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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE RICHARD M. LOVENWIRTH: Good
3 morning, everyone. We will now commence an initial hearing
4 concerning the matter of White Haven Borough vs. Reading,
5 Blue Mountain and Northern Railroad Company, which has been
6 assigned Public Utility Commission Docket No. C-00004204.

7 I will try to accurately summarize the history of
8 these proceedings.

9 In this case, on September 18, 2000, a formal
10 complaint was filed by White Haven Borough. And the
11 complaint brings into question, quote: General failure of
12 the railroad to address citizen and borough concerns for the
13 conditions of the trackage and appurtenances within the
14 borough; period; end of quote.

15 And more specifically, the complaint says that on
16 May 24, 2000, some employees of the railroad caused a
17 section of wall to partially collapse and buckle, and after
18 which an additional section failed adjacent to the, quote,
19 new end of closed section; whatever that means.

20 Apparently repairs were made after several months.
21 But no communication between the railroad and the borough
22 was had.

23 Additionally, the complaint says that a stone, steel
24 trestle at Susquehanna Street has rotted ties and timbers
25 and handrails.

1 It says that routine train passage has seen debris
2 fall onto the railway, creating unsafe vehicular conditions.
3 Onto the roadway; excuse me. Not the railway, the roadway.

4 The handrail supports, the complaint says, are being
5 used structurally to carry the weight and support of the
6 ballast at the intersection, I guess, at the railway, at the
7 rail highway crossing.

8 It says, the complaint does, that rails are being
9 held in place by the overgrown trees on the east side, I
10 guess of the tracks, and that several timbers are missing
11 and the openings are large enough for a child to fall
12 through.

13 The complaint says that much of the bridge
14 abutment/timber ties are being held in place by actively
15 growing tree trunks; and that other than this support, there
16 appears to be no anchoring to prevent a catastrophic
17 failure.

18 Additionally, the complaint says, that the entire
19 stone retaining wall supporting the approach on the east
20 side near a hardware store is known to have vegetative
21 growth and freeze/thaw action, which has produced voids
22 behind the retaining wall, and which has created concerns
23 about voids under the trackage.

24 And again, the complaint says, tree growth appeared
25 to be providing structural support.

1 And lastly, the complaint says, there is an area
2 repaired, which had been repaired about 30 or more years ago
3 by use of an I-beam/timbered wailer type support. And that
4 this temporary repair, made 30 some years ago, has been
5 overlooked so long that many of the wood wailers are
6 rotting.

7 That's what the complaint says.

8 And the appearance sheet will indicate that here on
9 behalf of the complainant is its attorney, Jill Moran,
10 Esquire.

11 Good morning, Ms. Moran.

12 MS. MORAN: Good morning, Your Honor.

13 JUDGE LOVENWIRTH: I might add that the complaint has
14 a prayer for relief. And it contains three prayers. One, a
15 request is being made that the Commission require that the
16 railroad complete an annual inspection of its facilities
17 within the borough, and provide written communications as to
18 its condition.

19 Two, second prayer for relief is a Commission order
20 requiring the railroad to rehabilitate the trestle through
21 engineered/designed remediation for safer passage.

22 And thirdly, a request that the Commission order
23 direct the railroad to repair/restore the retaining wall to
24 safe condition.

25 So far, after reading the complaint, I don't know

1 where the railroad's facilities are, excepting there's a
2 complaint about its intersection with Susquehanna Street.

3 Now, on October 2, 2000, an answer was filed by the
4 Reading, Blue Mountain and Northern Railroad Company. And
5 simply stated, the answer says that the railroad completed
6 all repairs at issue, without identifying them with
7 specificity.

8 It says that the railroad has no obligation to
9 communicate with the borough with regard to the repair of
10 its facilities.

11 It says that the railroad conducts regular
12 inspections of the bridge in question, and that -- the
13 bridge in question; I don't know which bridge in question,
14 by the way. But it says the bridge in question. I suppose
15 it's referring to a rail highway crossing at Susquehanna
16 Street.

17 And the answer says that the bridge in question --
18 and I'm emphasizing the word "the" -- is structurally sound
19 and adequate. And then the answer says that the retaining
20 wall was structurally sound and no repairs were required.

21 And that's what the answer says.

22 Now, I have the appearance sheet in front of me. And
23 it says that here on behalf of the Reading, Blue Mountain
24 and Northern Railroad Company is its attorney,
25 Gregory Lepore.

1 Good morning, Mr. Lepore.

2 MR. LEPORE: Good morning, Your Honor.

3 JUDGE LOVENWIRTH: Mr. Lepore has his offices near my
4 old briar patch, in Lansdale, Pennsylvania.

5 I think we discussed that once; didn't we?

6 MR. LEPORE: At a prior hearing, yes.

7 JUDGE LOVENWIRTH: Okay.

8 Subsequently, on October 6, 2000, an answer was filed
9 by Joseph P. Blum, Esquire on behalf of Luzerne County.

10 And the appearance sheet doesn't indicate that
11 there's anyone here on behalf of Luzerne County.

12 Is there anyone present in the hearing room --

13 MR. McCORMICK: Yes, Your Honor. I entered my
14 appearance as the first name, Your Honor.

15 JUDGE LOVENWIRTH: Oh, yes, you did. I made a
16 mistake.

17 MR. McCORMICK: That's okay.

18 JUDGE LOVENWIRTH: Again. Thank you for correcting
19 me. And the appearance sheet will indicate that
20 Charles McCormick, Esquire is here on behalf of Luzerne
21 County.

22 Good morning, Mr. McCormick.

23 MR. McCORMICK: Good morning, Judge.

24 JUDGE LOVENWIRTH: All right.

25 Now, the answer says that after reasonable

1 investigation, the Luzerne County solicitor is without
2 knowledge as to the truth of any averments of the complaint.
3 And the complaint says that neither Luzerne County nor its
4 attorney has any proprietary interest in the use of the real
5 estate, railway, railroad bed, trestles or abutments
6 referred to in the complainant's complaint; and that the
7 said county doesn't have any duty or authority to perform
8 any type of maintenance or inspection at or around the area
9 complained of in the complaint. And that's what it says.

10 Subsequently, an answer was filed by the Pennsylvania
11 Department of Transportation. And that was done on --

12 (Pause.)

13 JUDGE LOVENWIRTH: Sometime in October. My eyes
14 can't pick up the stamp. On or about October 11, I guess,
15 2000.

16 And PennDOT is represented at this time, according to
17 the appearance sheet, by its attorney, Jason D. Sharp.

18 Good morning, Mr. Sharp.

19 MR. SHARP: Good morning, Your Honor.

20 JUDGE LOVENWIRTH: I looked at your answer, and I saw
21 Roger Allen, an old pal of mine, signed it. But when I came
22 in, I looked; Roger's not here. I was looking forward to
23 seeing him. He and I used to be friends. Give him my
24 regards.

25 MR. SHARP: Certainly.

1 JUDGE LOVENWIRTH: Thank you.

2 Anyway, the answer was filed on or about October 11,
3 2000. And it says that a retaining wall adjacent to a
4 crossing of the Reading, Blue Mountain and Northern Railway
5 and Berwick Street -- now here we have a second crossing
6 mentioned; Berwick Street.

7 So I assume that there's two crossings. I don't
8 know, I'll have to listen to the evidence. But this
9 concerns me, because the Commission has prepared questions
10 in order to ensure a fully developed record in this case.
11 And none of the questions appertain to Berwick street.

12 So, as a consequence, I'm asking all the parties, if
13 they're prepared to do so -- and they should be prepared to
14 do so. But if not, we're going to have to have another
15 hearing -- to also give testimony which appertains to
16 Berwick Street, please. That is to say, a railroad crossing
17 at Berwick Street.

18 And it says concerning that crossing there were two
19 separate failures; without identifying what kind of
20 failures. And then it says that the retaining wall was
21 repaired after each failure. So I guess it was a failure of
22 the retaining wall.

23 And that's sort of what the answer says.

24 All right. Well, that's what's happened in this
25 case. I don't know anything else that's happened here. No

1 other pleadings were filed that I have copies of in my file.

2 Additionally, the record will indicate that here on
3 behalf of the Commission's Bureau of Transportation and
4 Safety is its attorney, David A. Salapa.

5 Good morning, Mr. Salapa.

6 MR. SALAPA: Good morning, Your Honor.

7 JUDGE LOVENWIRTH: Okay. Well, are there any
8 corrections or additions to make to my recitation of the
9 summary of these proceedings?

10 MS. MORAN: No, Your Honor, not on behalf of the
11 borough.

12 JUDGE LOVENWIRTH: Mr. McCormick?

13 MR. McCORMICK: Yes, Your Honor.

14 May it please the Court, previously I had submitted
15 for the record --

16 JUDGE LOVENWIRTH: Okay, I'm going to get to that.
17 I'm going to get to that.

18 MR. McCORMICK: Oh, I'm sorry.

19 JUDGE LOVENWIRTH: I'm going to get to that. Thank
20 you for jogging my memory. But I have it right here.

21 MR. McCORMICK: Okay.

22 JUDGE LOVENWIRTH: When we get to the questions and
23 answers part, there were certain questions and answers which
24 were directed to Luzerne County, and Mr. McCormick prefiled
25 with me, attached to a letter dated February 16, 2000, some

1 maps and answers to questions 25 and 26, which were set
2 forth in a letter authored by James J. Brozena, professional
3 engineer, for Luzerne County. And he wants to make that
4 part of the record.

5 Are there any objections to that becoming part of the
6 record?

7 MR. SHARP: Your Honor, I don't have a copy of that.

8 JUDGE LOVENWIRTH: All right.

9 MR. McCORMICK: Your Honor?

10 JUDGE LOVENWIRTH: Yes, Mr. McCormick.

11 MR. McCORMICK: Just for the record, I'll be glad to
12 provide one. In essence, question and answer no. 26
13 reiterates Luzerne County doesn't own any facilities; and
14 25's response is that whoever has the appropriate authority
15 should --

16 JUDGE LOVENWIRTH: I didn't hear you. 25? I didn't
17 hear you.

18 MR. McCORMICK: The answer to 26 is, in essence --

19 JUDGE LOVENWIRTH: I got that. I heard that part.

20 MR. McCORMICK: And 25, our answer would be that the
21 proper authority should ensure the placement of appropriate
22 height restrictions signing, width restrictions signing, all
23 necessary advanced warning signing; and installation of
24 signs should be installed in accordance with current PennDOT
25 criteria. In essence --

1 JUDGE LOVENWIRTH: All right. Well, this is what
2 we're going to do. We're going to have to hold this --
3 thank you, Mr. McCormick.

4 MR. McCORMICK: Thank you.

5 JUDGE LOVENWIRTH: We're going to have to hold this
6 in abeyance, because not all the parties have had copies.
7 However, it will be a little while before we get to question
8 25 and 26. And when we do so, you can move the letter into
9 evidence. And if nobody objects to its admission without
10 cross examination, that will go into the record. Fair
11 enough?

12 In the meantime, please, if you don't have copies,
13 would you be kind enough --

14 Mr. Sharp, are you the only one that hasn't received
15 a copy?

16 MR. LEPORE: I haven't received a copy either, Your
17 Honor.

18 JUDGE LOVENWIRTH: All right.

19 MS. MORAN: Nor have I, Your Honor.

20 JUDGE LOVENWIRTH: Do you have extra copies,
21 Mr. McCormick?

22 MR. McCORMICK: I can go make them, Your Honor.

23 JUDGE LOVENWIRTH: All right. Well, go right next
24 door. And tell the young lady, please, that the Judge asked
25 if she'd be kind enough to make copies for you.

1 MR. McCORMICK: Thanks, Judge.

2 JUDGE LOVENWIRTH: Thank you.

3 All right then. Are there any other preliminary
4 matters?

5 There's a gentleman in the back. Good morning. How
6 are you, sir?

7 MR. ANDREUZZI: Good morning.

8 JUDGE LOVENWIRTH: Who are you, please?

9 MR. ANDREUZZI: I am Atty. Gino Andreuzzi; I'm
10 representing Dennison Township, Your Honor.

11 JUDGE LOVENWIRTH: All right. Would you be kind
12 enough to fill out the appearance sheet. And we'll give you
13 a moment to do that. And then return it to the court
14 reporter.

15 MR. ANDREUZZI: Okay.

16 JUDGE LOVENWIRTH: Thank you very much.

17 While the counselor is doing that, are there any
18 other preliminary matters?

19 MR. SALAPA: Your Honor, there's a --

20 JUDGE LOVENWIRTH: Yes, Mr. Salapa.

21 MR. SALAPA: -- preliminary matter, I believe, and I
22 think counsel could probably stipulate that there were
23 repairs that were made to the Berwick Street crossing. And
24 I don't think that there are any issues that need to be
25 addressed on the Berwick Street crossing in light of those

1 repairs.

2 Is that --

3 MS. MORAN: Correct.

4 MR. HULL: The retaining wall adjacent to --

5 JUDGE LOVENWIRTH: Well, the record doesn't know
6 who's talking. Do you want to talk, Ms. Moran, or introduce
7 the gentleman seated next to you?

8 MS. MORAN: Sure. Your Honor, Jill Moran, again, for
9 the Borough of White Haven. And we would be willing to
10 stipulate that certain repairs were made to the Berwick
11 Street crossing.

12 And I'm not sure if I have the details, I'm sorry, as
13 to the dates that those were made. But perhaps counsel for
14 the railroad --

15 JUDGE LOVENWIRTH: Well, I don't know that you even
16 mention the Berwick Street crossing in your complaint.

17 MS. MORAN: No, we do not, Your Honor.

18 JUDGE LOVENWIRTH: So you're saying that,
19 notwithstanding the answer filed by PennDOT, the subject
20 matter of this proceeding does not include the Berwick
21 Street crossing. Is that right, Ms. Moran?

