



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

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ISSUED: OCTOBER 23, 1998

IN REPLY PLEASE
 REFER TO OUR FILE

A-00113589, C-00970107, C-00970126
 C-00970106, A-00109901

TIMOTHY D SHEFFEY ESQUIRE
 REILLY WOLFSON SHEFFEY SCHRUM & LUNDBERG
 1601 CORNWALL ROAD
 LEBANON PA 17042

IN RE: APPLICATION OF THE COUNTY OF LEBANON TRANSIT AUTHORITY..... ETC

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge Herbert S. Cohen. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision. All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and/or late filed replies might not be considered by the Commission.

cc: ALJ COHEN/OFFICE OF ALJ/LAW/PIO/OSA/CHAIRMAN/COMMISSIONERS/T&S-LEGAL/T&S/KEEZEL/TRANS & SAFETY-RAIL/COMP & ASSIGN/OUR FILE

Very truly yours,

James J. McNulty
 Secretary

EEF

Encls.
 Certified Mail
 Receipt Requested

SIMILAR LETTER LIST ATTACHED:

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: : Docket No. A-00113589
APPLICATION OF THE COUNTY :
OF LEBANON TRANSIT AUTHORITY :
FOR APPROVAL OF THE :
SUSPENSION OF A SERIES OF :
CROSSINGS INVOLVING THE :
CORNWALL INDUSTRIAL TRACK :
OF CONSOLIDATED RAIL :
CORPORATION LOCATED IN THE :
CITY OF LEBANON, LEBANON :
COUNTY :

CITY OF LEBANON : Docket No. C-00970107
Complainant :
v. :
CONSOLIDATED RAIL :
CORPORATION, et al, :
Respondent :

COMMONWEALTH OF :
PENNSYLVANIA DEPARTMENT OF :
TRANSPORTATION, :
Complainant :
v. :
CONSOLIDATED RAIL :
CORPORATION, :
Respondent :

THE TOWNSHIP, : Docket No. C-00970106
BOARD OF SUPERVISORS :
Complainant :
v. :
CONSOLIDATED RAIL :
CORPORATION, et al., :
Respondent :

APPLICATION OF SOUTH LEBANON :
TOWNSHIP FOR THE APPROVAL OF : Docket No. A-00109901
THE ALTERATION OF THE CROSSING:
(AAR 591 537 S). WHERE TOWN- :
SHIP ROAD 705 (WILHELM- :
AVENUE). CROSSES BELOW GRADE :
OF THE TRACKS OF THE :
CONSOLIDATED RAIL CORPORATION: :
IN SOUTH LEBANON TOWNSHIP, :
LEBANON COUNTY :

DOCUMENT
FOLDER

DOCKETED
OCT 26 1998

RECOMMENDED DECISION

Before
HERBERT S. COHEN
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On January 30, 1997, South Lebanon Township (TOWNSHIP) submitted a Complaint to the Public Utilities Commission (PUC) against Consolidated Rail Corporation (CONRAIL) relative to the condition of the railroad crossing, on what is referred to as, the Cornwall Industrial Track at South Lincoln Avenue. In addition, the Township, the City of Lebanon (City), the Commonwealth of Pennsylvania, Department of Transportation (PennDOT), and the County of Lebanon Transit Authority (Colt) also filed complaints regarding other crossings on said line.

A hearing on the complaints was scheduled for August 5, 1997 before the undersigned Administrative Law Judge.

On July 24, 1997, the Township filed a petition to reopen an Application of the Township, filed to Docket Number A-00109901, in order to reexamine the issue of the Wilhelm Avenue Bridge in light of the issues presented as part of the above referenced Complaints against Conrail.

On August 5, 1997, a hearing was held before me, at which time all parties presented testimony regarding the at grade

crossings. The record was held open until October 1, 1997, in order for Conrail to advise the undersigned of a proposed sale of said line to R.J. Corman Railroad Company/Allentown Lines, Inc. (Corman); and, held open until October 8, 1997 as to the Township's Petition to consolidate the at grade crossing cases with the case of the Wilhelm Avenue Bridge.

On August 21, 1997, the Commission granted the Township's Petition to open the Wilhelm Avenue Bridge case and ordered the matter consolidated with the above proceedings.

On October 8, 1997, a hearing was held to consider the circumstances of the Wilhelm Avenue Bridge and the prior Order of the Commission to replace the same at a projected cost of \$1,200,000.00. Initially, I refused to consider additional testimony concerning the condition of the at grade crossings and the proported sale of the line by Conrail to Corman, the record as to the same having been closed as of October 1, 1997.

On December 5, 1997, Conrail filed a Petition to reopen the matter in order to allow additional testimony as to the acquisition of the Cornwall Industrial Track by R.J. Corman Railroad Company/Allentown Lines, Inc. Following the submission of Answers opposing the reopening of the case, an Order was entered January 29, 1998 granting Conrail's Petition to reopen and scheduled a hearing for April 16, 1998.

