: The bureau brought a witness to testify  
14 as to Wilhelm Avenue, depending on the scope of what that  
15 reopening was. I think everybody is in agreement that it  
16 is not certain what, if any -- if it's going to be an  
17 active line or it should be replaced, filled in if it  
18 there's not going to be service, so I don't see any reason  
19 to have another turkey shoot.

20 JUDGE COHEN: Anyone else?

21 (Discussion off the record.)

22 JUDGE COHEN: On the record. We'll note for the  
23 record that in an off the record decision the parties  
24 seemed to be in agreement that there has been no physical  
25 change in the location of Met Ed's facilities vis-a-vis

1 whatever.

2 (Discussion off the record.)

3 JUDGE COHEN: On the record.

4 MR. EATON: I request that the record remain open  
5 for a sufficient period so that I may file as a late  
6 exhibit a copy of the deed from Conrail to Corman.

7 MR. WEISS: Objection. The time to -- the reason we  
8 are here today was to give them an opportunity to conclude  
9 their negotiations, present the testimony regarding the  
10 Corman negotiations. It's my opportunity to -- I'd say --

11 MR. BIRSIC: It is just another red herring.

12 MR. EATON: I represented that there was negotiation  
13 or a negotiation underway which we expected would be  
14 concluded.

15 JUDGE COHEN: I was supposed to be notified by  
16 October 1.

17 MR. WEISS: October 1, Your Honor.

18 JUDGE COHEN: Very definitely did it.

19 MR. WEISS: Absolutely and in addition, whatever the  
20 agreement between Conrail and Corman, Conrail is in the  
21 best position to make certain that the obligations imposed  
22 on it by you in this order in this proceeding are, if it's  
23 sold to Corman, transferred to Corman vis-a-vis that  
24 agreement.

25 We should not have to be held hostage to an

1 agreement that isn't even in front of us today and we have  
2 no idea whether Corman is good, bad or indifferent. We  
3 know Conrail. Conrail is the party of record. Conrail is  
4 the responsible party and there is no prejudice to Conrail,  
5 none whatsoever, in imposing a cost on them that they, in  
6 turn, can transfer by agreement to Corman. I would like  
7 briefs to that effect if, in fact, I make an order  
8 prejudicial to Conrail, imposing a burden on Conrail that  
9 the order will run to the assigns, the transferee.

10 MS. D'ALFONSO: I request that regardless of what  
11 may or may not happen between Conrail and R. J. Corman and  
12 I have no reason to expect that the two entities will not  
13 come to an agreement, if it were known, I would ask that  
14 same language be indicated in your order based upon the  
15 impending demands of Conrail.

16 JUDGE COHEN: Nothing's going to happen tomorrow.  
17 You know that. We are looking at probably end of the year  
18 or very close to it.

19 MS. D'ALFONSO: And for that reason I would request  
20 that that language be included in your order regardless of  
21 what may happen.

22 JUDGE COHEN: Off the record.

23 (Discussion off the record.)

24 JUDGE COHEN: We are going to deal with the matter  
25 before us. You have received due notice of what the nature

1 of the proceeding will be. So I am asking the parties to  
2 submit briefs because findings of fact, conclusions of law,  
3 as you all know or may not know the contract with the  
4 reporter provides that the Reporter has three weeks in  
5 which to file transcripts and if that, I can set a briefing  
6 schedule.

7 But be that as it may, a how about briefs due on or  
8 about December 29th. I don't want to say January 1st.

9 MR. BIRSIC: Sir --

10 JUDGE COHEN: Briefs due on or before December 29.  
11 1997.

12 MS. D'ALFONSO: December 29 is a Monday.

13 JUDGE COHEN: Reply briefs ten days thereafter if  
14 needed. Anything further, gentleman?

15 MR. KILGORE: No, thank you.

16 (Whereupon, at 11:40 a.m., the hearing was  
17 adjourned.)

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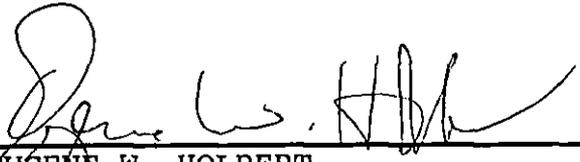
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1  
2 I hereby certify that the evidence and  
3 proceedings are contained fully and accurately in the notes  
4 taken by me during the hearing of the within cause, and  
5 that this is a true and correct transcript of the same.  
6

7  
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9 \_\_\_\_\_  
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