22 MS. MORAN: That is correct, Your Honor, that was not
23 a part of our initial complaint.

24 JUDGE LOVENWIRTH: All right, so we can forget
25 Berwick Street. All right, very good. That will make it

1 easier.

2 We'll go off the record for a moment.

3 (Discussion off the record.)

4 JUDGE LOVENWIRTH: Back on the record.

5 The record will indicate that here on behalf of
6 Dennison Township is its solicitor, Gino L. Andreuzzi.

7 Good morning, Mr. Andreuzzi.

8 MR. ANDREUZZI: Good morning, Your Honor.

9 JUDGE LOVENWIRTH: Now, I'm just curious,
10 Mr. Andreuzzi. What's Dennison Township got to do with
11 this? The complaint indicates that there are deficiencies
12 in the Borough of White Haven. And of course, the borough
13 can't be located in Dennison Township, because boroughs
14 aren't located in townships.

15 So what's Dennison Township's interest in this
16 proceeding, please?

17 MR. ANDREUZZI: Well, somebody put us down on the
18 notice sheet, Your Honor.

19 JUDGE LOVENWIRTH: Okay.

20 MR. ANDREUZZI: So that's probably the main reason
21 we're here. Aside from that --

22 JUDGE LOVENWIRTH: Oh, so you don't know what you're
23 doing here either?

24 MR. ANDREUZZI: No, I don't.

25 (Laughter.)

1 JUDGE LOVENWIRTH: Off the record.

2 (Discussion off the record.)

3 JUDGE LOVENWIRTH: Back on the record again.

4 All right, very good.

5 MR. ANDREUZZI: Your Honor, Dennison Township is
6 adjacent to White Haven Borough. And the tracks go through
7 our area. And we've experienced problems on our highways as
8 a result of their inattention to the railway and the
9 surrounding areas. It's been a lot of water flow.

10 JUDGE LOVENWIRTH: All right. Well, do you have
11 evidence to present?

12 MR. ANDREUZZI: Yes, I have testimony.

13 JUDGE LOVENWIRTH: All right. Well, we'll hear from
14 your witness then. That's swell. Thank you, Mr. Andreuzzi.

15 MR. ANDREUZZI: Thank you.

16 JUDGE LOVENWIRTH: All right. Anything else
17 preliminarily?

18 (No response.)

19 JUDGE LOVENWIRTH: All right. Then it's time for
20 somebody else to go to work besides me.

21 Ms. Moran, do you want to call a witness, please,
22 madam?

23 MS. MORAN: Yes, Your Honor. I would call
24 Ronald Sturgeon on behalf of the borough.

25 JUDGE LOVENWIRTH: Thank you.

1 What is your name, please, sir?

2 MR. STURGEON: Ronald A. Sturgeon.

3 JUDGE LOVENWIRTH: Spell it.

4 MR. STURGEON: S-T-U-R-G-E-O-N.

5 JUDGE LOVENWIRTH: All right. Good morning,

6 Mr. Sturgeon. It's very nice to have you with us, sir.

7 Would you please come forward to the witness chair? Which
8 is the only comfortable chair in here. And remain standing.
9 Whereupon,

10 RONALD A. STURGEON

11 having been duly sworn, testified as follows:

12 JUDGE LOVENWIRTH: Please be seated, Mr. Sturgeon.

13 All right, Ms. Moran.

14 DIRECT EXAMINATION

15 BY MS. MORAN:

16 Q. Ron, could you state your full name and
17 professional address for the Court?

18 A. Ronald A. Sturgeon, professional engineer with
19 Pennoni Associates.

20 JUDGE LOVENWIRTH: Spell it, please.

21 THE WITNESS: P-E-N-N-O-N-I, Associates.

22 JUDGE LOVENWIRTH: Thank you.

23 THE WITNESS: 100 North Wilkes-Barre Boulevard,
24 Wilkes-Barre, Pennsylvania.

25

1 BY MS. MORAN:

2 Q. Mr. Sturgeon, what is your occupation?

3 A. Professional engineer.

4 Q. Do you hold any professional degrees or
5 certifications?

6 A. Yes, I have a certificate with the Commonwealth
7 of Pennsylvania to practice professional engineering in the
8 commonwealth.

9 Q. And where are you currently employed?

10 A. Pennoni Associates.

11 Q. As an engineer for Pennoni Associates, do you
12 also serve as engineer for the Borough of White Haven?

13 A. Yes, we were retained as the White Haven
14 Borough's consultant.

15 Q. How long ago were you retained as the borough's
16 engineer?

17 A. Approximately fifteen months ago at their January
18 meeting of the year 2000.

19 Q. Have you been authorized by White Haven Borough
20 council to speak on their behalf today?

21 A. Yes, I have.

22 Q. Ron, in your position as borough engineer,
23 generally, what are some of your duties and
24 responsibilities?

25 A. We routinely take care of subdivision and zoning

1 issues, draining issues, storm water issues, traffic issues
2 within the borough, safety and health concerns with the
3 borough, recreational issues; those types of things.

4 JUDGE LOVENWIRTH: Subdivision issues?

5 THE WITNESS: Subdivisions, land use, zoning.

6 BY MS. MORAN:

7 Q. Ron, in capacity as borough engineer, have you
8 ever been requested to review the railroad situation within
9 the Borough of White Haven?

10 And when I say the railroad situation, you've heard
11 His Honor read briefly a summary of the complaint that we've
12 made here today.

13 Have you ever been asked to review the I think that
14 was referenced in the complaint?

15 A. Yes. Last May 12 there was the wall that has
16 been since repaired, Your Honor, was -- we were called out
17 to take a look at that wall because of maintenance that was
18 done, apparently by the railroad.

19 JUDGE LOVENWIRTH: Where is the wall, please?

20 THE WITNESS: The wall as adjacent to Berwick Street,
21 which is State Route 940.

22 JUDGE LOVENWIRTH: This is part of the Berwick Street
23 crossing, rail highway crossing?

24 THE WITNESS: Well, it's off the crossing, Your
25 Honor.

1 JUDGE LOVENWIRTH: How far?

2 THE WITNESS: Approximately fifteen feet from the
3 edge of the road, cartway.

4 JUDGE LOVENWIRTH: Fifteen feet from the rail highway
5 crossing?

6 THE WITNESS: Uh-huh.

7 JUDGE LOVENWIRTH: And is that part of this case,
8 Ms. Moran?

9 MS. MORAN: Yes, it is, Your Honor. It's part of the
10 complaints that were made.

11 JUDGE LOVENWIRTH: So there's a wall; a retaining
12 wall. What does it retain?

13 THE WITNESS: The embankment for the railroad
14 trackage adjacent to a private dwelling.

15 JUDGE LOVENWIRTH: All right. So it's a retaining
16 wall that supports the tracks?

17 THE WITNESS: Yes.

18 JUDGE LOVENWIRTH: All right. And that's fifteen
19 feet from Berwick Street?

20 THE WITNESS: Yes, the cartway.

21 JUDGE LOVENWIRTH: All right, go ahead. Please
22 excuse the interruption, Ms. Moran.

23 MS. MORAN: That's okay, Your Honor.

24 BY MS. MORAN:

25 Q. Ron, we're going to get specifically into that

1 inspection. But preliminarily let me ask you. Do you have
2 any maps of the borough which would show the Court where the
3 area in question is located?

4 A. Yes, I have a scanned image of the official map
5 of the Borough of White Haven which they gave me to utilize
6 today off the borough hall wall

7 You have the copies there, Jill. I can explain the
8 map in more detail.

9 JUDGE LOVENWIRTH: All right. Well, let's get that
10 in front of everybody. Do you have enough copies, I hope,
11 Ms. Moran?

12 MS. MORAN: I believe so, Your Honor. I have two
13 copies for the court reporter, and I have one copy for Your
14 Honor.

15 JUDGE LOVENWIRTH: All right. What about counsel?

16 MS. MORAN: Yes. I don't know if I anticipated the
17 number of attorneys who would be here, so I'll see if I have
18 a copy for everyone.

19 JUDGE LOVENWIRTH: All right. Well, they can share
20 it, and then you can send it to them afterwards, Ms. Moran.

21 THE WITNESS: I think I made enough, Jill, yes.

22 JUDGE LOVENWIRTH: All right. Now, we'll go off the
23 record for a moment so that the court reporter can, at my
24 request, mark this exhibit as Borough Exhibit No. 1.

25 We're off the record.

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(Off-the-record pause.)

(Whereupon, the document was marked as Borough Exhibit No. 1 for identification.)

JUDGE LOVENWIRTH: Back on the record.

BY MS. MORAN:

Q. Ron, can you review what we've now marked as Borough Exhibit No. 1 and identify that for the Court, please?

A. Yes. For the sake of those present, this is a reduced version of the White Haven Borough map as it existed in 1995.

It is an accurate description of what's within the borough as of the date of 1995. But I can say that there's been no major additions or revisions to this mapping since that time.

And in particular, this map was selected because it does show the trackage through White Haven Borough in reference to the referenced streets and crossings.

JUDGE LOVENWIRTH: What's that smudge there in the middle?

THE WITNESS: Your Honor, the best I can say, that's an error in the imaging process.

JUDGE LOVENWIRTH: Okay. So it doesn't mean anything to me?

FORM 2

1 THE WITNESS: Yeah, well, it's right on top of
2 Interstate 80. It has nothing to do with the area in
3 question, though.

4 JUDGE LOVENWIRTH: What's what I meant. Okay.

5 BY MS. MORAN:

6 Q. Ron, using the map, again, that we've marked as
7 Borough Exhibit 1, can you show to the Court where the
8 railroad in question is on this map?

9 A. Yes. In general, if you look at the lower
10 portion of the image, you'll see the demarcation of a darker
11 line that traverses along parallel to the river, through the
12 town, starting from the upper portion of the track, upriver,
13 if you will.

14 On the right-hand side it traverses down through
15 town, it crosses over top os Susquehanna Street. There's an
16 at-grade crossing, vehicular crossing at Berwick Street,
17 which is also known as State Route 940; and additionally,
18 there's an at-grade crossing on Northampton Street as well.

19 JUDGE LOVENWIRTH: What kind of crossing at
20 Susquehanna Street?

21 THE WITNESS: Susquehanna Street is a trestle type,
22 stone, masonry, steel crossing.

23 JUDGE LOVENWIRTH: Are you saying that it's rail
24 tracks above the highway?

25 THE WITNESS: There's a single rail track up there at

1 this time, yes, sir.

2 JUDGE LOVENWIRTH: A rail track above the highway?

3 THE WITNESS: Uh-huh.

4 JUDGE LOVENWIRTH: So there's a bridge over which the
5 trains run?

6 THE WITNESS: That is correct.

7 JUDGE LOVENWIRTH: And it's above the highway. All
8 right, thank you.

9 THE WITNESS: There are also two pedestrian crossings
10 as well; one at the intersection with the track and Wilkes-
11 Barre Street extension. And that is reserved for a
12 pedestrian crossing.

13 And there's also one at the southern end of town in
14 an area commonly referred to as Allegheny Street. It is
15 only for pedestrian crossings. There's no vehicular
16 crossings there.

17 BY MS. MORAN:

18 Q. Ron, for the ease of everyone here, if, during
19 your testimony you would like to reference this map, or to
20 point out where a certain area of the railroad is, I'd ask
21 that you just reference it on the map. And perhaps if you
22 can hold it up to just show everyone --

23 A. Okay.

24 Q. -- generally where you're referencing.

25 And again, the area you're referring to is marked on

1 here as Lehigh Valley Railroad; is that correct? Is that
2 the railroad --

3 JUDGE LOVENWIRTH: It says Lehigh Valley RR; right?

4 THE WITNESS: Yes. Historically, that was the former
5 name of the railroad, I believe.

6 BY MS. MORAN:

7 Q. But that is the same railroad --

8 A. Yes, it is.

9 Q. -- we're addressing today?

10 A. Uh-huh.

11 Q. Thank you.

12 Now, going back again, we were talking about the
13 first time you were called to inspect the subject property.
14 Can we go back to that for a second? Can you tell me again
15 when that was?

16 A. On May 12, we received a phone call that morning
17 from the bridge secretary to investigate --

18 JUDGE LOVENWIRTH: May 12, 2000?

19 THE WITNESS: May 12, 2000, Your Honor. To
20 investigate a buckling of the wall, retaining wall, adjacent
21 to Berwick Street. And it is also adjacent to the property
22 known as the Sutich Insurance Company.

23 JUDGE LOVENWIRTH: What kind of insurance company?

24 MS. MORAN: S-U-T-I-G, Your Honor.

25 THE WITNESS: S-U-T-I-C-H, I believe it is.

1 MS. MORAN: Oh, I'm sorry. I apologize.

2 THE WITNESS: Daniel Sutich.

3 JUDGE LOVENWIRTH: Thank you.

4 THE WITNESS: And again, that's when I was first made
5 aware of a potential problem within the borough as it
6 related to the railroad facilities.

7 Subsequent to that, now -- and this is the wall, Your
8 Honor, that has since been repaired. I'd like to make
9 reference to that. We're really not taking issue with that
10 wall. The repairs have been made.

11 What came about as a result of that was our first
12 part of our complaint with the fact that there was no
13 communication with the municipality, with the railroad
14 itself.

15 JUDGE LOVENWIRTH: Well, nobody asked you that.
16 You're just a witness. You're not here to invent the
17 questions, please.

18 THE WITNESS: Okay. Yes, sir.

19 JUDGE LOVENWIRTH: Thank you.

20 BY MS. MORAN:

21 Q. Ron, subsequent to receiving that phone call from
22 the borough secretary on May 12, did you actually inspect
23 the site?