Appearances at the April 16, 1998, hearing were entered by, John Herzog, Esquire, for PUC Bureau of Transportation and Safety; Benjamin Dunlap, Esquire, for Conrail; Gina D'Alfonso, Esquire, for Pennsylvania Department of Transportation; Paul Kilgore, Esquire, for County of Lebanon Transit Authority; James T. Reilly, Esquire, for City of Lebanon; John B. Joyce, Esquire for R.J. Corman Company/Allentown Lines, Inc.; and William C. Matthews, II, Esquire for GPU Energy.

Following the hearing on Conrail's Petition to reopen, a Stipulation was entered as to all matters except the issue of the Wilhelm Avenue Bridge.

On July 16, 1998, the undersigned issued a Recommended Decision approving the parties' Stipulation for Settlement.¹

Before me now is resolution of the Wilhelm Avenue Bridge issue.

FINDINGS OF FACT

1. The instant reopened Application arises out of a proceeding which concluded approximately four years earlier after entry of an Order by the Public Utility Commission ("Commission") on September 15, 1993, at Docket No: A-00109901.

¹ The Commission Adopted my Recommended Decision at its August 27, 1998, Public Meeting.

2. The 1993 Commission Order required the Township, "at its initial cost and expense, to submit within four months...detailed plans concerning reconstruction of the crossing" [Wilhelm Avenue Bridge] and to "furnish all material and do all work necessary to reconstruct the crossing and make associated highway improvements." The reconstruction work covered under the Order was to be completed in eighteen months from the September 15, 1993 entry date.

3. The 1993 Commission Order directed the general plans for the Wilhelm Avenue Bridge to include realignment of the track on a pre-existing line immediately east of the Cornwall Industrial Line, the replacement of the bridge, widening of the road and reconstruction of the bridge at a new location. (N.T. 227).

The Commission extended the time to file detailed plans by the Township to December 31, 1998 (N.T. 235). Had the Township completed the construction work in accordance with the Commission's September 15, 1993 Order, the project would have been completed in March, 1995. (N.T. 235).

4. The 1993 Commission Order projected sharing of costs for the replacement of the Wilhelm Avenue Bridge as follows:
Conrail \$50,000.00, Pennsylvania Department of Transportation

("PennDOT") and the Township to split the balance 80%20% respectively. (N.T. 227).

5. In 1993, the estimated cost of the project was \$1.2 million. Pennsylvania Department of Transportation would reimburse the Township 80%. (N.T. 228).

6. Corman currently is the owner of the rail line (Cornwall Industrial Track) at all the involved crossings in the consolidated proceedings, except for the Willow Street crossing in the City of Lebanon, pursuant to an Indenture dated October 14, 1997. (N.T. 270-272, 329-330; RJC Exhibit No. 1; Conrail Exhibit No. 3).

7. The Cornwall Industrial Track terminates at the spur leading to the ALCOA plant in South Lebanon Township, Lebanon County, Pennsylvania. (N.T. 120 & 126).

8. The line from milepost .90 to 4.50 contains nine (9) at grade crossings and a bridge over Wilhelm Avenue. (N.T. 137).

9. Traffic ended on the line in late 1995 at the time Conrail owned the track, namely, from milepost .90 to 4.50. (N.T. 20, 119).

10. The at grade crossings at Willow Street (prior to milepost .90) will be repaired in accordance with the party's Stipulation and the at grade crossing on Cumberland Street

(Pennsylvania Route 422), Walnut Street, Chestnut Street, 12th Street, 10th Street, 9th Street, 8th Street, South Lincoln Avenue and State Drive are to be temporarily suspended until April 16, 2000, unless reactivated by Corman, failing which the appropriate Petition for abandonment and abolishment the track will be filed.

11. Conrail, Corman's predecessor, petitioned the Interstate Commerce Commission to abandon the line from milepost .90 to 4.50. (N.T. 121).

12. The rail line at the subject crossing is an operating line under an acquisition and operation exemption issued by the Surface Transportation Board under STE Finance Docket No. 3302, and Corman is obligated to provide service on the line for a customer which desires such service. (N.T. 313; RJC Exhibit No. 2; Conrail Exhibit No. 4.).

13. The last and only service on the line was to ALCOA. ALCOA has no plans to use the line; has switched to truck service; and, in accordance with its Agreement with Conrail, has requested Conrail to remove the spur, which serves the plant. (N.T. 120, 134, 141, 237 Conrail (Exhibit 1 and Township Exhibits 6 & 7)).

14. The cost to rehabilitate the track on the portion of line that is not in use and prior to resumption of rail traffic is \$451,700.00. (N.T. 144).

15. At this time there are no projected customers to be serviced by the line from milepost .90 to 4.50. (N.T. 93, 145, & Conrail Exhibit 1).

16. The existing railroad structure over Wilhelm Avenue allows for one lane of highway traffic moving east and west. (N.T. 229).

17. Wilhelm Avenue provides access to housing developments, schools, athletic fields, hospitals, VA Medical Center and 102 acre park. (N.T. 234).

