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Law Offices
SPITLER AND KILGORE
522 South Eighth Street
P.O. Box 1188
LEBANON, PENNSYLVANIA 17042

CALVIN D. SPITLER
KEITH L. KILGORE
PAUL W. KILGORE

(717) 273-7621(VOICE)
(717) 273-1693(FAX)

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July 9, 1998

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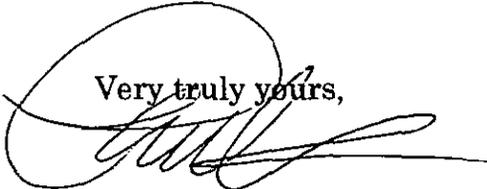
Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

**RE: Supplemental Brief of South Lebanon Township
Wilhelm Avenue Bridge
Docket No. A-00109901**

Dear Mr. McNulty:

Enclosed please find an original and nine (9) copies of South Lebanon Township in the above referenced matter. Please be advised copies were forwarded on June 26, 1998 to Judge Cohen and all parties of interest.

Also enclosed please find a Certificate of Service for the same.

Very truly yours,

PAUL W. KILGORE

PWK:daw
Enclosure

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

156801

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,
Complainant
vs.
CONSOLIDATED RAIL
CORPORATION, et al,
Respondent

Docket No. C-00970107

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

Docket No. C-00970126

THE TOWNSHIP
BOARD OF SUPERVISORS,
Complainant
vs.
CONSOLIDATED RAIL
CORPORATION, et al,
Respondent

Docket No. C-00970106

APPLICATION OF SOUTH LEBANON
TOWNSHIP FOR THE APPROVAL OF
THE ALTERATION OF THE CROSSING
(AAR 591 537 S). WHERE TOWNSHIP
ROAD 705 (WILHELM AVENUE).
CROSSES BELOW GRADE OF THE
TRACKS OF THE CONSOLIDATED
RAIL CORPORATION IN SOUTH
LEBANON TOWNSHIP, LEBANON
COUNTY

Docket No. A-00109901

DOCKETED
JUL 10 1998

**SUPPLEMENTAL
BRIEF OF SOUTH LEBANON TOWNSHIP**

AND NOW, comes SOUTH LEBANON TOWNSHIP, by and through their attorneys, Spitler and Kilgore, and files the following supplement to its proposed FINDINGS OF FACT, CONCLUSIONS OF LAW and BRIEF in support thereof:

HISTORY OF THE CASE

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.

The PUC, on June 3, 1997, set the time and date for the hearing in order to consider all four (4) Complaints against CONRAIL at one time. The hearing was scheduled for August 5, 1997 before Administrative Law Judge, Herbert S. Cohen.

On July 2, 1997, CONRAIL filed an Answer to the TOWNSHIP'S Complaint.

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 the Administrative Law Judge, 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 Administrative Law Judge 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 PUC 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, the Administrative Law Judge held a hearing to consider the circumstances of the Wilhelm Avenue Bridge and the prior order of the PUC to replace the same at a projected cost of \$1,200,000.00. The Judge 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.

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.

The following is submitted in accordance with the Administrative Law Judge's briefing schedule set at the conclusion of the April 16, 1998 hearing and is a supplement to its Brief submitted at the close of the October 8, 1997 hearing.

PROPOSED FINDING OF FACT

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

2. CORMAN acquired said Line from CONRAIL on or about October 14, 1998. (N.T. 270)

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

4. 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 (PA 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.

5. CONRAIL, CORMAN'S predecessor, petitioned the Interstate Commerce Commission to abandon the line from milepost .90 to 4.50. (N.T. 121).

6. The cost to rehabilitate the at grade crossings which are included in the CONRAIL'S ICC petition is \$90,000.00. (N.T. 137 & CONRAIL Exhibit 1).

7. The line from milepost .90 to 4.50 has not been used since November 29, 1995. (N.T. 119).

8. 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).

9. 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).

10. There are no projected customers to be serviced by the line from milepost .90 to 4.50. (N.T. 93, 145, & CONRAIL Exhibit 1).

11. The Wilhelm Avenue Bridge is currently under order by the PUC to be replaced at an estimated cost of \$1,200,000.00. (N.T. 227).

12. The projected sharing of costs for the replacement were to be allocated as follows: CONRAIL \$50,000.00, with PENN DOT and the TOWNSHIP to spilt the balance 80%/20% respectively. (N.T. 227).

13. The PUC extended the time to file detailed plans by the TOWNSHIP to December 31, 199. (N.T. 235).

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

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

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

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

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

19. 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).