24 A. Yes, we did.

25 Q. And when was that?

FORM 2

1 A. The same day. That morning.

2 Q. And what did that inspection reveal?

3 A. It revealed a wall that was buckled and in a
4 state of potential collapse.

5 Q. And again, that was the retaining wall that
6 you've referenced?

7 A. Yes.

8 Q. Subsequent to this initial investigation, was
9 this wall repaired?

10 A. Yes.

11 Q. And it was repaired by whom?

12 A. I believe by the railroad company or it's
13 contractor or subcontractor. I'm not sure. But the wall
14 was repaired.

15 JUDGE LOVENWIRTH: When?

16 THE WITNESS: Prior to -- from the time of May 12,
17 Your Honor, up till prior to -- I don't have an exacting
18 date. We were not communicated when the wall was completed.
19 Sometime in September, I believe. I don't have an exact
20 date for you. It was repaired in two phases.

21 BY MS. MORAN:

22 Q. And again, Ron, you were not notified by the
23 railroad company of the repairs that were taking place or
24 when those were completed?

25 A. No, I was not.

1 Q. So you would not know the date that those were
2 completed?

3 A. No.

4 Q. Following this initial inspection, were you again
5 called to examine a situation with regards to the railroad
6 in the Borough of White Haven?

7 A. Yes. Subsequent to this inspection, at the
8 council meeting on May 18, 2000, during the segment of the
9 council meeting for petitions and complaints from the
10 citizens, a citizen, Marie Piro, came to the meeting to --

11 JUDGE LOVENWIRTH: Marie who?

12 THE WITNESS: Marie Piro, P-I-R-O.

13 JUDGE LOVENWIRTH: P-I-R-O?

14 THE WITNESS: Yes, Your Honor.

15 JUDGE LOVENWIRTH: Thank you.

16 THE WITNESS: I have -- I believe there's copies of
17 the borough council meeting minutes where this is
18 referenced. And she addressed her concerns about the
19 railroad tracks through town in general, about their state
20 of disrepair.

21 And we were asked by the municipality to investigate
22 the --

23 JUDGE LOVENWIRTH: Asked by the municipality? You
24 mean you --

25 THE WITNESS: As a result of her complaint, we were

1 asked by the municipality to investigate the railroad tracks
2 through the Borough of White Haven.

3 JUDGE LOVENWIRTH: Okay.

4 BY MS. MORAN:

5 Q. And did you make such investigation?

6 A. Yes, we did.

7 Q. And when was that investigation completed?

8 A. Within the month of May.

9 Q. What did that investigation involve?

10 A. It involved a walk-through of the facilities from
11 where they enter the borough to where they exit into
12 Dennison Township.

13 Q. And who attended that inspection?

14 A. Myself and my structural engineer, Eric Burgulis;
15 B-U-R-G-U-L-I-S. As well as Councilman William Radley,
16 R-A-D-L-E-Y.

17 Q. What did this inspection reveal?

18 A. At that time, various vegetative growths and
19 issues with the trackage relative to ballast placement
20 against supporting facilities within the borough on the
21 appurtenances within the railroad facility.

22 And it referenced particularly to the trestle at the
23 Susquehanna Street and the retaining wall adjacent to
24 Susquehanna Street.

25 JUDGE LOVENWIRTH: How far from adjacent to

FORM 2

1 Susquehanna Street?

2 THE WITNESS: Within seven feet, adjacent to the
3 cartway, Your Honor. Parallel to the hardware store known
4 as G&A Hardware.

5 JUDGE LOVENWIRTH: G&A?

6 THE WITNESS: G&A.

7 It should be noted that during that inspection, too,
8 that wall had not been repaired at the time, but it has
9 since been repaired.

10 JUDGE LOVENWIRTH: What's been repaired, please?

11 THE WITNESS: A retaining wall adjacent to Berwick
12 Street.

13 JUDGE LOVENWIRTH: Well, you said that was repaired.

14 THE WITNESS: Yes.

15 JUDGE LOVENWIRTH: But now you're talking about the
16 tracks and the vegetative growth, the growth and the
17 ballast, and stuff like that?

18 THE WITNESS: Right.

19 JUDGE LOVENWIRTH: And after having explained that,
20 you're going back to the wall fifteen feet from Berwick
21 Street; right?

22 THE WITNESS: Yes, sir.

23 JUDGE LOVENWIRTH: All right. I follow you. Thank
24 you.

25

1 BY MS. MORAN:

2 Q. Ron, following this inspection, did you take any
3 action with regards to the situation that you discovered?

4 A. Yeah, I made my findings known to the council.
5 At that point the asked that a correspondence be submitted
6 to the railroad.

7 Q. And did you submit said correspondence?

8 A. Yes, we did.

9 Q. And I'll show you what we'll mark as Borough
10 Exhibits 2 and 3.

11 JUDGE LOVENWIRTH: Are you going to mark them,
12 Ms. Moran? It's all right with me if you do.

13 MS. MORAN: Sure, I can mark them now.

14 JUDGE LOVENWIRTH: All right, we're off the record
15 for a moment or two.

16 (Off-the-record pause.)

17 (Whereupon, the documents were marked
18 as Borough Exhibit Nos. 2 and 3 for
19 identification.)

20 JUDGE LOVENWIRTH: We're back on the record.

21 Counsel behind you doesn't have them, I don't think.
22 Unless you gave it to him before.

23 MS. MORAN: Your Honor, the letters have been
24 attached as an exhibit to our actual complaint, so all
25 counsel should have copy.

1 JUDGE LOVENWIRTH: All right. Well, then for those
2 who don't have not been distributed a copy of it, the letter
3 which has been attached to the complaint, which is dated
4 May 24, to Michael Cormier, is Borough Exhibit No. 2; and
5 Borough Exhibit No. 3 is a letter addressed to John Walaits.
6 And that is also dated May 24. And those letters are from
7 the borough engineer, Ronald A. Sturgeon.

8 BY MS. MORAN:

9 Q. Ron, can you review these exhibits, please?

10 A. Yes. I transcribed these letters to be sent to
11 representatives of the Reading, Blue Mountain and Northern
12 Railroad Company.

13 I received their names from the property owner where
14 the retaining wall adjacent to Berwick Street had collapsed.
15 He had their business cards, and he was kind enough to give
16 me their names so I could reference these letters to them.

17 I had tried to call both parties prior to
18 transcribing this letter and had not received a response
19 back from them.

20 And the purpose of this letter was to address the
21 concerns -- without reading the letter verbatim, Your Honor.

22 JUDGE LOVENWIRTH: The letter speaks for itself.

23 THE WITNESS: Okay.

24 JUDGE LOVENWIRTH: The letters speak themselves.

25 THE WITNESS: We are asked to investigate the

1 public's concern about the conditions of the trackage
2 through town. We did our investigation; and the as a result
3 of that investigation we found the concerns at the trestle
4 and Susquehanna Street as well as the wall next to the
5 G&A Hardware.

6 BY MS. MORAN:

7 Q. Ron, those letters that we've marked as 2 and 3,
8 were those letters actually sent by your office?

9 A. Yes, they were.

10 Q. To date, has there been a response received from
11 either of the individuals whom you addressed in those
12 letters?

13 A. Not to my knowledge.

14 Q. Subsequent to that time, Ron, was there any other
15 inspection done of the subject property?

16 JUDGE LOVENWIRTH: By him? By the witness?

17 MS. MORAN: Yes, Your Honor.

18 THE WITNESS: In a concerted effort -- yes, there
19 was. During an inspection that was done in concert with
20 many of the individuals in this room, we went out and did an
21 inspection. I believe it was in September that we did the
22 inspection.

23 BY MS. MORAN:

24 Q. September of 2000?

25 A. 2000, yes. I don't have that exact date with me,

1 but I have photographs.

2 Q. Can you tell me who was at that inspection in
3 September of 2000?

4 A. Well, there was no sign-in sheet, but
5 organizations represented were PennDOT, the PUC, my firm,
6 the borough, and citizens of the borough as well.

7 Q. Was anyone from the railroad at that inspection?

8 A. No one from the railroad identified themselves as
9 being representatives from the railroad, and I can't say
10 that there were.

11 Q. Had they been notified of this walk-through?

12 A. I believe they were notified through proper --
13 not by us, but by proper authorities.

14 Q. Ron, to the present time, to your knowledge, has
15 there been any repairs, or have any of the concerns that
16 have been identified in the complaint which His Honor read
17 at the beginning of this hearing, have any of these been
18 addressed, with the exception of the retaining wall, which
19 we've already discussed the retaining wall on Berwick
20 Street.

21 (Pause.)

22 Q. Have any of these been addressed by the railroad?

23 A. No.

24 Q. To the best of your knowledge, are these
25 conditions still as they had been set forth in the

1 complaint?

2 A. Yes.

3 JUDGE LOVENWIRTH: And that includes the retaining
4 wall near Susquehanna Street; right?

5 THE WITNESS: Yes.

6 JUDGE LOVENWIRTH: Excuse me. The learned counsel
7 used the word "repairs." You can't repair vegetation
8 growth. Has any of that been cleared?

9 THE WITNESS: No.

10 JUDGE LOVENWIRTH: All right.

11 THE WITNESS: During the winter, the vegetation's not
12 there now.

13 JUDGE LOVENWIRTH: Right.

14 THE WITNESS: But none of the vegetation that would
15 cause the overgrowth has been touched at all.

16 BY MS. MORAN:

17 Q. Just to make it clear for the Court, on the issue
18 addressed, again, in the complaint, with the exception of
19 the Berwick Street retaining wall, have any of those issues
20 been addressed by the railroad?

21 A. Not from my observations.

22 MS. MORAN: Your Honor, if it may please the Court, I
23 have several photographs that we have packed together in
24 packages for everyone. If it's permissible, I'd like to
25 just pass those out now, and then we can reference them.

1 And this way everyone will have copies in front of them.

2 JUDGE LOVENWIRTH: Well, what do you mean, little
3 photographs, big photographs?

4 MS. MORAN: Eight-by-ten photographs.

5 JUDGE LOVENWIRTH: All right. Now, how many of them
6 do you have, please?

7 MS. MORAN: Twenty, Your Honor. Twenty photographs.

8 JUDGE LOVENWIRTH: And do you want them marked
9 separately, or do you want them marked all as one exhibit?

10 MS. MORAN: I would have no objection to marking them
11 as a packet, and just marking them Borough Exhibit No. 4, if
12 there's no objection.

13 JUDGE LOVENWIRTH: All right, very well. Then why
14 don't you do it, or give it to the court reporter, please.
15 I have a stapler here if you want to staple them all
16 together.

17 (Pause.)

18 JUDGE LOVENWIRTH: These packets are time-dated.

19 MS. MORAN: Your Honor, they're just dated as of the
20 date they were printed out, and not of the date the
21 photographs were taken.

22 JUDGE LOVENWIRTH: But they could be identified by
23 the times on them by the witness so as to distinguish one
24 from the other.

25

1 (Whereupon, the photographs were
2 marked as Borough Exhibit No. 4
3 for identification.)

4 BY MS. MORAN:

5 Q. Ron, I've handed you what we're marking as
6 Borough Exhibit 4. It's representing 20 photographs that
7 were taken. Did you take these photographs?

8 A. Yes, I did.

9 Q. Ron, do you recall when these photographs were
10 taken?

11 A. Yes, there's two dates of these photographs by
12 the obvious views that you'll see. The summery, the earlier
13 date, is September 6, 2000. And the obvious date on the
14 second set in the wintertime was, they were taken yesterday,
15 March 7, 2001.

16 Q. And as we're going through them --

17 JUDGE LOVENWIRTH: What did you say, please,
18 Ms. Moran?

19 MS. MORAN: I'm sorry. Just as we're going through
20 them, if it's necessary, we can identify them again by date.

21 JUDGE LOVENWIRTH: It is necessary. Please, when you
22 refer to a photograph, such as, for example, the top one,
23 the 3/7/01 photograph, taken at 3:21 p.m., is what I'm
24 referencing now.

25 THE WITNESS: Yes, Your Honor.

1 JUDGE LOVENWIRTH: That way we'll know what you're
2 talking about.

3 Do all counsel have copies of these photographs?

4 MR. SALAPA: Yes, Your Honor.

5 MR. SHARP: Yes, Your Honor.

6 BY MS. MORAN:

7 Q. Ron, starting with the first photograph, and it's
8 marked 3/7/01, 3:21 p.m., I would ask if you would identify
9 that photograph for the Court. And initially, Ron, if you
10 can identify them as to the date they were taken.

11 A. Yes. This photograph was taken March 7, 2001,
12 yesterday afternoon. This photograph references the
13 repaired retaining wall adjacent to Berwick Street, State
14 Route 940.

15 Immediately in the front you see a picket fence,
16 which distinguishes, if you will, the property adjacent to
17 the railroad trackage.

18 To the right of this photo would be the Daniel Sutich
19 Insurance Agency. Before the taker, behind myself in this
20 photograph was Berwick Street itself. I was standing on the
21 sidewalk when I took this.

22 And I took this just to basically identify the fact
23 that the retaining wall that is not part of our complaint
24 now was repaired, and it was done such at different times,
25 which we were not made aware of when they were repaired.

1 JUDGE LOVENWIRTH: Now, Susquehanna Street, what kind
2 of a street is that? Is that a borough street, or is that a
3 state street, or a county street?

4 THE WITNESS: Yes, sir, Susquehanna Street is a
5 borough street.

6 BY MS. MORAN:

7 Q. I'll draw your attention to the next photo. And
8 again, it's marked 3/7/01, 11:46 a.m. And can you identify
9 when that photograph was taken?