18. Traffic under the bridge on Wilhelm Avenue is 5, 120 vehicles per day. (N.T. 228).

19. The existing structure is at a low point of the road and rainwater and ice lay in the underpass. (N.T. 223).

20. A new housing development, with 55 of 59 houses completed, lies immediately to the northeast of the underpass. (N.T. 235).

21. The Township will widen the road to two lanes, raise the grade and improve its condition upon the removal of the bridge. (N.T. 237).

22. Corman is attempting to convince ALCOA to reconsider the use of rail transportation for its commodities. (N.T. 318, 325).

23. Corman has experience in the aluminum industry and currently transports approximately 400 million pounds of aluminum annually. (N.T. 273-274). It recently purchased 112 box cars especially to move finished aluminum products. Corman also handles millions of pounds of raw aluminum product and moves approximately 200 box cars a month of aluminum out west. (N.T. 273-74).

24. Corman intends to work with Norfolk Southern, the new interchanging carrier, which currently has a good working relationship with ALCOA Aluminum at other plants, to obtain ALCOA business on the involved line and provide service to ALCOA. (N.T. 272-276; RJC Exhibit No. 2; Conrail Exhibit No. 4).

25. The R.J. Corman family of companies have annual gross revenues of approximately \$58 million. (N.T. 297-300).

26. Corman was aware of Conrail's obligations regarding the Wilhelm Avenue bridge prior to conveyance, and obligated itself in the Indenture between Conrail and Corman conveying the line to assume any costs or other responsibilities imposed on Conrail by the Pennsylvania Public Utility Commission ("Commission") for any bridge or crossing on the line. (N.T. 312-313, 329-331; RJC Exhibit No. 1 at 3-4; Conrail Exhibit No. 3 at 3-4).

27. If Corman does not obtain ALCOA's business, it has agreed to remove the Wilhelm Avenue bridge. (N.T. 325).

28. Corman has obligated itself to petition the Commission to either reactivate all other crossings on the line or abolish them by April 16, 2000. (Stipulation filed June 1, 1998, at Paragraph 2(d)).

29. Although Corman would prefer that a bridge always remain in place over Wilhelm Avenue, because Corman is still in the process of developing a business relationship with ALCOA, it is not opposed to the removal of the bridge, the widening of Wilhelm Avenue and the construction of new bridge abutments so that a new bridge can quickly be built if the ALCOA business materializes. (N.T. 314).

30. Corman wants a specific commitment from the Township, Pennsylvania Department of Transportation and any other parties as to how long it would take to put a bridge in if the current bridge is removed. (N.T. 321, 332).

31. Pursuant to the 1992 Order by the PUC, Corman expected that a bridge would always be open on the Cornwall track. A new bridge would be built while the current bridge was in use, and once the new bridge was completed, the old bridge would be removed. (N.T. 335-336).

32. Corman currently has two operating lines in Pennsylvania. The Allentown line is short line railroad serving customers and involving a material sales yard located in Allentown

and serving Conrail. The Pennsylvania line, headquarters in Clearfield, principally moves 3.5 million tons of coal per year to Pennsylvania Power and Light. (N.T. 278).

33. Rails to Trails is on the service list for the Wilhelm Avenue Bridge case and had actual notice of the proceedings held October 8, 1997 and April 16, 1998. (N.T. 213, 214, 266).

34. R.J Corman Company/Allentown Lines, Inc. does not know how much it would cost to rehabilitate the Cornwall Industrial Track so that it could serve ALCOA. (N.T. 321).

35. Following demolition of the bridge, building concrete abutments would cost approximately \$250,000.00. (N.T. 322, 337).

36. Following demolition of the bridge, a standard 2:1 grade of the railroad embankment would cost approximately \$70,000.00-\$95,000.00. (Bur TG S M, Br., p.12).

37. Metropolitan Edison Company, d/b/a GPU Energy, (Met-Ed) has facilities within the area of subject crossing that would be affected by the alteration to the crossing. (Met-Ed, M, Br., P.2).

38. The Commission's September 15, 1998 Order, directed, inter alia, Met-Ed to provide all material and perform all work necessary to relocate or modify its facilities in a manner so as not to interfere with the construction of the Wilhelm Avenue

improvement. Met-Ed was directed to bear the initial cost and expense associated with the relocation or modification of its facilities. (Met-Ed, M,Br., p.2)

39. Met-Ed takes no position with respect to issues whether the Wilhelm Avenue Crossing should be modified, removed, or reconstructed. However, it does have facilities located in the area of the crossing and within the jurisdictional limits as tentatively established by the Commission. (Met-Ed, M.Br., p.8).

40. Met-Ed requests that any order modifying the Wilhelm Avenue Crossing direct Met-Ed to relocate or modify its affected facilities at its initial cost and expense. (Met-Ed, M.Br., p.11).

DISCUSSION

As in all cases before the Commission, the ultimate objective in proceedings which involve rail-highway crossings is to protect the public interest, i.e., to ensure and promote the protection, safety, convenience and welfare of the public. To this end, the Commission has exclusive authority to order the construction, reconstruction, alteration, repair, protection, suspension or abolition of rail-highway crossings, as well as the exclusive authority to determine and order which parties should maintain the crossings in the future.