20. 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).

PROPOSED CONCLUSION OF THE LAW

1. The Commonwealth has jurisdiction over the subject and the parties.

2. The bridge over Wilhelm Avenue is a hazard to the public.

3. The Cornwall Industrial Line from mile post .90 to 4.50 has no feasible use, the public will be served by it being abandoned, and in the alternative suspended, with all structures and embankments removed; and, such abandonment or suspension will not adversely affect any shipper.

4. Rehabilitation of the line is outweighed by the hazard the line creates for the public, cost to rehabilitate and its non-use.

PROPOSED RECOMMENDATIONS

1. CORMAN, at its own cost and expense, shall remove all track and supporting structure and remove the Wilhelm Avenue Bridge and supporting structure in order to allow SOUTH LEBANON TOWNSHIP to widen Wilhelm Avenue to two lanes per TOWNSHIP specifications.

2. CORMAN, shall, at its own cost and expense, furnish all material and do all work necessary to make adjustments to its facilities required as a result of the removal of the Wilhelm Avenue Bridge.

3. CORMAN, shall, at its own cost and expense, furnish engineering and construction inspection services, as necessary, to observe the progress of the work during the time of removal, in accordance with this Order.

4. CORMAN, shall, at its own cost and expense, furnish and maintain watchmen and flagmen necessary to protect the traveling public during the time that the removal occurs.

5. This project shall be completed, in a manner satisfactory to the Commission, within eighteen months after service of the Commission's order.

6. Upon completion of this project, CORMAN shall report to the Commission the actual date of completion of the work ordered herein.

DISCUSSION

The TOWNSHIP submits the issues before the Commission are two-fold.

A. WHETHER OR NOT THE WILHELM AVENUE BRIDGE IS A DANGER TO THE TRAVELING PUBLIC; AND,

B. GIVEN THE CONDITION OF THE LINE, COST TO REHABILITATE THE CROSSINGS AND THE LINE AND LACK OF CUSTOMERS, THE CROSSING SHOULD BE SUSPENDED WITH STRUCTURES REMOVED IN ORDER TO WIDEN THE ROAD WITH POSSIBLE USE IN THE FUTURE SHOULD THE LINE BECOME ACTIVE.

The PUC has jurisdiction to determine whether or not crossings and or bridges are a hazard to the public. See Public Utilities Code Section 2702 (66 Pa. C.S.A. 2702). The Commission also has jurisdiction to determine whether or not a crossing or bridge should be abolished (Section 2702). Finally, the Commission has exclusive authority to determine the allocation of costs involved in protecting the safety of the traveling public. Commonwealth Department of Transportation v. Pennsylvania Public Utility Commission, 469 A. 2d 1149, 79 Pa. Commonwealth 266, (1989).

The TOWNSHIP submits, given all the testimony presented at the three (3) hearings that the Wilhelm Avenue Bridge is a hazard to the traveling public. Except where the CITY has patched the roadway, neither the line nor the crossings have been maintained since prior to 1995. The last service on the line between milepost .90 and 4.50 was in November of 1995. The line from just North of Pa Route 422 (milepost .90) was established to serve one customer - ALCOA. ALCOA no longer uses rail service and has ordered CONRAIL to remove its rails and ties on its spur (TOWNSHIP Exhibit 7). The PUC can, taking into account traffic congestion, conditions of the crossings or bridge, need for repair and requisite safety, close bridges or crossings indefinitely. Municipality of Monroeville v. Pennsylvania Public Utility Commission 600 A.2d 655, 143 PA Commonwealth 668 (1991). The TOWNSHIP submits the Wilhelm Avenue Bridge should be closed with all track and supporting structures removed as soon as practicable.

The testimony, which was by and large unrebutted, clearly established the need for correction of the bridge. Wilhelm Avenue is very busy and provides access to major hospitals, schools, athletic fields, a park and housing developments. As previously stated, the subject line served one customer, who has now demanded the spur be ripped up pursuant to the right-of-way it granted CONRAIL. CORMAN, as CONRAIL'S successor, is now responsible for such removal per the Agreement of right-of-way.

CORMAN, however, wants time to reestablish ALCOA as a customer. (N.T. 288). Since the bridge has to be removed per prior PUC Order, it makes no sense to keep the existing structure in its present hazardous condition pending a decision from ALCOA. (N.T. 321 & 349). Besides, CORMAN has yet to contact ALCOA, despite owning the track for six (6) months (N.T. 272 & 317); and, CORMAN stated they will remove the bridge if they cannot get ALCOA'S business, the nature of which is unknown to CORMAN. (N.T. 325 & 318).