10 A. Again, that photograph, this photograph was taken
11 September 6, 2000. It was printed out yesterday at 11:46.

12 Q. And what does this photograph show?

13 A. This shows the trestle over Susquehanna Street.
14 And off to your right would be G&A Hardware Store. If you
15 look under the trestle you'll see at the very top, the
16 underpass, overpass of the trestle, the stop sign.

17 This Susquehanna Street, the borough street,
18 intersects with Towanda Street, which is a state highway.

19 JUDGE LOVENWIRTH: Well, how far is Towanda Street
20 from the rail highway crossing?

21 THE WITNESS: Approximately 75 to 80 feet, Your
22 Honor.

23 BY MS. MORAN:

24 Q. Now, if you go to the third photograph, again,
25 this is dated 3/7/01 -- which I believe most of the

1 photographs will be -- and the time on it is 11:29 a.m., and
2 ask if you can tell us when that photograph was taken.

3 A. Again, this photograph was taken September 6.
4 What this photograph depicts --

5 JUDGE LOVENWIRTH: September 6?

6 THE WITNESS: Sixth, 2000.

7 JUDGE LOVENWIRTH: Wait, wait. It was developed on
8 3/7/01?

9 THE WITNESS: Yes, all these images were printed out
10 yesterday, on 3/7.

11 JUDGE LOVENWIRTH: Okay. But that doesn't mean that
12 they were taken then?

13 THE WITNESS: No.

14 JUDGE LOVENWIRTH: I see. Thank you.

15 THE WITNESS: Yes.

16 JUDGE LOVENWIRTH: I was going to say, what happened
17 to all the snow.

18 (Laughter.)

19 BY MS. MORAN:

20 Q. If you could identify that?

21 A. This identifies standing on top of the trestle on
22 the southerly side, looking across the trestle. The purpose
23 of this photograph was to identify that the trestle used to
24 carry two tracks. One has since been vacated.

25 And this image also shows the upper side handrail

1 intact. It's guarding against anyone falling off the bridge
2 if they would be up there.

3 Also shows the planking walk going across between the
4 old trackage and the handrail itself. And it shows the
5 deteriorating condition of the cross ties on top of the
6 trestle.

7 JUDGE LOVENWIRTH: Now, this is the railroad bridge
8 over Susquehanna Street; right?

9 THE WITNESS: Yes, sir.

10 JUDGE LOVENWIRTH: All right. Thank you.

11 THE WITNESS: Yes, Your Honor.

12 BY MS. MORAN:

13 Q. Ron, taking you to the next photo. And again,
14 this is marked 3/7/01, as I said, as I'm sure all of them
15 are, and it's dated 11:30 a.m., and ask if you could
16 identify when that photograph was taken.

17 A. Again, this was taken September 6, 2000.

18 Q. What does this photograph show?

19 A. This is a closer image of the condition of the
20 cross ties on that vacated track, on the top of the trestle,
21 approximately in the center of the trestle.

22 JUDGE LOVENWIRTH: Again, when you say trestle, this
23 is the bridge over Susquehanna Street?

24 THE WITNESS: The bridge over Susquehanna Street.

25 JUDGE LOVENWIRTH: And just to make sure you didn't

1 make a mistake, I want to make sure, this is the abandoned
2 track?

3 THE WITNESS: Well, it's been vacated. I'm not sure
4 if it's abandoned.

5 JUDGE LOVENWIRTH: Well, the unused track?

6 THE WITNESS: Yes, sir.

7 JUDGE LOVENWIRTH: Thank you.

8 BY MS. MORAN:

9 Q. Ron, taking you to the next photo marked 3/7/01,
10 11:28 a.m., and ask when that photograph was taken.

11 A. This photograph was taken, again, on
12 September 6, --

13 JUDGE LOVENWIRTH: Now wait. Sometimes you say
14 September, sometimes you say December. Now, were some of
15 these pictures taken in December and others in September?

16 THE WITNESS: No, sir, all are in September.

17 JUDGE LOVENWIRTH: All right. So when you talked
18 about the previous photograph, you said December, you meant
19 to say September; right?

20 THE WITNESS: Yes. Pardon if I did say December.
21 I'm sorry.

22 JUDGE LOVENWIRTH: All right. I just want to make
23 sure.

24 BY MS. MORAN:

25 Q. Again, Ron, looking at this photo marked 11:28

1 a.m., can you identify this photograph, please?

2 A. Yes, this is an image taken standing under the
3 bridge on Susquehanna Street, looking up at the southern
4 exposure of the vacated track. And the purpose of this
5 image was to show the cross ties that have rotted and the
6 possible, and the obvious opening that's occurred looking up
7 through the bridge.

8 Q. And again, this is the bridge over Susquehanna
9 Street; correct?

10 A. Yes, it is.

11 Q. So this photograph was taken from Susquehanna
12 Street?

13 A. Yes, looking southward on the trestle.

14 Q. Our next photograph, 3/7/01, 11:46 a.m. When was
15 that photo taken?

16 A. This photo was taken September 6, 2000.

17 Q. And can you identify what this photo is?

18 A. Yes, this is standing on the southerly side of
19 the tracks looking north on the easterly side as you
20 approach the bridge.

21 Q. And what specifically does this photograph
22 depict?

23 A. The purpose of this photograph, in reference to
24 the previous photograph that was presented, you'll notice
25 the handrail, how it's been pushed out. And it's being --

1 actually, it's helping to retain the ballast that the
2 railroad company had come through to fortify or to perform
3 maintenance on their tracks and the cross ties.

4 It's very hard to see in this photograph. But the
5 intent there in September was to show that they're actually
6 using the handrail for structural purposes to support the
7 ballast to, in my opinion, help support the railroad
8 trackage.

9 JUDGE LOVENWIRTH: Now, to the left of the handrail
10 is the track; right?

11 THE WITNESS: Yes, sir.

12 JUDGE LOVENWIRTH: And to the right is vegetation;
13 right?

14 THE WITNESS: Yes. Within that vegetation is the
15 handrail itself. And it's actually leaning out.

16 JUDGE LOVENWIRTH: So it's a rock formation then?

17 THE WITNESS: It's not really a rock formation at
18 that point. The trees to the right of the handrail are
19 actually holding the handrail up. Otherwise, it's my
20 opinion it would collapse.

21 JUDGE LOVENWIRTH: In other words, the handrail is
22 supported by a tree?

23 THE WITNESS: Several trees, yes.

24 BY MS. MORAN:

25 Q. The next photograph dated 3/7/01, at 3:23 p.m.

1 Can you identify when that picture was taken?

2 A. Yes, this photograph was taken yesterday,
3 March 7, 2001.

4 Q. And again, can you identify for the Court what
5 this photo --

6 JUDGE LOVENWIRTH: This is the one marked 3:23 p.m.;
7 right?

8 MS. MORAN: Yes.

9 THE WITNESS: Yes.

10 Yes, this was taken yesterday. This, again, shows
11 the handrail in question. Again, as of yesterday, no
12 corrections have been made to it.

13 Actually, with the lack of vegetation, you get a
14 better view of how the support to the handrail, and with the
15 snow cover on the ground that's covering the ballast, you
16 can get a sense of how the handrail's being used to support
17 the ballast across the bridge.

18 JUDGE LOVENWIRTH: This isn't the same section of
19 handrail as the previous photograph; is it?

20 THE WITNESS: Yes.

21 JUDGE LOVENWIRTH: It is.

22 THE WITNESS: Yes, Your Honor.

23 JUDGE LOVENWIRTH: All right, thank you.

24 BY MS. MORAN:

25 Q. Our next photo, again dated 3/7/01, at 11:47 a.m.

1 And that photo was taken when?

2 A. This photo was taken September 6, 2000.

3 Q. And what does this photo depict?

4 A. Standing on the north side of the bridge, looking
5 to the southeast. The intent of this photograph was to show
6 in the lower right corner you get a feeling for the railroad
7 track location, the edge of the outside rail.

8 This photograph was taken to show the obvious missing
9 timber on the walkway as you come across the east side of
10 the bridge. You can see the hole through the walkway there.
11 It speaks for itself as far as possible, someone falling
12 through it, or what have you.

13 JUDGE LOVENWIRTH: Now, these last three photographs,
14 for example, are not photographs of the railroad crossing
15 with the highway; isn't that right?

16 THE WITNESS: That is correct.

17 JUDGE LOVENWIRTH: How far from the railroad crossing
18 are they?

19 THE WITNESS: It's approximately, I believe it's 800
20 to 1,000 feet, Your Honor.

21 JUDGE LOVENWIRTH: And the track shown on this last
22 photograph, that's the abandoned track? That's the track
23 that's not being used?

24 THE WITNESS: No. On the last photograph, Your
25 Honor? No, that's the active track there that you see down

1 in the lower right corner.

2 JUDGE LOVENWIRTH: All right.

3 THE WITNESS: The abandoned track has no trackage on
4 it at all at this point.

5 JUDGE LOVENWIRTH: So you're saying if somebody were
6 walking the track, so to speak, this would be a dangerous
7 situation; is that right?

8 THE WITNESS: It could be, Your Honor, yes.

9 BY MS. MORAN:

10 Q. Now, the area depicted on this photograph, is
11 this actually the walkway next to the track? Is that what
12 that is?

13 A. Yes. On the previous photo, where the track has
14 been abandoned, the walkway and the handrail were intact.
15 That was on the west side of the bridge.

16 On this east side you can see the walkway where it's
17 missing associated timbers. It's also important to note
18 there too, with the ballast that you see in the foreground,
19 that due to the vibration of the trains, many times ballast
20 rolls down onto the road in that area as well because of the
21 hole in the walkway.

22 JUDGE LOVENWIRTH: Now, in every photograph you've
23 shown us so far, the tracks are elevated from the borough;
24 isn't that right?

25 THE WITNESS: Yes, it is an elevated section through

1 town.

2 JUDGE LOVENWIRTH: All right.

3 BY MS. MORAN:

4 Q. And you are referencing, just for clarification,
5 I believe, item 2 in the complaint as the stone and steel
6 trestle at Susquehanna Street, and referencing it in that
7 paragraph 2 of the complaint?

8 JUDGE LOVENWIRTH: Well, the witness says this isn't
9 Susquehanna Street, this is some distance from Susquehanna
10 Street.

11 MS. MORAN: This is the bridge over Susquehanna
12 Street, Your Honor.

13 JUDGE LOVENWIRTH: No, that's not what the witness
14 said.

15 THE WITNESS: No, I understood your question, Your
16 Honor, to be how far this bridge was from Berwick Street.

17 JUDGE LOVENWIRTH: No, no. I'm sorry. I'm glad that
18 we got this cleared up. The last photograph, the one that's
19 marked 3/7/01, 11:47 a.m., this is not the bridge; is it?

20 THE WITNESS: This is the bridge over Susquehanna
21 Street.

22 JUDGE LOVENWIRTH: Oh, this is the bridge?

23 THE WITNESS: Uh-huh.

24 JUDGE LOVENWIRTH: All right. And the previous three
25 photographs are also the bridge?

1 THE WITNESS: Yes. Yes, sir.

2 JUDGE LOVENWIRTH: Are there any photographs that you
3 identified so far that are not the bridge?

4 THE WITNESS: The first one was the retaining wall.

5 JUDGE LOVENWIRTH: That's right. Other than that --
6 all right. Thank you.

7 BY MS. MORAN:

8 Q. Ron, the next photo, again, this is 3/7/01, and
9 this photograph is also marked 11:47 a.m. But this is
10 showing specifically, it appears to be vegetation coming
11 from the side of a wall on this photograph. And I'll ask if
12 you can identify that as to when it was taken.

13 A. This photograph was taken September 6, 2000.

14 Q. And can you identify for the Court that this
15 depicts?

16 A. This is an image of the northeast quadrant of the
17 abutment to the trestle to the bridge. To your right would
18 be the G&A Hardware; to your left would be the steel
19 overpass of the bridge.

20 And what you see in the foreground there are trees
21 which are growing out just above the rock masonry structure
22 of the abutment of the wall.

23 Immediately to the right of that you see the older
24 cross ties that are being used as a retaining wall type
25 structure to hold back ballast which are immediately behind

1 them.

2 JUDGE LOVENWIRTH: Now, this photograph is also of
3 the bridge which forms the crossing with Susquehanna Street?

4 THE WITNESS: Yes, sir. This was taken standing at
5 the edge of Susquehanna Street.

6 BY MS. MORAN:

7 Q. Ron, the next photo, 3/7/01, 3:24 p.m. When was
8 that photo taken?

9 A. This photo was taken yesterday, March 7, 2001.

10 Q. And can you identify this photo?

11 A. It's a similar image of the previous image, taken
12 a little more parallel with the trackage. What you see
13 there, again, standing Susquehanna Street, looking at the
14 northeast quadrant of the abutment, you see the tree in the
15 upper left. That's the same tree from the previous
16 photograph.

17 This photograph also shows you the image of two
18 additional trees which are to the right of the photo. And
19 they are basically holding up those railroad ties that you
20 see in between the two tree structures.

21 Q. And those would be the trees at the right of the
22 photo?

23 A. Right of the photograph, yes.

24 Q. Next photograph is 3/7/01, 11:45 a.m. Again,
25 when was that photo taken?

1 A. This photo was taken September 6, 2000.

2 Q. And what does that depict?

3 A. What you see there, this was taken standing just
4 off Susquehanna Street in the small driveway alleyway
5 between G&A Hardware and the railroad easements and
6 property.

7 What you see there to your left is the stone masonry
8 structure. Which would be, again, the northeast part of the
9 bridge abutment.

10 You see the older cross ties that were being used to
11 support the ballast which is behind that, if you can see
12 that in the upper photos. Where the cross ties end you can
13 see the ballast behind there.

14 And it also showed two trees, again, which are being
15 used to support the cross ties and the associated
16 appurtenances behind that, the trackage and the ballast.
17 And I'm not sure what else is behind that. But we do know
18 that if those trees would be removed in their entirety, it
19 would be suspect on how you would hold back that area.