Section 2702(b) of the Public Utility Code, 66 Pa.

C.S. §2702(b), provides in part:

The Commission is hereby vested with exclusive power ... to determine and prescribe, by regulation or order, the points at which, and the manner in which, such crossings may be constructed, altered, relocated, suspended or abolished, and the manner and conditions in or under which such crossings shall be maintained, operated, and protected to effectuate the prevention of accidents and promotion of the safety of the public ...

This jurisdiction extends as well to the approaches to rail-highway crossings. Pa. Department of Transportation v. Pennsylvania Public Utility Commission, 64 Pa. Commonwealth Ct. 299, 440 A.2d 657 (1982).

Other provisions of the Public Utility Code authorizes the Commission to allocate costs of construction, relocation, alteration, protection or abolition of rail-highway crossings or utility facilities at such crossings among interested parties. 66 Pa. C.S. §2704(a); Pennsylvania Department of Transportation v. Pennsylvania Public Utility Commission, 76 Pa. Commonwealth Ct. 525, 464 A.2d 645 (1983).

It is well-settled that in apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule but must consider all relevant factors in order to arrive at an order which is just and reasonable. Borough of South Greensburg v. Pennsylvania Public Utility Commission, 117 Pa. Commonwealth Ct.

361, 544 A.2d 82 (1988); East Rockhill Township v. Pennsylvania Public Utility Commission, 115 Pa. Commonwealth Ct. 228, 540 A.2d 600 (1988); City of Philadelphia v. Pennsylvania Public Utility Commission, 91 Pa. Commonwealth Ct. 123 (1985). Factors which have been considered by the Commission include prior ownership and maintenance responsibility, the relative benefits which will accrue to the interested parties as a result of the crossing, availability of state or federal funds, deferred maintenance, origin and destination of bridge users, and ownership of the tracks as well as the general equities of each particular case. Re: Pennsylvania Department of Transportation, 68 Pennsylvania Public Utility Commission, 116, 127 (1988).

Application of the City of Wilkes-Barre, Docket No. A-101606 (Order entered April 9, 1991) serves as a further guide for the Commission's use in apportioning costs in rail-highway crossing cases. This decision listed the following cost allocation factors which may be considered, namely, (1) the benefits to the utility and its ratepayers from the rail-highway crossing project, (2) the availability of state or federal funding for the project, (3) the placement of costs upon the party responsible for the situation, and (4) the equities of a particular situation.

Recently, in Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, No. 3132 C.D. 1994, (Order entered March 1, 1996) the Commonwealth Court stated:

Contrary to Bell's arguments, a review of the Commission's decision in Wilkes-Barre reveals that there is no fixed four-part test. The Wilkes-Barre decision merely acknowledges that various factors have been used by the Commission in allocating costs and the Commission is "not limited to any fixed rule, but may consider any one or more of the above recited factors, depending upon the facts peculiar to each case." Id., slip op. at 4 (emphasis in original). This principle has been also accepted by this Court. See Green Township Board of Supervisors v. Pennsylvania Public Utility Commission, 642 A.2d 541 (Pa. Cmwlth. 1994) (in assessing the costs in rail-highway crossing cases, the Commission is not limited to any fixed rule but takes all relevant factors into consideration, with the fundamental requirement being that its order be just and reasonable).

Because the Commission is not required to limit itself to any or all of the factors enumerated in Wilkes-Barre, Bell's argument that the Commission erred by not analyzing the present case under its "four-part test" is without merit.

The parties all agree that the Wilhelm Avenue bridge as presently constituted poses a distinct safety hazard to the traveling public. The specific hazards involved with the bridge include close vertical clearance problems, especially for truck traffic forced to slow down to see if they have ample clearance

room, as well as close horizontal clearance problems for any other traffic and drainage concerns regarding ponding of water and/or ice in the winter underneath the bridge.

Conrail proffers some temporary measures to alleviate the existing safety hazards at the bridge site, namely, installation of speed bumps, signing regarding poor weather conditions, installation of blinking lights, and stricter enforcement by the police of existing speed limits. Conrail's engineer, Mr. Mark W. Sawyer, admitted on cross examination that "there are inherent risks that cannot be addressed by virtue of this bridge being in place." (N.T. 355).

Conrail's position in this matter is reduced to the following, namely, (1) that it should not be ordered to perform any work, nor should it be allocated any costs for any work ordered by the Commission in regard to the Wilhelm Avenue Bridge, (2) The Commission's Order dated September 15, 1993, in Docket No.

A-001009901, regarding the Wilhelm Avenue crossing should be held in abeyance until a determination is made as to the resumption of rail operations on the conveyed portion of the Cornwall Industrial Track, namely, until April 16, 2000, (3) Adoption of the temporary measures advocated by its engineer, Mr. Sawyer, until a determination regarding future use of the line is made.