The cost to rehabilitate the nine (9) crossings within the portion of the line that is not used is \$90,000.00. (N.T. 76). The cost to rehabilitate the track before rail service could be reestablished is \$451,500.00, based upon CONRAIL'S request to abandon the line. (N.T. 144). In addition, it will cost the TOWNSHIP and PennDOT a total of \$1,200,000.00 to remove the Wilhelm Avenue Bridge, widen the roadway and reconstruct the bridge for rail service, all pursuant to an existing PUC Order. (N.T. 227). The cost to merely widen the road, should the Commission close the bridge and order its

removal, would be a small percentage of said amounts. To require the bridge replaced or abutments constructed, given ALCOA'S actions to remove track; that there is no prospect of future use according to the TOWNSHIP and CONRAIL; and, Conrail's statement that the public will be served by abandoning the line, is not in the public interest. (N.T. 138 and Conrail's Exhibit 1).

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. CORMAN'S own witness projected not knowing whether CORMAN is going to be able to get into the plant (ALCOA) for 15-18 months from the S.T.B.'S decision to approve the merger of the Norfolk Southern of CRX. (N.T. 277). Such a decision by the S.T.B. may not come until July of August of this year.

In the meantime, because of CONRAIL and CORMAN'S business dealings and lack of existing customers, the traveling public remains at risk.

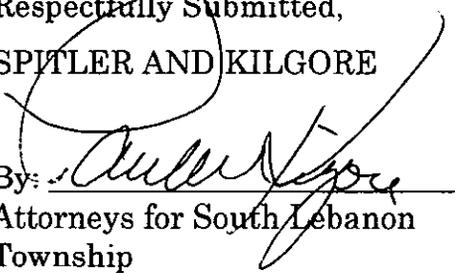
The Commission, given the authority as set forth in Monroeville, supra, should suspend the requirements to proceed with the bridge project; order the removal, by CORMAN, of all structures pertaining to the Wilhelm Avenue Bridge; and, set a date certain for the line to be declared abandoned or reactivated, presumably April 16, 2000. Should rail service become viable in the future, the PUC has the authority to allocate costs to reestablish the crossings, and if necessary, the Bridge. In the TOWNSHIP'S own words, "...the Bridge is a fatality waiting to happen."

The TOWNSHIP submits the Commission can order said removal of the bridge under its Order of October 23, 1997, paragraph two (2) filed to Docket Number M-00970979, given the danger said Bridge possesses to the traveling public and due to the fact that the Rails to Trails, having specific knowledge of these proceedings, has not expressed an interest in using said bridge. The best temporary solution per CONRAIL'S own engineer, who testified when called by CORMAN, is to remove the bridge, establish a standard PennDOT roadway, with appropriate shoulders, lane widths, profile and sight distances. (N.T. 360).

IN SUMMARY, the line from PA Route 422 (milepost .90) has not been used for more than 2 years and has not been maintained for an even longer period. There is no service on that portion of the line, nor is there any likely prospect, given ALCOA'S conversion to truck service. CORMAN has not provided any testimony as to its financial fitness to operate the line (N.T. 73 & 324), nor has there been any testimony to rebut the hazards that exist to the traveling public from ice, rain water runoff and traffic congestion due to the single lane of travel on this heavily traveled underpass. (N.T. 288-289). The bridge is extremely hazardous to the traveling public. This matter of removing this hazardous bridge has been under debate for the past seven (7) years.

Remove it now and if needed in the future order its replacement. The TOWNSHIP requests the Commission act in accordance with the above.

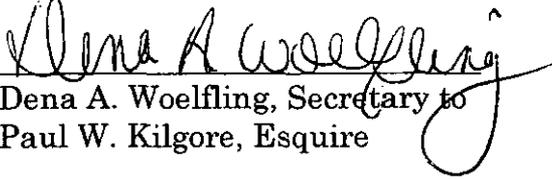
Respectfully Submitted,
SPITLER AND KILGORE

By: 
Attorneys for South Lebanon
Township
Paul W. Kilgore, Esquire
522 South Eighth Street
Lebanon, Pennsylvania 17042
(717) 273-0960
I.D. # 25180

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Supplemental Brief of South Lebanon Township this day by depositing the same in the United States mail, postage prepaid, in Lebanon, Pennsylvania, addressed to:

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265


Dena A. Woelfling, Secretary to
Paul W. Kilgore, Esquire

Dated: July 9 1998