20 Q. Ron, the next photo, 3/7/01, 11:31 a.m. Again,
21 when was that photo taken?

22 A. This photo was taken September 6, 2000.

23 Q. And can you identify what that depicts?

24 A. This is taken looking southerly of the same image
25 with the cross ties supporting the ballast between the cross

1 ties and the railroad tracks and that ballast.

2 It shows the same set of trees in question. And it
3 gives you a little more detail on how they are being
4 utilized to support the cross ties in that area.

5 JUDGE LOVENWIRTH: And this is the railroad crossing
6 Susquehanna Street?

7 THE WITNESS: Yes. If you look off to the very left
8 of that photograph, you'll see the asphalt pavement there.
9 That is Susquehanna Street, that goes underneath the bridge.

10 BY MS. MORAN:

11 Q. And the next photograph, 3/7/01, 3:23 p.m. And
12 when was this photo taken?

13 A. This photo was taken yesterday, March 7, 2001.

14 Q. And what does this photo depict?

15 A. This shows a recent, as of yesterday, image of
16 the retaining wall between the railroad and the G&A Hardware
17 Store.

18 The purpose of this image was to give a viewer some
19 idea of the bulge in the wall as it relates to the potential
20 problem with the structural support behind that wall of the
21 railroad.

22 JUDGE LOVENWIRTH: Now, this isn't part of the
23 crossing; right?

24 THE WITNESS: No, sir. We're actually on the next --

25 JUDGE LOVENWIRTH: All right. And in case it

1 matters, how far are we from the crossing at Susquehanna
2 Street?

3 THE WITNESS: This is approximately 25 to 30 feet
4 away from the other area in question.

5 JUDGE LOVENWIRTH: From the crossing?

6 THE WITNESS: From the crossing.

7 JUDGE LOVENWIRTH: At Susquehanna Street?

8 THE WITNESS: Yes. From the centerline of the road,
9 or from the edge of the cartway, it would be approximately
10 70 feet. The 25 to 30 feet is in reference to the previous
11 images we were looking at.

12 BY MS. MORAN:

13 Q. Ron, this photo, is this depicting the stone
14 retaining wall adjacent to G&A Hardware?

15 A. Yes, yes.

16 Q. That's what this photograph is depicting, that
17 area?

18 A. Uh-huh.

19 Q. The next photograph, Ron. And this one is
20 3/7/01, 11:49 a.m.

21 A. Yes, I would ask everyone to rotate that 90
22 degrees so that you orientate that. You'll see the wall.
23 Again, this photograph was taken September 6, 2000.

24 If you would rotate that 90 degrees, you will see the
25 wall on the left side and the Jeep in the background on the

1 right, behind the G&A Hardware Store.

2 And the purpose of this, again, was -- with the
3 vegetation you lose some of the relief as far as the bulge
4 in the wall. But it was taken to give the image that the
5 wall does have some buckling and vegetation growing through
6 the wall as well.

7 JUDGE LOVENWIRTH: All right. Now, just to make sure
8 I understand it, your testimony is that this is 70 feet from
9 the edge of the cartway of Susquehanna Street?

10 THE WITNESS: About from the centerline, Your Honor,
11 yes.

12 JUDGE LOVENWIRTH: 70 feet from the centerline?

13 THE WITNESS: Yes.

14 JUDGE LOVENWIRTH: And how wide is Susquehanna
15 Street?

16 THE WITNESS: Susquehanna Street, as it goes under
17 the trestle, is approximately sixteen to eighteen feet wide.

18 JUDGE LOVENWIRTH: So it's 62 feet, say, from the --

19 THE WITNESS: About, yes.

20 JUDGE LOVENWIRTH: From the cartway?

21 THE WITNESS: Yes, sir.

22 JUDGE LOVENWIRTH: All right.

23 BY MS. MORAN:

24 Q. And again, Ron, this picture is depicting the
25 retaining wall by G&A Hardware?

1 A. Yes.

2 Q. That's correct?

3 A. That's the structural wall for their building on
4 the right edge of the photograph.

5 Q. The next photograph, 3/7/01, 3:24 p.m. Again,
6 when that one was taken.

7 A. This photograph was taken yesterday, March 7,
8 2001.

9 Q. And what area does this depict?

10 A. This is, again, the same general area of the
11 retaining wall, with the railroad to the left, the
12 G&A Hardware Store to the right.

13 Looking along that wall between the building and the
14 alleyway, with the vegetation down, you can get an idea of
15 the overhanging vegetation that's growing out of the top of
16 this wall; and also some relief to the fact that there's a
17 bulge in the wall as well.

18 Q. Our next photo, 3/7/01, 11:49 a.m.

19 A. This photograph was taken September 6, 2000. The
20 purpose of this image was to depict the vegetation of the
21 multiple tree growth out of the top of that wall.

22 And it also gives you at the very bottom of that
23 photograph the feeling how you go from the wall and it's
24 masonry structure, stone and masonry structure, to you can
25 see the start of the breakup of the wall and the stone and

1 masonry below that.

2 JUDGE LOVENWIRTH: So this is the same wall --

3 THE WITNESS: Yes.

4 JUDGE LOVENWIRTH: -- this section of the wall 62
5 feet from the intersection, about?

6 THE WITNESS: Yes, Your Honor.

7 BY MS. MORAN:

8 Q. And again, Ron, for clarification, this is the
9 retaining wall by G&A Hardware; correct?

10 A. Yes. Parallel to the railroad.

11 Q. Okay. The next photo is 3/7/01, 11:50 a.m.
12 Again, when was that one taken?

13 A. This photograph was taken September 6, 2000.

14 Q. And what does this depict?

15 A. This is the area immediately below the previous
16 photograph, where the stone started to break up. Which you
17 can identify there as the structural loss of structure of
18 the wall. You can see the loss of mortar between the
19 joints, the movement of the rock and mortar themselves. And
20 actually there's voids behind this wall.

21 Q. When you say voids behind the wall, can you
22 just --

23 A. There are air space openings between the back of
24 the stone structure and the embankment that you can look
25 through and see.

1 Q. When looking at this photo, would it be the
2 G&A Hardware side of this wall?

3 A. Yes, you would, you would be standing in that
4 alleyway between the wall and the G&A Hardware building,
5 looking a little bit southwest.

6 Q. On the next photo, which is marked 3/7/01, 3:25
7 p.m. When was this photo taken?

8 A. This photograph was taken yesterday, March 7,
9 2001.

10 Q. And I know I'm not supposed to turn this one;
11 this is actually correct.

12 A. Yeah.

13 Q. Can you describe what this depicts?

14 A. What you have there is, we've gone into the --
15 through the rock, through the openings, through the void
16 area behind the wall, to demonstrate that there's at least a
17 34- to 36-inch void, less than that, less the thickness of
18 the rock, between the retaining wall itself and where we get
19 refusal of the earthen embankment.

20 Q. Is this referencing the same void as you
21 referenced when we were looking at the previous photo, which
22 had been marked, it says 11:50 a.m.?

23 A. Yes, it is.

24 JUDGE LOVENWIRTH: Now, the stone wall's to the
25 right; isn't that correct?

1 THE WITNESS: The stone wall would be to your right,
2 Your Honor, yes.

3 JUDGE LOVENWIRTH: And the space between the stone
4 wall and the other side of the void is to the left?

5 THE WITNESS: No, sir. It would be to the right. To
6 your left would be the alleyway and the G&A Hardware Store.

7 JUDGE LOVENWIRTH: All right.

8 THE WITNESS: Yes, looking at this photograph, this
9 was taken from --

10 JUDGE LOVENWIRTH: I got you.

11 THE WITNESS: -- due south.

12 JUDGE LOVENWIRTH: I got you.

13 THE WITNESS: And it's a right-hander's tape, so
14 that's why it's upside down.

15 JUDGE LOVENWIRTH: That's all right. Now, the stone
16 was how thick? I mean, the stone takes up part of this 36
17 inches?

18 THE WITNESS: Yeah. The stone in that area
19 approximately is about anywhere from nine to twelve --

20 JUDGE LOVENWIRTH: So it's approximately a 24-inch
21 void?

22 THE WITNESS: Yes.

23 JUDGE LOVENWIRTH: All right.

24 BY MS. MORAN:

25 Q. Our next photo, 3/7/01, 11:51 a.m. When was this

1 photo taken?

2 A. This photograph was taken September 6, 2000. And
3 again, this is a general overview of the wall in
4 relationship to the alleyway, the back of the G&A Hardware
5 building. And just to complete the cycle of walking through
6 that alleyway, it's an overview of the structure as it
7 existed looking from the north, looking south.

8 Q. And the building on the left is the G&A Hardware
9 building?

10 A. That is correct.

11 Q. Last photo, 3/7/01, 11:50 a.m. Again, when was
12 this photo taken?

13 A. This photograph was taken September 6, 2000.

14 Q. And what does this depict?

15 A. This is the last item in the third part of the
16 complaint relative to a repair that was done 30-plus years
17 ago.

18 Just to give a general overview of the repairs, what
19 this indicated to me was that this wall had problems
20 historically.

21 JUDGE LOVENWIRTH: Where's the wall? Where is this
22 wall, please?

23 THE WITNESS: In the photograph, Your Honor, the wall
24 is where you see the steel supports. It's behind that.

25 JUDGE LOVENWIRTH: I know. But how far from the

1 intersection?

2 THE WITNESS: At this point, this would be behind the
3 G&A Hardware. I don't have a really good distance. I
4 wouldn't want to give you -- it's at least 100 feet away
5 from the --

6 JUDGE LOVENWIRTH: From Susquehanna Street?

7 THE WITNESS: From Susquehanna Street.

8 MR. LEPORE: Your Honor, I'll offer photographs later
9 into evidence that will depict the entire area.

10 JUDGE LOVENWIRTH: All right.

11 How do you know it's 30 years old?

12 THE WITNESS: Based upon a conversation I had with
13 the property owner, George Jarrod (phonetic), of G&A
14 Hardware.

15 JUDGE LOVENWIRTH: All right.

16 Let's take a ten-minute recess.

17 (Recess.)

18 JUDGE LOVENWIRTH: All right, we will return to the
19 record.

20 You're still under oath, Mr. Sturgeon.

21 THE WITNESS: Yes, Your Honor.

22 JUDGE LOVENWIRTH: Ms. Moran?

23 BY MS. MORAN:

24 Q. Ron, again, you're familiar with the complaint
25 that was filed on behalf of the Borough of White Haven;

1 correct?

2 A. Yes.

3 Q. And under paragraph 3 of that complaint there are
4 three numbered paragraphs identifying certain issues which
5 we have discussed today; correct?

6 A. Yes.

7 Q. Again, just for clarification, item 1 of the
8 complaint, you have already testified that that problem has
9 been resolved?

10 A. Yes.

11 Q. Specifically I now want to draw your attention to
12 paragraph 2 of that complaint, and the reference to the
13 bridge over Susquehanna Street.

14 Ron, as a professional engineer and as the engineer
15 for the Borough of White Haven, could you describe for the
16 Court what your concerns are specifically with regards to
17 that situation, the bridge over Susquehanna Street?

18 A. The bridge over Susquehanna Street, in reference
19 to the photographs that have been viewed, one would be the
20 walkway, the handrail of that walkway, the walkway platform
21 itself that has missing timbers, as far as the safety to
22 walk across that bridge should someone be up there to walk
23 across; and also it allows the ballast to fall through down
24 onto the roadway surface, which it can be a concern as well.

25 Secondly, on the vacated track, or the abandoned

1 track not in use at this time, with the condition of the
2 timbers and the deteriorating condition of those timbers,
3 that they be -- that some mechanism be made where, as parts
4 of the timbers fall off, they watch that they -- a remedy to
5 keep them from falling down onto Susquehanna Street.

6 And also, in one case, the timbers are completely
7 rotted through. There's an opening on the southerly side of
8 the bridge from the trestle looking down, that is a concern
9 that someone or an animal or something could even fall
10 through the openings there.

11 And then lastly, the structural issue with the
12 ballast, the way it's being retained by the railroad ties
13 that were shown in the photographs, and being held up by the
14 trees. That issue, in that area, in my opinion, should be
15 addressed as well.

16 Q. Ron, you mentioned the debris falling through the
17 voids in the area over Susquehanna Street. Have you been
18 made aware of that situation actually occurring?

19 A. Yes, I was actually -- yesterday a train did go
20 by, and I noticed the ballast -- there is vibrations when
21 the trains go by. The structure itself seems to be doing
22 quite well. However, because of the openings and the
23 freeze/thaw actions and what have you, you can see the
24 different rocks, and even, not yesterday, but at times
25 timbers, you could see the result of the cross planks as

1 they fall off from above onto the sides of the road and onto
2 the road itself.

3 Q. With respect to paragraph 3 of the complaint,
4 referencing the retaining wall by the area that we've been
5 referencing as G&A Hardware, can you describe, again, in
6 your opinion as a professional engineer and as the engineer
7 for the Borough of White Haven, what the problems are
8 specific to that area?

9 A. The concerns with the wall parallel and between
10 G&A Hardware and the railroad, on the railroad area, is the
11 obvious voids that have occurred from the rock movements,
12 from the wall movements, the vegetative growth and the
13 associated root system on those trees, what effect they've
14 had on the wall system in that area, as was depicted by the
15 photographs.

16 Q. And briefly, Ron, you also referenced, and it's
17 referenced in the complaint, the problem with the I-beam and
18 the timbered wailer type support which had been established
19 in the past. Can you describe for the Court what is the
20 specific problem with regards to this I-beam support?