The Bureau of Transportation & Safety stresses the Wilhelm Avenue crossing poses a "significant and immediate threat to the public safety and should be removed." Traffic studies indicate that the crossing is used by more than 4,000 vehicles per day. Wilhelm Avenue, a two-lane road, narrows to one lane at the crossing. The Bureau submits the crossing's shortcomings cannot be rectified by temporary repairs or by those measures advocated by Conrail's Mr. Sawyer. The Bureau indicates it is uncontested that the bridge must be removed, and that the remaining issue is what is to be done in connection with the removal. (N.T. 232). The Bureau further notes that, to date, no rail operations are currently conducted on the line where the crossing is located and any future renewal operations vis-a-vis ALCOA is speculative at best. Accordingly, in its opinion, removal of the crossing is necessary to protect the motoring public. Moreover, it argues that this Commission has authority to order removal of an unsafe crossing regardless of the Surface Transportation Board's exemption to acquire and operate the Cornwall Industrial Track, pursuant to the mandate at 49 U.S.C. Sec. 10502. It notes this Commission can order the crossing removed pending reconstruction if there is a future need. See 66 C.S.A. Sec. 270(g).

R.J. Corman Railroad Company/Allentown Lines, Inc.

("Corman"), asks the Commission to consider the following options relative to its determination of the crossing issue:

(1) To keep in effect this Commission's previous Order entered September 15, 1993, approving the alteration of subject crossing, including the completion of plans and designs for a new bridge crossing over Wilhelm Avenue.

(2) Hold in abeyance a decision on the disposition of the Wilhelm Avenue Crossing until April 16, 2000, the alleged time necessary for Corman to determine if it can secure a service commitment from ALCOA after the Norfolk Southern/CRX joint venture merger involving Conrail.

(3) In the event the Township is eventually permitted to remove the bridge, require the Township and Pennsylvania Department of Transportation to guarantee the construction of a fully operational Bridge within three (3) months after receiving notice from Corman that it intends to commence use of the line.

(4) If the Township is permitted to remove the bridge, the Township and Pennsylvania Department of Transportation should be required to construct new bridge abutments if they cannot guarantee that the new bridge will be constructed within three months after receiving written notice from Corman that it intends to use the line.

Corman argues that the existing safety issues surrounding the Wilhelm Avenue Bridge Crossing would not be present at this time had the Township complied with the Commission's September 15, 1993 Order directing, inter alia, construction of the new bridge within eighteen months after the entry of the Order. Since traffic on the rail line ended late 1995, the new bridge would have been in place well before that time. It submits the Township's requests for extensions of time to submit plans and complete construction work is largely responsible for the ongoing safety problems at the crossing. Corman further maintains that it "in good faith purchased the Cornwall Industrial Track with the belief that it would be able to operate the Line and that the bridge would be replaced by the Township with costs allocated in accordance with the Commission's prior Order "\$50,000 for Corman and the balance divided between Pennsylvania Department of Transportation and the Township 80/20%". (Corman Br., p.7).

Corman recognizes the safety hazards present at the Crossing, but contends "it would be unjust and unreasonable to allow the Bridge Crossing to be demolished without any established plan to replace the bridge, so Corman can pursue its business opportunities with ALCOA..." In this regard Corman maintains it needs a hiatus on any bridge construction/demolition activity until April 16, 2000, the time period it allegedly needs to develop

business on the Line with ALCOA. Corman also does not believe that the safety problems at the crossing site are as significant as the Township has portrayed them. It fails to see how the Township could have let this condition perpetuate itself over at least a four year period if the safety problem was so critical. Corman performed an analysis of a Township "Underpass Accident Report and Traffic Count" study which revealed, inter alia, that over a ten and one-half year period of time, twenty-four (24) accidents were reported at the Wilhelm Avenue underpass, of which eight (8) involved injuries, from a total of 19 million vehicles traversing same. Corman concurs in the temporary measures advocated by Conrail engineer Sawyer, namely, placing additional safety signs in the area and reducing the speed limit.

In its fallback proposal, if there is no guarantee that a new bridge can be constructed in a three month time period, Corman can accept removal of the Bridge and implementation of appropriate road adjustments, so long as the project would include construction of bridge abutments, so that if a bridge is eventually needed by it, the abutments would already be in place. This, Corman indicates, would shorten the time span for the construction of a new bridge and would also serve as retaining walls at the crossing site. Corman declares that "unless the Township and Pennsylvania Department of Transportation can guarantee a bridge

within a three (3) months, then it is futile for Corman to expend the energy to secure ALCOA's commitment for service only to have the inefficiency of the Township and Pennsylvania Department of Transportation undermine the effort." (Corman Br.p.10).

The Township submits that the Wilhelm Avenue Bridge is a hazard to the traveling public and should be closed with all track and supporting structures removed as soon as possible. It notes that the line from just North of Pennsylvania Route 422 (milepost .90) was established to serve one customer, namely, ALCOA. ALCOA no longer uses rail service and has ordered Conrail to remove its rails and ties on its spur. The line between milepost .90 and 4.50 was last serviced in November 1995. Corman, it points out, as Conrail's successor, is now responsible for the removal work by virtue of the Agreement of right-of-way. The Township recognizes that Corman, despite owning the track for approximately nine (9) months has still not contacted ALCOA to see if they are agreeable to now resuming rail service with Corman. It must be noted that ALCOA, at this time is exclusively utilizing motor carrier transportation for its shipping needs.

The Township cites the considerable expense which both it and Pennsylvania Department of Transportation will incur (\$1,200,000.00), if they remove the bridge, widen the roadway and reconstruct the bridge for rail service, all pursuant to the

existing 1993 Commission Order. Conversely, it maintains the cost to merely widen the road, in the event the bridge is ordered removed by the Commission, would entail the expenditure of a significantly lesser amount.

The Bureau of Transportation and Safety, the Township and Pennsylvania Department of Transportation, all dispute the need to construct abutments in the event the Bridge is ordered removed. The parties cite the highly speculative nature of ALCOA reverting to the use of rail transportation for its shipping needs. The Township opines that "Corman's desire to reestablish business with ALCOA, rehabilitate the line and the crossings which have been suspended, and start up rail service will, in all likelihood, take more than two (2) years." (Twp. Br.,p.11).

The above parties note that building concrete abutments approximately twenty (20) feet high, would cost about \$250,000.00, versus a standard 2:1 grade, espoused by Pennsylvania Department of Transportation, costing between \$70,000.00 - \$95,000.00. By way of reply, Corman indicated that abutments can also act as a retaining wall "even if the bridge would not go in."

Finally, the Township cites the testimony of Conrail's Mr. Sawyer, who stated the best temporary solution respecting subject crossing/bridge site is to remove the bridge, establish a standard Pennsylvania Department of Transportation roadway with

appropriate shoulders, lane widths and profiles and sight distances. (N.T. 360).

Pennsylvania Department of Transportation did not submit a brief, but indicated it fully supported the position taken by the Township in this proceeding.

Metropolitan Edison Company, (Met-Ed) indicated it takes no position with respect to issues involving whether the Wilhelm Avenue Crossing should be modified, suspended, relocated, abolished or reconstructed. It will fully cooperate with any alterations ordered with respect to the Crossing, subject, however, "to its rights to recover such costs." Presently, Met-Ed has two (2) facilities within private rights-of-way that are encompassed by the jurisdictional limits of subject crossing, namely, 1-13.2kV aerial circuit located on the northern side of Wilhelm Avenue bridge attached to poles owned by Bell Atlantic Company, and 1-69kV aerial transmission circuit constructed on steel poles, paralleling the existing right-of-way, making a perpendicular crossing to Wilhelm Avenue. At Docket No. A-00109901, Application of South Lebanon Township, (Order dated June 18, 1993). Administrative Law Judge Christianson recommended that Met-Ed at its initial cost and expense, provide all material and perform all work necessary to relocate or modify its facilities.

Met-Ed advises "in circumstances involving either of Met-Ed's facilities, Met-Ed would need to review any engineering design for the reconstruction or demolition of the Wilhelm Avenue Crossing to determine the affect on its facilities." Further, it asserts" upon completion of any work ordered with respect to Wilhelm Avenue Crossing, additional hearing(s) should be scheduled to take testimony concerning the allocation of costs and expenses, allocation of maintenance responsibilities and to address any other matters relevant to this proceeding."

Bell Atlantic of Pennsylvania, Inc. advised this office that it would not be participating in the April 16, 1998 hearing. However, it did advise that "The effect of the above-captioned project on Bell's facilities will depend on the scope of and the specific work to be done to complete the projects that ultimately result from these proceedings. Bell is willing to perform whatever work may be required to its facilities to accommodate the projects.

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

Finally, as previously noted, Rails To Trails, having notice of subject hearings, did not participate in same.

Resolution of the various problems associated with subject bridge crossing have remained in limbo over the past seven (7) years. It is now time to cut the Gordian Knot. Everyone recognizes the hazards as it now exists, but cannot reach a mutually agreeable solution for them. The temporary measures espoused by Conrail engineer-witness Sawyer will merely delay an immediate and complete solution to the existing problems. In my opinion, the present resolution to this problem calls for removal of the Wilhelm Avenue Bridge and suspension of the crossing. Corman would have the Township, Bureau and Pennsylvania Department of Transportation wait until April 16, 2000 to see if it no longer has use for the line and/or subject bridge. The record clearly indicates that no rail operations have been conducted over the Cornwall Industrial Line for several years, and there has been no maintenance over same during this interval as well. Corman speculates that it somehow can convince ALCOA, the only potential customer on the line at this time to return rail service to meet its shipping requirements. This, in spite of the fact that ALCOA has requested Conrail, Corman's antecedent owner of the line, to remove the rail spur serving its plant; that ALCOA currently utilizes motor carrier transportation to meet its transportation requirements; that as of the last April 16, 1998 hearing in this matter, Corman had as yet not contacted ALCOA about soliciting its business; that Corman

wants at least an 18 month actual trial usage on the line so that it can go to ALCOA with a proven operational record to showcase its wares, when, in fact, there is no guarantee that this would convince ALCOA who has indicated that it is satisfied with its motor carrier providers and is not interested in returning to rail transportation; and that Corman does not know the cost involved in the rehabilitation of the Cornwall Industrial Track in order for it to serve ALCOA. In view of the foregoing circumstances, I fail to recognize a realistic, immediate need for a rail bridge at this crossing at this time.