21 JUDGE LOVENWIRTH: This is the 30-year-old support
22 you're talking about?

23 MS. MORAN: Yes, Your Honor.

24 THE WITNESS: The last item in that complaint
25 addresses the previously repaired area that's behind the G&A

1 Hardware that was in the last photograph. When you look at
2 that structure, the way it was repaired, the space necessary
3 to make a repair of that type, and the way it was repaired,
4 with the timbers, the timbers behind those steel I-beams are
5 rotting in the last photograph.

6 And just the fact that the stone wall was not
7 replaced inasmuch as there was a patch, if you will, a
8 patchwork effect put in to repair that area.

9 And because of the rotting timbers that are there, it
10 appears that that area is suspect to additional
11 investigation as far as needing more modern, newer repairs
12 even now at this age. There appears to be movement in that
13 area as well.

14 MS. MORAN: Nothing further, Your Honor.

15 JUDGE LOVENWIRTH: Did you say you're finished
16 examining the witness?

17 MS. MORAN: Yes, I am, Your Honor.

18 JUDGE LOVENWIRTH: All right. I have a few questions
19 before we cross-examine the witness, please.

20 You don't think that the structural integrity of the
21 railroad bridge over Susquehanna Street is in danger; do
22 you? You didn't say you did.

23 THE WITNESS: Now, sir. It's my opinion, again,
24 structurally, that the bridge seems to be sound. I think
25 that the issues are more of a safety concern.

1 JUDGE LOVENWIRTH: Okay. Now, do you know how much
2 vehicular traffic there is on Susquehanna Street?

3 THE WITNESS: Based upon conversations with the
4 police chief in the Borough of White Haven, approximately
5 500 to 600 vehicles a day.

6 JUDGE LOVENWIRTH: How about pedestrian traffic
7 underneath the bridge at Susquehanna Street?

8 THE WITNESS: I wouldn't have an opinion of that,
9 sir.

10 JUDGE LOVENWIRTH: Okay. So is this a major
11 throughway in the borough?

12 THE WITNESS: It's one of three crossings. When the
13 trains do traverse the borough, many vehicles, since it is
14 the only underpass, many vehicles to utilize Susquehanna
15 Street to --

16 JUDGE LOVENWIRTH: Because it's safer than the
17 at-grade crossings?

18 THE WITNESS: It's safer than the at-grade crossings,
19 and it's more timely. They don't have to wait for the
20 trains to go through.

21 JUDGE LOVENWIRTH: So it certainly is, Susquehanna
22 Street at this crossing is -- the separated crossing
23 certainly is a benefit then to the motorists?

24 THE WITNESS: Yes.

25 JUDGE LOVENWIRTH: Now, do you know of any past

1 orders of the Public Utility Commission appertaining to
2 maintenance of the structure at Susquehanna Street, the
3 crossing at Susquehanna Street? Are you aware of any prior
4 Public Utility Commission orders?

5 THE WITNESS: No, I'm not.

6 JUDGE LOVENWIRTH: Do you have any idea how much it
7 would cost to rehabilitate the railroad facilities so that
8 it would be rendered safe?

9 THE WITNESS: No, sir, I do not have an opinion of
10 cost.

11 JUDGE LOVENWIRTH: Now, concerning the railroad
12 crossing, is the borough willing to prepare the plans
13 necessary to rehabilitate it?

14 THE WITNESS: I have not received any instructions
15 from them. But knowing the financial situation of the
16 borough --

17 JUDGE LOVENWIRTH: I didn't ask you at whose cost.

18 THE WITNESS: Okay. I really don't have an opinion
19 of where the borough would stand on that.

20 JUDGE LOVENWIRTH: Now I'm asking about cost. Do you
21 have the same answer?

22 THE WITNESS: Yes, sir.

23 JUDGE LOVENWIRTH: All right. Well, which of the
24 parties, in your opinion, should be required to prepare
25 plans and assume the costs of the plans and of the necessary

1 repairs?

2 THE WITNESS: Well, from my understanding, everything
3 appears to be within the confines of the railroad easements
4 and properties. And it's my opinion that it would be the
5 responsibility of the railroad.

6 JUDGE LOVENWIRTH: Are there any public utilities
7 here at this crossing? Like does the electric company or
8 water company or telephone company have any facilities here
9 at this crossing that goes over the bridge or under the
10 bridge, or what else have you?

11 THE WITNESS: To my knowledge, there are four
12 facilities which go under the bridge; a storm sewer
13 system --

14 JUDGE LOVENWIRTH: Okay. Now, that's a municipal --

15 THE WITNESS: Municipal storm sewer system.

16 JUDGE LOVENWIRTH: That goes where?

17 THE WITNESS: That goes from the intersection with
18 Towanda Street and Susquehanna Street, down to the river.

19 JUDGE LOVENWIRTH: Okay. So that's underneath the
20 ground?

21 THE WITNESS: Underneath the ground.

22 JUDGE LOVENWIRTH: All right.

23 THE WITNESS: There's a gas line, a gas main.

24 JUDGE LOVENWIRTH: Where?

25 THE WITNESS: Underground. Under the trestle.

1 JUDGE LOVENWIRTH: Okay.

2 THE WITNESS: There's a White Haven Municipal
3 Authority has built their water and sanitary sewer lines
4 that go underground as well, under the trestle.

5 JUDGE LOVENWIRTH: Is there anything on the bridge
6 that you know of?

7 THE WITNESS: There's nothing that was noted that was
8 strapped to the bridge.

9 JUDGE LOVENWIRTH: Okay. Now, what maintenance or
10 improvements has the borough performed at the crossing with
11 Susquehanna Street?

12 THE WITNESS: Back in 1980 the borough installed the
13 storm sewer in question. They improved it. I should not
14 say they installed it, they improved upon it.

15 Prior to that it was an older system that was
16 installed back in the early 1900s as part of a borough-wide
17 storm water system.

18 And they've done paving operations as well, since
19 1980.

20 JUDGE LOVENWIRTH: Paving Susquehanna Street?

21 THE WITNESS: Yes.

22 JUDGE LOVENWIRTH: When was the last time it did
23 that; do you know?

24 THE WITNESS: I'm not exactly sure. It might have
25 been 1980.

1 JUDGE LOVENWIRTH: And will the borough agree to
2 maintain the highway in the future, or any other -- will it
3 agree to incur any other maintenance costs concerning the
4 crossing?

5 THE WITNESS: Other than the storm sewer and the
6 paving operations, I really couldn't speak for the borough,
7 unless I check with council first.

8 JUDGE LOVENWIRTH: Okay. But it will agree to do the
9 paving, in your opinion, and it will maintain its facilities
10 underneath the ground, the borough?

11 THE WITNESS: Yes, sir.

12 JUDGE LOVENWIRTH: And concerning the bridge itself,
13 who do you think should maintain that in the future?

14 THE WITNESS: Again, being that it's a railroad
15 facility, I'm of the opinion the railroad company has its
16 obligations and responsibilities to maintain that as well.

17 JUDGE LOVENWIRTH: All right.

18 Do you have any questions that you want to ask the
19 witness, Mr. McCormick?

20 MR. McCORMICK: Just two or three, Your Honor.

21 **CROSS EXAMINATION**

22 BY MR. McCORMICK:

23 Q. Mr. Sturgeon, based on your background and
24 investigation of the area in question, are there any
25 facilities or property ownership of Luzerne County in the

1 area in question?

2 A. Not that I'm aware.

3 Q. Let me show you what ultimately will be marked,
4 answers to questions no. 25 and 26 from the PUC, which have
5 been previously given which are photocopies, three pages of
6 photocopies with specific site locations stated near
7 abutment, etcetera, and also a location map.

8 (Documents handed to witness.)

9 Q. Based on your investigation of the area in
10 question and your knowledge of the area in question, did
11 those photos accurately depict the area you've been
12 discussing at the present time?

13 A. Yes, sir, the photos do depict the Susquehanna
14 Street bridge in relationship to the area in question.

15 MR. McCORMICK: No further questions, Your Honor.

16 JUDGE LOVENWIRTH: Thank you.

17 Mr. Lepore, would you like to ask the witness any
18 questions?

19 MR. LEPORE: Thank you, Your Honor.

20 **CROSS EXAMINATION**

21 BY MR. LEPORE:

22 Q. Mr. Sturgeon, do you have the packet of color
23 photographs in front of you?

24 A. Let me see if I've got them.

25 Q. I'd appreciate if you would.

1 A. No, but I can get them.

2 (Documents handed to witness.)

3 Q. Before we get into those, just so I'm clear, and
4 so His Honor is clear, you, on behalf of the borough, don't
5 have any concerns about the structural integrity of the
6 bridge structure itself; correct?

7 A. The steel portions of the bridge structure, no.

8 Q. Or the active rail track?

9 A. The area in question where the timbers are being
10 retained by the tree structures and what have you, in those
11 areas I do.

12 Q. Okay. Let's confine ourselves to within, say,
13 the abutment walls for now. And we'll move down the alley a
14 little bit.

15 A. Okay.

16 Q. But within the confines of Susquehanna Street,
17 it's your opinion that the active rail line is in
18 satisfactory condition?

19 A. Yes.

20 Q. Okay. If you would, sir, could you turn to the
21 third color of the package, the print time and date is
22 3/7/01, at 11:29?

23 A. Uh-huh.

24 Q. Now, correct me if I'm wrong. But that depicts
25 the former second rail line along the now unused rail line

1 across the top of the bridge, along with the pedestrian
2 walkway?

3 A. Yes.

4 Q. And you've expressed concerns about the timbers,
5 or the former cross ties in that area; correct?

6 (No response.)

7 Q. And I understand those concerns are twofold.
8 First of all, you're concerned that they'll fall into the
9 roadway, and secondly you're concerned about pedestrian
10 traffic across those cross ties; correct?

11 A. Yes.

12 Q. All right. Let's deal with the second concern
13 first. In terms of pedestrian traffic, is that a public
14 way?

15 A. No, it's not.

16 Q. And it doesn't connect with any public way of the
17 borough? There are no sidewalks or pathways or rail-to-
18 trail trails or anything along this area; correct?

19 A. South of here there's that pedestrian crossing at
20 Wilkes-Barre Street.

21 Q. But not in the immediate vicinity. My point is
22 that --

23 A. Not within --

24 Q. -- pedestrians wouldn't stray on this bridge
25 unless they had been walking the rail line; correct?

1 A. There is an avenue where they can get up onto the
2 railroad property by the old engine house, which is --

3 JUDGE LOVENWIRTH: By the what, please?

4 THE WITNESS: The old engine house. Which is north
5 of the property. The borough has a property adjacent on
6 that side of the trackage; there is a possibility that
7 someone could walk onto the tracks in that area.

8 JUDGE LOVENWIRTH: And at the at-grade crossings too?

9 THE WITNESS: And at the at-grade crossings, yes,
10 sir.

11 BY MR. LEPORE:

12 Q. Sure. But it's not a regularly used pedestrian
13 way, or designated as such? They'd be trespassing, in
14 essence?

15 A. They would be trespassing. But I did note
16 several prints in the snow yesterday whenever we were up
17 there.

18 Q. There are some people who would do it?

19 A. Uh-huh.

20 Q. Would it satisfy your concerns were the railroad
21 to remove that formerly active rail bed along with the
22 pedestrian walkway along the edge of the bridge and the
23 associate handrail?

24 A. I'd have to think about that one, only because if
25 you would remove them, would it be an open structure at that

1 point that someone could fall through even further?

2 Q. Well, of course, yes, you'd remove it. I'm not
3 suggesting we would deck it.

4 A. I don't have an opinion of that relative to the
5 safety of removing what's there. If you take away what's
6 there, it could do more harm.

7 Q. It would alleviate your concern about --

8 A. It would --

9 Q. -- debris falling into the roadway?

10 A. -- provided you made the structure at the ballast
11 which come off there now as well.

12 Q. I appreciate that. Which is another concern,
13 obviously, was ballast retention along the side of the
14 railway.

15 A. Uh-huh.

16 Q. Let's turn our attention to the photograph of --
17 I lost count, but the print date is 3/7/01, 3:24.

18 MR. LEPORE: And for His Honor's convenience, it
19 depicts the tie structure immediately adjacent to the
20 abutment.

21 Maybe you could just hand those up to His Honor.

22 JUDGE LOVENWIRTH: I'll find it. I'll look for it.
23 Go ahead.

24 MR. LEPORE: It's about midway through the package,
25 Your Honor.

1 THE WITNESS: It's the eleventh page in the packet,
2 Your Honor.

3 JUDGE LOVENWIRTH: I see it. With the snow. The one
4 with the snow?

5 MR. LEPORE: Yes, sir.

6 THE WITNESS: Yes.

7 BY MR. LEPORE:

8 Q. Now, as I understand it, that photograph, and the
9 two photographs immediately following, depict an area of
10 timbers or old ties that have been used to provide
11 additional ballast support along the edge of the bridge
12 abutment; correct?

13 A. Correct.

14 Q. Did you make any effort to determine whether
15 there were reinforcing rods or anything driven through those
16 ties to retain the bottom of the trees?

17 A. Well, in the third photograph that you reference,
18 you can actually see a couple older steel pins that are
19 through them in that area.

20 I base my concern on the fact that there was obvious
21 stresses against that tree. That if they were retaining
22 them, the timbers have moved. So there is some -- there is
23 structural support by the trees in that area.

24 Q. Sir, do you have an engineering opinion as to
25 what would be the appropriate repair for the railroad to

1 perform in that area?

2 A. Well, my opinion would be that, years past, my
3 assumption would be that those timbers were not placed there
4 originally; that there was probably -- if the engineer
5 drawings would be available from the original designs, to
6 very possibly follow what was done years ago, would be my
7 recommendation. Short of some engineered product, which I'd
8 leave up to you folks to really think about, to be honest
9 with you.