Corman has indicated that if, in fact, permission is granted to remove the bridge, it wants assurances, *guarantees*, in fact, that a fully operational bridge will be in existence within three (3) months after receiving notice from Corman that it intends to commence use of the line. However, if a three (3) month bridge-completion date is not to be forthcoming, then Corman wants to require the Township and Pennsylvania Department of Transportation to provide for the construction of new bridge abutments in their construction plans. Corman contends the presence of the abutments would lessen the time required for the completion of a new bridge in the event one is forthcoming.

There can be no guarantee that a new bridge will be in place within the three month period requested by Corman.

Preparation of plans, letting the contract and construction of the bridge itself will realistically require at least an eighteen-month time frame. If the contract is awarded in the winter, construction cannot begin until the end of the winter season. As for the need to put new bridge abutments in place, I note the following from the transcribed record:

BY MS. D'ALFONSO:

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

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

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

A Probably not, no.

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

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

So that may be somewhat the \$250,000.00 may be a good number that I would agree with but of that \$250,000.00 you are going to spend so much of that, some of that same money to do your two to one slope so it's not a true

\$250,000.00 differential to put the abutments in, I don't think. I could be wrong.

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

A There would be, question. I would agree.

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

BY MS. D'ALFONSO:

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

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

JUDGE COHEN: Do you know.

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

THE WITNESS: What are the current preliminary plans.

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

The Commission's Bureau of Transportation and Safety opposes the suggestion that abutments be put in place if the bridge is removed. It advocates construction of a standard 2:1 grade slope and notes the cost effectiveness of this measure, namely, the approximate \$250,000.00 cost for building concrete abutments following demolition of the bridge, versus the \$70,000.00-\$95,000.00 cost for installation of the 2:1 grade. Pennsylvania

Department of Transportation advised that the height of the existing abutments is 20 feet and that any new abutments would approximate 23 feet because of the necessity to raise the current road. In view of the highly speculative nature regarding Corman's chances to regain ALCOA's rail traffic, I deem it highly imprudent to construct abutments at this time, in the course of the bridge's removal. I endorse and recommend grading the railroad embankment to a 2:1 grade after the bridge's removal.

The Recommended Decision of Administrative Law Judge Christianson dated June 18, 1993, issued in this proceeding and the transcript of the February 2, 1993, hearing state that bridge bill funds would be available for the crossing project as proposed at that time. If funding is still available, we ask that PennDOT and Township cooperate with each other to utilize said funds for the current project.

Summarizing, I recommend removal of the bridge, suspension/alternation of the existing crossing and employment of a standard 2:1 grade for the railroad embankment.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties.

2. The bridge over Wilhelm Avenue poses a safety hazard to the traveling public.

3. Corman was aware of Conrail's obligations regarding the Wilhelm Avenue bridge prior to executing the Indenture between itself and Conrail conveying the line and thereby assumed any costs or other responsibilities imposed on Conrail by this Commission in regard to any crossing on the line.

4. The Commission has the exclusive authority to order the construction, reconstruction, alteration, repair, protection or abolition of rail/highway crossings, as well as the exclusive authority to determine and order which party should perform such work at crossings and which party shall maintain the crossings in the future.

5. The Wilhelm Avenue bridge should be temporarily removed pending the outcome of Corman's negotiations with ALCOA and such removal should include construction of a 2:1 grade rather than construction of abutments, which under the prevailing circumstances is not economically feasible at this time.

6. Upon completion of Corman's negotiations with ALCOA, the Wilhelm Avenue bridge should either be reconstructed to accommodate rail service at the crossing, or, should that not be the case, should then be abolished at some appropriate time on or before April 16, 2000.

7. The proposed changes at subject crossing will enhance the safety of the traveling public and will improve local traffic flow.

ORDER

THEREFORE,

THE FOLLOWING ORDER IS RECOMMENDED:

1. That the request of South Lebanon Township to modify the September 15, 1993, Commission Order in this proceeding so as to demolish and remove the bridge, including the stone abutments, which carries the tracks of R.J. Corman Railroad Company/Allentown Lines, Inc. over Township Road 705 (Wilhelm Avenue) in South Lebanon Township, Lebanon County, is hereby approved. Therefore, the September 15, 1993, Commission Order be and is hereby modified consistent with this Order.

2. That the jurisdictional limits of this project are tentatively established as that portion of Wilhelm Avenue which will be affective by the highway widening project, plus all of the railroad right-of-way involved.

3. That South Lebanon Township shall, at its initial cost and expense, within six months of service of the Commission's Order, shall furnish all material and do all work necessary to prepare and submit to all parties of record for review, and to the Commission for review and approval, detailed right-of-way and

construction plans for the demolition and removal of the railroad bridge over Wilhelm Avenue and the construction of a two lane highway in its place. The new highway is to be designed to be compatible with the existing highway approaches. The railroad embankment is to be sloped back at a 2:1 slope. The highway improvement is to be constructed such that there is minimum or no involvement with the Metropolitan Edison Company's 96 KV line pole on the south side of the crossing.

4. That South Lebanon Township, at its initial cost and expense, shall prepare and submit to all parties of record for review and this Commission for review and approval, the exact legal description in metes and bounds of the R.J. Corman Railroad Company/Allentown Lines, Inc. property which must be appropriated to construct the new highway at the crossing. Following which the said property will be appropriated in accordance with the provisions of Section 2702 of the Public Utility Code, 66 Pa. C.S.A. §2702.

5. That South Lebanon Township shall, at its initial cost and expense, within 12 months of approval of the construction plans ordered in paragraph No. 3, furnish all material and do all work necessary to demolish and remove the bridge and construct the associated highway improvements all in accordance with the approved construction plans.

6. That R.J. Corman Railroad Company/Allentown Lines, Inc. shall, at its initial cost and expense, prior to the start of work as directed in paragraph 5 of this Order, furnish all material and do all work necessary to make adjustments to its facilities required as a result of the construction this improvement, including, but not limited to the removal of all affected track, railroad ties and ballast.

7. That South Lebanon Township at least twenty (20) days prior to the start of work notify all parties of record of the actual date when work will be started on this project. That South Lebanon Township shall give R.J. Corman Railroad Company/Allentown Lines, Inc. at least 3 months notice of the start of work date so that it can remove its railroad facilities from this crossing area in accordance with paragraph 6 of this Order.

8. That South Lebanon Township, at its initial cost and expense, if the railroad facilities have not been removed as directed in Order paragraph 6 herein, then said facilities should be removed in conjunction with its work directed in Order paragraph 5 herein and R.J. Corman Railroad Company/Allentown Lines, Inc. shall, loose the right to salvage said railroad facilities.

9. That South Lebanon Township shall, at its initial cost and expense, furnish all material and do all work necessary to establish, mark and maintain any detours which may be required to

properly accommodate highway traffic, during the time subject improvement is being constructed.

10. That Metropolitan Edison Company shall, at its initial cost and expense, provide all material and perform all work necessary to relocate, protect or modify its facilities, near the location of this crossing, in such a manner so as not to interfere with the construction of the improvement.

11. That Bell Atlantic-Pennsylvania, Inc. shall, at its initial cost and expense, provide all material and perform all work necessary to relocate, protect or modify its facilities, near the location of this crossing, in such a manner so as not to interfere with the construction of the improvement.

12. That any other modifications, or protections, of any other utility facilities located at the crossing, which may be required as incidental to the execution of the crossing improvement project, shall be made by the pertinent public utility, at its initial cost and expense, in such manner as will not interfere with the construction of the improvement.

13. That South Lebanon Township and R.J. Corman Railroad Company/Allentown Lines, Inc. shall cooperate with each other, and with the pertinent utilities, so that the work of the construction of the improvement will not be delayed, the operation of motor vehicles will not be endangered or unduly impeded and

service of associated public utilities will not be unnecessarily interrupted.

14. That South Lebanon Township and Pennsylvania Department of Transportation shall cooperate with each other in seeking the use of Bridge Bill funds for construction of the improvement as currently proposed.

15. That, upon completion of this project, South Lebanon Township and R.J. Corman Railroad Company/Allentown Lines, Inc. shall report to the Commission the actual date of completion, of the work ordered herein and, at the earliest practicable time subsequent to the date of completion, shall submit to this Commission a detailed statement of the actual cost incurred in furnishing material and performing work in accordance with this order.

16. That upon completion of the work herein ordered, the Wilhelm Avenue (T-705) crossing where the track of R.J. Corman Railroad Company/Allentown Lines, Inc. crossed above Wilhelm Avenue be and is hereby suspended.

17. That, upon completion of the work herein ordered, this matter shall be scheduled for further hearing, at a time and place to be determined by the Commission, for the purpose of taking testimony concerning the allocation of costs and expenses incidental to the construction of the project, allocating

maintenance responsibilities and addressing any other matters
pertinent to this proceeding.

Dated: October 20, 1988

Herbert S. Cohen
HERBERT S. COHEN
Administrative Law Judge

DATE: December 2, 1998

SUBJECT: A-00113589, C-00970107, C-00970126
C-00970106, A-00109901

TO: Office of Administrative Law Judge
Annette Shelley

FROM: James J. McNulty
Secretary

JJM

DOCKETED

DEC 02 1998

APPLICATION OF THE COUNTY OF
LEBANON TRANSIT AUTHORITY...ETC

DOCUMENT
FOLDER

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

EEF

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.