10 Q. But a succinct answer to my question would be
11 that you don't yourself have an opinion --

12 A. Not at this time.

13 Q. -- as what this bridge requires?

14 A. No. It would require an effort to do a proper
15 design.

16 Q. Now, the following photographs -- which generally
17 depict the stone wall along the alleyway to the rear of the
18 hardware store?

19 A. Uh-huh.

20 Q. I'd just like to answer you a couple questions
21 about that wall, and you can make reference to the photos,
22 if you'd like.

23 At one point in your testimony you made a comment
24 about mortar. But that wall is, in fact, a dry-laid stone
25 wall; is it not?

1 A. Well, there appeared to be mortar in places on
2 it. I'm basing that -- it originally may have been dry-
3 laid, but there are locations, through maintenance or
4 otherwise, closer to the trestle where there appeared to be
5 some mortar that was placed, yes.

6 So if you're considering it a dry-laid wall, that
7 would be fine with me.

8 JUDGE LOVENWIRTH: We'll take a two-minute recess.

9 MR. LEPORE: Certainly, Your Honor.

10 (Recess.)

11 JUDGE LOVENWIRTH: Let's return to the record.

12 Mr. Lepore?

13 MR. LEPORE: Thank you, Your Honor.

14 BY MR. LEPORE:

15 Q. While His Honor was off the bench, we had a
16 pleasant off-the-record discussion, and we learned that the
17 railroad intends to install what are commonly referred to as
18 jersey barriers, or those concrete type lane dividers, on
19 either side of the former abandoned railroad line.

20 Would that serve to ameliorate your concerns about
21 pedestrian traffic along that --

22 A. Again, being that this is news to me, it's
23 something I'd want to present to council. It's a borough
24 decision; it's not necessarily mine.

25 JUDGE LOVENWIRTH: But from an engineering point f

1 view, would that --

2 THE WITNESS: Well, people can -- 32-inch, 54-inch
3 barriers, type thing; if they want, they could still get
4 over that as well, in general.

5 BY MR. LEPORE:

6 Q. Short of closing the tracks, I mean, people can
7 always enter the area; correct?

8 A. Yes, they can.

9 Q. If they're determined?

10 A. It puts another barrier between them and the
11 tracks themselves.

12 Q. Okay. Now, without belaboring the issues with
13 the law, do you have an engineering opinion yourself as to
14 what you would do to repair this wall? In addition to
15 removing the vegetation. Let's assume that --

16 JUDGE LOVENWIRTH: You're talking about the wall near
17 the hardware store?

18 MR. LEPORE: Yes. Whether or not the Commission has
19 jurisdiction over that, we'll argue later. But just for the
20 purpose of testimony.

21 THE WITNESS: Well, obviously, with the movement of
22 the structure itself, I'd want to investigate why it's
23 moved. Is it from the vegetation, is it from a drainage
24 problem behind that wall, is it from the drainage to the
25 tree, from the trees uptake of the moisture. I think

1 there's some things you'd want to investigate before you
2 form an opinion.

3 BY MR. LEPORE:

4 Q. But you don't currently have an opinion as to
5 what necessary to repair it?

6 A. No. And with today's modern technology there
7 might be other ways at looking at repairing it as well.

8 MR. LEPORE: That's all I have, Your Honor.

9 JUDGE LOVENWIRTH: Thank you very much.

10 Mr. Sharp?

11 MR. SHARP: Thank you, Your Honor. Just a few
12 questions.

13 CROSS EXAMINATION

14 BY MR. SHARP:

15 Q. Mr. Sturgeon, going back, you mentioned the four
16 utilities which run underneath Susquehanna Street. When
17 they run underneath the trestle, are they located -- where,
18 in fact, underneath the roadway are they?

19 A. Well, it's very tight. Looking from the east-
20 west, looking up grade and up the hill in the one photograph
21 that we had, the storm sewer is right at the base of the
22 northern structure wall.

23 Originally, I can tell you I was personally there
24 when that was installed in 1980. That wall was an old
25 flagstone storm sewer that was replaced with a 36-inch storm

1 sewer. That's right up against the foundation.

2 On the far left is a sanitary sewer; eight-inch
3 conveyance line from the town up above. And within the area
4 of that, between approximately in the center of the road, is
5 the water main, eight-inch water main. And between there
6 and the storm sewer is, I believe it's a two-inch gas main,
7 a UGI gas main.

8 Q. Okay. I just wanted to clear that up. You had
9 mentioned your background as an engineer before. Are you a
10 traffic engineer?

11 A. I have a highway degree and an environmental
12 degree.

13 Q. Okay. In preparation for this case, you stated
14 that you had learned there were approximately 500 or 600
15 cars a day is the average daily traffic volume at this
16 location?

17 A. In both directions.

18 Q. Okay, in both directions. Did your company, or
19 to your knowledge, the borough conduct any traffic studies?

20 A. No, I based that upon a conversation with the
21 police chief of the Borough of White Haven.

22 Q. So no traffic study was done?

23 A. No.

24 Q. No origin or destination study?

25 A. No.

1 Q. Okay. You're familiar with the configuration of
2 the railroad overpass and the highway. What are the height
3 restrictions there generally, height and width restrictions
4 generally for a vehicle?

5 A. I don't know the exact clearances. However, the
6 Susquehanna Street is coming up on a hill. You have more
7 clearance on the low side than you do coming from the high
8 side. I believe it's an eight-foot, eight-inch clearance
9 overall.

10 Q. And assuming that it's an eight-foot, eight-inch
11 clearance overall, that would prevent, obviously, a vehicle
12 over that size of traveling through that crossing?

13 A. Yes.

14 Q. So large vehicles, semis, tractor trailers, for
15 example, couldn't use this crossing?

16 A. No.

17 Q. Okay. To your knowledge, are there any weight
18 restrictions on Susquehanna Street?

19 A. I'm not sure.

20 MR. SHARP: Your Honor, if I could have one second.

21 (Pause.)

22 MR. SHARP: I just have one question.

23 BY MR. SHARP:

24 Q. The borough is not asking that the Department of
25 Transportation be responsible for the maintenance of either

1 Susquehanna Street or this railroad trestle; are they?

2 A. No, we're not.

3 MR. SHARP: That's all the questions I have, Your
4 Honor.

5 JUDGE LOVENWIRTH: What was the last question?
6 Whether it should be responsible for the maintenance? Was
7 that your question?

8 MR. SHARP: Yes, whether the --

9 JUDGE LOVENWIRTH: The maintenance?

10 MR. SHARP: Yes.

11 JUDGE LOVENWIRTH: Okay, thank you, Mr. Sharp.

12 Mr. Andreuzzi, sir?

13 MR. ANDREUZZI: No questions for the witness, Your
14 Honor.

15 JUDGE LOVENWIRTH: Thank you.

16 Do you have any redirect, Ms. Moran?

17 MR. SALAPA: I have a couple questions, Your Honor.

18 JUDGE LOVENWIRTH: Oh, I made a mistake, Mr. Salapa,
19 again. Mr. Salapa.

20 MR. SALAPA: Thank you, Your Honor.

21 **CROSS EXAMINATION**

22 **BY MR. SALAPA:**

23 Q. Mr. Sturgeon, if you could look at the third
24 photograph in your packet that's marked as Exhibit 4, where
25 it depicts the unused portion of the bridge over Susquehanna

1 Street.

2 When you were there, did you have the opportunity to
3 view that structure closely?

4 A. This one in question here?

5 Q. Yes.

6 A. Relative to --

7 Q. Well, I notice --

8 A. I looked through the opening that was at the very
9 forefront of that picture. There's a later picture, I
10 believe, that shows. Two photographs behind, where you see
11 the opening through the old unused structure.

12 Q. Well, what I'm --

13 JUDGE LOVENWIRTH: The witness is referring to the
14 photograph marked 11:29 a.m.

15 THE WITNESS: Yes.

16 BY MR. SALAPA:

17 Q. Well, what I'm curious about with that particular
18 photograph is that it appears as though there are two
19 girders on the right-hand side of the page. Does that
20 designate that these two, where the two tracks are going,
21 were actually two separate structures that were put next to
22 each other?

23 A. I can't comment on that. But the appearance of
24 the abutment underneath and the structural supports, it
25 gives the appearance that it was originally proposed to be a

1 two-track structure.

2 I don't know if I'm answering your question, but
3 depending on the type of design back when this bridge was
4 put in, they could have well carried individual tracks under
5 each -- under a separate design, but yet the bridge was
6 married together into a common design.

7 I'm not sure -- I don't have information on how that
8 bridge was originally designed.

9 Q. So, in other words, it's possible that each --
10 that there were two separate spans laid side by side, each
11 one designed to independently carry the set of tracks over
12 it?

13 A. Yes.

14 Q. With regard to the clearances underneath the
15 bridge, is it safe to say that the clearance between the
16 bottom of the bridge and the roadway is somewhat
17 restrictive?

18 A. I believe there's a clearance sign there on the
19 limiting side of eight foot, eight inches.

20 Q. Does that clearance restriction create any
21 problems for the borough in terms of access by energy
22 vehicles?

23 A. The fire equipment, the larger fire equipment
24 would be restricted to use that. But I can't make a comment
25 on the newer ambulance, whether it fits through there or

1 not. Depending on that eight-foot, eight-inch height
2 clearance restriction, that could be of a concern.

3 And historically, I have not heard of any problems in
4 that, other than the fact, with the grade restrictions as
5 well, with the larger vehicles utilizing that, they would
6 have difficulty as well because of the grade coming up to
7 the state highway at Towanda Street.

8 Q. So it wouldn't be just a problem with the lack of
9 vertical clearance, it would also be a problem with the
10 upgrade?

11 A. With the larger equipment.

12 Q. Am I correct that Susquehanna Street somewhat
13 narrows when it goes under this bridge?

14 A. There is somewhat of an hourglass design, yes.
15 It's twofold. One in the sense that we -- immediately
16 coming in in front of G&A Hardware, it's fully paved. Which
17 affords the business there a parking area as well.

18 It does taper down under the trestle, under the
19 bridge. And then because of its closeness to the
20 intersection with Towanda Street, you actually develop, you
21 start to develop a turning radius to make a right turn onto
22 Towanda Street. But it does narrow down.

23 Q. Thank you.

24 MR. SALAPA: That's all that I have, Your Honor.

25 JUDGE LOVENWIRTH: Do you have any redirect,

1 Ms. Moran?

2 MS. MORAN: No, Your Honor.

3 JUDGE LOVENWIRTH: All right, thank you very much,
4 sir.

5 (Witness excused.)

6 JUDGE LOVENWIRTH: Do you have another witness,

7 Ms. Moran?

8 MS. MORAN: No, I do not, Your Honor.

9 JUDGE LOVENWIRTH: All right, we'll take a luncheon
10 recess until quarter of one, it now being five minutes to
11 twelve. Thank you.

12 (Whereupon, at 11:55 a.m., the hearing was adjourned,
13 to reconvene at 12:45 p.m. this same day.)

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FORM 2

AFTERNOON SESSION

(12:45 p.m.)

1
2
3 JUDGE LOVENWIRTH: If everyone is here, we'll return
4 to the record. Good afternoon, everyone.

5 Mr. Lepore, do you want to call a witness, please,
6 sir?

7 MR. LEPORE: Yes, Your Honor. Wes Westenhoefer,
8 please.

9 JUDGE LOVENWIRTH: Good afternoon. Please remain
10 standing. What, please, is your name?

11 MR. WESTENHOEFER: Wesley, W-E-S-L-E-Y; Westenhoefer,
12 W-E-S-T-E-N-H-O-E-F-E-R.

13 JUDGE LOVENWIRTH: It's nice to have you with us,
14 Mr. Westenhoefer.

15 Whereupon,

WESLEY WESTENHOEFER

16
17 having been duly sworn, testified as follows:

18 JUDGE LOVENWIRTH: Mr. Lepore.

19 MR. LEPORE: Thank you.

DIRECT EXAMINATION

20
21 BY MR. LEPORE:

22 Q. Wes, in an effort to be expeditious, I'll get
23 right to the point. Let's get some background. His Honor
24 has some questions just as a formality that we need to
25 complete.

1 What's your official job title with the railroad?

2 A. Chief financial analyst.

3 Q. Do you also have maintenance of way
4 responsibilities?

5 A. Myself and one other person are in charge of the
6 administrative of maintenance of way.

7 Q. Okay. The Reading, Blue Mountain and Northern
8 Railroad owns the bridge in question; that is, the bridge
9 over Susquehanna Street and the trackage adjacent to the
10 wall in question; correct?

11 A. Yes.

12 Q. And the wall is part of our real estate as well?

13 A. Correct.

14 Q. Could you tell me roughly how much traffic that
15 line sees on a daily basis?

16 A. Average of four trains daily.

17 Q. When you say four trains, that's actually one --
18 that's two trains up, two trains back?

19 A. Two D&H trains one way through, and then one of
20 our trains down and back. So it's four passings.

21 Q. Just so we're clear, when you say D&H trains --

22 JUDGE LOVENWIRTH: Delaware & Hudson.

23 MR. LEPORE: Yes. It's now CP Rail, technically.

24 BY MR. LEPORE:

25 Q. And they have trackage rights over our line

1 there?

2 A. Yes.

3 Q. All right. You've been out to look at the bridge
4 and the wall adjacent?

5 A. Yes, I have.

6 Q. In addition, the railroad had a bridge inspector,
7 a certified bridge inspector on their behalf by name of
8 Mr. Ronnis (phonetic) take a look at the bridge?

9 A. Yes.

10 JUDGE LOVENWIRTH: Please excuse me. I'm very sorry,
11 Mr. Lepore.

12 MR. LEPORE: Certainly.

13 JUDGE LOVENWIRTH: But before we forget.

14 Ms. Moran, did you want to move your exhibits into
15 the record?

16 MS. MORAN: Yes, I did, Your Honor. And thank you
17 for reminding me. I just thought of that myself.

18 JUDGE LOVENWIRTH: Any objection to the admission
19 into the record of --

20 MS. MORAN: I think it was Borough 1 through 4.

21 JUDGE LOVENWIRTH: -- Borough Exhibits 1 through 4
22 inclusive?

23 (No response.)

24 JUDGE LOVENWIRTH: There being none, it's made part
25 of the record.

1 (Whereupon, the documents marked
2 as Borough Exhibit Nos. 1 through 4
3 were received in evidence.)

4 JUDGE LOVENWIRTH: Thank you, Mr. Lepore. You may
5 continue.

6 MR. LEPORE: Thank you.

7 Could I have this marked as, I suppose Railroad
8 No. 1, Your Honor?

9 JUDGE LOVENWIRTH: Railroad 1; RR Exhibit No. 1 All
10 right, the packet that has just been handed to the court
11 reporter is RR Exhibit No. 1.

12 (Whereupon, the document was
13 marked as RR Exhibit No. 1 for
14 identification.)

15 BY MR. LEPORE:

16 Q. And again, Wes, just as a formality, I'm not
17 going to ask you a series of detailed questions about that
18 report. That's a report prepared by an employee of the
19 railroad concerning an inspection of the bridge?

20 (Witness nodding head affirmatively.)

21 Q. And there are attached photographs --

22 JUDGE LOVENWIRTH: Wait a minute. I didn't hear the
23 answer.

24 MR. LEPORE: I'm sorry.

25 You can't nod your head.

1 THE WITNESS: He's a subcontractor.

2 BY MR. LEPORE:

3 Q. And there are a series of photographs that depict
4 the bridge and general area attached?

5 A. Yes.

6 MR. LEPORE: Your Honor, just as a matter of record,
7 I move that into evidence.

8 JUDGE LOVENWIRTH: Any objection to the admission,
9 subject to cross examination, of RR-1 into the record?

10 MS. MORAN: No objection.

11 JUDGE LOVENWIRTH: All right, being none, it's made
12 part of the record.

13 (Whereupon, the document marked
14 as RR Exhibit No. 1 was received
15 in evidence.)

16 BY MR. LEPORE:

17 Q. Now, Wes, we've had an opportunity to discuss a
18 number of issues in the various breaks we've had here today.
19 So I'm going to cut directly to the point, if I might.

20 With regard to the section of the abandoned rail
21 line --

22 MR. LEPORE: I'm using the term "abandoned" whether
23 that's technically correct or not, Your Honor. Unused rail
24 line.

25

1 BY MR. LEPORE:

2 Q. And then the complaints we've heard about that
3 today, as I understand it, the railroad would be willing to
4 remove the ties and timbers associated with that former
5 line?

6 A. We would be able to look into it for sure, and
7 most likely do it.

8 JUDGE LOVENWIRTH: Looking into it doesn't mean
9 anything. I could look into admitting a hydrogen bomb.

10 BY MR. LEPORE:

11 Q. Leaving aside for a minute the steel underneath,
12 I'm talking about just removing the timbers. That's
13 something that you could --

14 A. That can be done, yes.

15 Q. Okay. And you can agree to remove the
16 maintenance walkway along that abandoned --

17 JUDGE LOVENWIRTH: Well, I didn't hear the answer to
18 the first question. Did you say that you're authorized by
19 the railroad to testify, and that the railroad is willing to
20 remove the tracks on the unused line? Is that what you
21 said?

22 THE WITNESS: Without a cost estimate, I cannot agree
23 to do that.

24 JUDGE LOVENWIRTH: Okay. Thank you.

25 MR. LEPORE: Okay.

1 JUDGE LOVENWIRTH: And what was your question,
2 please, Mr. Lepore, appertaining to the wall?

3 MR. LEPORE: I'm sorry, Your Honor, I lost my train.

4 JUDGE LOVENWIRTH: I'm sorry.

5 BY MR. LEPORE:

6 Q. But assuming for a minute that it's cost-
7 feasible, the railroad would also be willing to remove the
8 maintenance walkway along that same side of the bridge?

9 A. Yes.

10 Q. And along the other side of the bridge as well?

11 A. Yes.

12 Q. That is, along the active rail line?

13 (Witness nodding head affirmatively.)

14 Q. Okay. In terms of the wall, it's my
15 understanding that you're prepared to agree today to remove
16 the vegetation that's grown along the top of the wall, that
17 is, the trees?

18 A. Yes.

19 Q. Would the railroad be willing to consider, if His
20 Honor were to so order -- well, if His Honor would so order,
21 you'd have to do it. But would the railroad be willing to
22 voluntarily consider having an engineer take a look at that
23 wall and prepare a report for His Honor's consideration as
24 to what needs to be done in that regard?

25 A. Yes.

1 JUDGE LOVENWIRTH: You're talking about the wall near
2 the hardware store?

3 THE WITNESS: Yes.

4 MR. LEPORE: Yes, sir.

5 JUDGE LOVENWIRTH: There's a hardware store right
6 there. You can get all your parts right there.

7 (Laughter.)

8 BY MR. LEPORE:

9 Q. As I understand it, Wes -- I'm going to lead you
10 for a moment, with counsel's permission. As I understand
11 it, the railroad currently has in place plans to place what
12 we call jersey barriers at 90-degree angles at either end of
13 the empty railroad line to prevent access by snow mobiles
14 and all-terrain vehicles and pedestrians?

15 A. Yes, we do.

16 Q. Those plans are already in place?

17 A. Those plans are in place.

18 Q. Okay. And to the extent there's a problem with
19 ballast spilling from the rail line over onto the open deck
20 structure of the bridge and falling onto the roadway, you're
21 willing to investigate methods to control that as well;
22 correct?

23 A. Yes, we are.

24 Q. Thank you.

25 MR. LEPORE: That's all I have.

1 JUDGE LOVENWIRTH: Sir, Mr. Westenhoefer, the
2 Reading, Blue Mountain and Northern Railroad Company is your
3 employer; is that correct??

4 THE WITNESS: Correct, Your Honor.

5 JUDGE LOVENWIRTH: And do you know anything about its
6 railroad operations, where it runs; from what point to what
7 point?

8 THE WITNESS: Yes, I do, Your Honor.

9 JUDGE LOVENWIRTH: Okay. Now, does the Reading, Blue
10 Mountain and Northern Railroad Company have any operations
11 outside the Commonwealth of Pennsylvania?

12 THE WITNESS: No, we do not.

13 JUDGE LOVENWIRTH: So all of the railroad traffic of
14 the Reading, Blue Mountain and Northern Railroad Company is
15 between points within the Commonwealth of Pennsylvania; is
16 that correct?

17 THE WITNESS: That is correct.

18 JUDGE LOVENWIRTH: Okay. And what is the exact
19 corporate name of the railroad company, your employer?

20 THE WITNESS: The Reading, Blue Mountain and Northern
21 Railroad Company.

22 JUDGE LOVENWIRTH: And does it own the bridge
23 separating its operations from Susquehanna Street in the
24 Borough of White Haven?

25 THE WITNESS: Yes, we do.

1 JUDGE LOVENWIRTH: You own the bridge?

2 THE WITNESS: Yes.

3 JUDGE LOVENWIRTH: Do you own the wall along the
4 tracks about 60 feet away from that intersection near the
5 hardware store, about which there's been much testimony?

6 THE WITNESS: Yes.

7 JUDGE LOVENWIRTH: All right.

8 You were going to show me a map. Do you have another
9 witness for that, Mr. Lepore?

10 MR. LEPORE: Your Honor, I don't have a map of the
11 area. I would agree that the map previously provided by the
12 township is accurate.

13 JUDGE LOVENWIRTH: I thought someone said they had a
14 map. Maybe it was somebody else.

15 MR. LEPORE: Your Honor, not the township, but the
16 borough submitted a map as an exhibit.

17 JUDGE LOVENWIRTH: Okay, that's fine.

18 MR. LEPORE: And I would agree that that's
19 substantially accurate.

20 JUDGE LOVENWIRTH: Okay, I understand.

21 Now, you heard the engineer for the borough testify,
22 Mr. Sturgeon, about the condition of the tracks and of the
23 rail highway crossing and of the wall near the hardware
24 store. Do you agree with his testimony?

25 THE WITNESS: Yeah, I'd agree with it.

1 JUDGE LOVENWIRTH: Or, you're not an engineer; isn't
2 that correct?

3 THE WITNESS: I'm not an engineer, no.

4 JUDGE LOVENWIRTH: All right. But from a layman's
5 point of view, you agree with that testimony?

6 THE WITNESS: Yes.

7 JUDGE LOVENWIRTH: All right.

8 You say you don't have another witness, Mr. Lepore?

9 MR. LEPORE: No, sir.

10 JUDGE LOVENWIRTH: Okay.

11 MR. LEPORE: If there are any formal questions, I
12 think we covered them all, Your Honor. But if there's
13 anything --

14 JUDGE LOVENWIRTH: All right, very good.

15 Do you have any records, or do you have any knowledge
16 as to the age of the bridge over Susquehanna Street?

17 THE WITNESS: No, I don't.

18 JUDGE LOVENWIRTH: Do you have any plans from when it
19 was originally constructed? Or have you seen any?

20 THE WITNESS: We might. I'm not sure. We have a
21 vault with a lot of the old railroad maps.

22 JUDGE LOVENWIRTH: But you haven't look at it with
23 respect to this?

24 THE WITNESS: I have not looked at it.

25 JUDGE LOVENWIRTH: Okay. So you don't know the width

1 of the bridge, for example, and other questions I might ask
2 you about the bridge; is that right?

3 THE WITNESS: No, I do not.

4 JUDGE LOVENWIRTH: And there's only one track being
5 used right now at the subject crossing site; isn't that
6 right?

7 THE WITNESS: Yes.

8 JUDGE LOVENWIRTH: And the railroad benefits, does it
9 not, by virtue of the fact that there's a separate crossing
10 at that point; isn't that correct?

11 THE WITNESS: Yes.

12 JUDGE LOVENWIRTH: You don't have any estimate of
13 cost of repairs, do you?

14 THE WITNESS: No, I do not.

15 JUDGE LOVENWIRTH: If plans, for example, are ordered
16 to be prepared for the rehabilitation of the rail line or
17 the wall, the railroad would rather prepare them? Do I
18 correctly assume that?

19 THE WITNESS: Yes.

20 JUDGE LOVENWIRTH: And would the railroad assume the
21 cost of the preparation of the plans?

22 (No response.)

23 JUDGE LOVENWIRTH: Are they willing to assume those
24 costs?

25 THE WITNESS: With the possible removal of timbers on

1 the bridge, we would.

2 JUDGE LOVENWIRTH: Nothing else?

3 THE WITNESS: With the wall, I would feel that we
4 would ask for help

5 JUDGE LOVENWIRTH: From whom?

6 THE WITNESS: I would say most likely the borough.

7 JUDGE LOVENWIRTH: Okay. You're talking about the
8 wall near the hardware store?

9 THE WITNESS: Yes.

10 JUDGE LOVENWIRTH: And the bridge itself, other than
11 the timbers, repairs, for example, to be then ballast from
12 falling over onto the roadway?

13 THE WITNESS: The railroad would assume costs for
14 that.

15 JUDGE LOVENWIRTH: And the preparation of those
16 plans?

17 THE WITNESS: Yes.

18 JUDGE LOVENWIRTH: All right. Are you saying that
19 concerning the cost of preparation of plans, the railroad
20 would want help from the borough? Is that what you're
21 saying?

22 THE WITNESS: Not the preparation of the plans.

23 JUDGE LOVENWIRTH: All right. But the repair, you're
24 saying?

25 THE WITNESS: For the repair, the construction.

1 JUDGE LOVENWIRTH: Okay.

2 THE WITNESS: Depending on the magnitude of it, too.
3 If it's just a small repair, we'd be glad to do it. But if
4 this is we have to build a whole new wall or anything of
5 great cost, we would look for some help.

6 JUDGE LOVENWIRTH: What maintenance has the railroad
7 performed on this line at the crossing or at the hardware
8 store?

9 THE WITNESS: I know that within the past, I would
10 have to estimate three years, we have dumped ballast and we
11 have tamped it.

12 JUDGE LOVENWIRTH: Tamped it?

13 THE WITNESS: Yeah.

14 JUDGE LOVENWIRTH: Tamped the ballast?

15 THE WITNESS: Yes.

16 JUDGE LOVENWIRTH: Anything else?

17 THE WITNESS: No, that is all.

18 JUDGE LOVENWIRTH: Do you know of any Public Utility
19 Commission orders directing maintenance of the structure and
20 of the rail line?

21 THE WITNESS: On that particular line?

22 JUDGE LOVENWIRTH: Well, maintenance of that
23 particular railroad crossing with Susquehanna Street.

24 THE WITNESS: I'm not aware of any, no.

25 JUDGE LOVENWIRTH: Now, as far as maintenance of the

1 rail line and the bridge in the future, is the railroad
2 willing to maintain the bridge and the rail line in the
3 future?

4 THE WITNESS: The rail line, definitely. The bridge,
5 that's something that in the past philosophy the company was
6 to look for help as well, from either the state, state
7 funds, the borough.

8 JUDGE LOVENWIRTH: Well, are you willing to maintain,
9 for example, if somebody else pays for it?

10 THE WITNESS: Yes.

11 JUDGE LOVENWIRTH: All right. Now, but you're saying
12 that insofar as the cost of the maintenance, just the rail
13 lines, not the bridge or the wall; is that what you're
14 saying?

15 THE WITNESS: Yes.

16 JUDGE LOVENWIRTH: Thank you.

17 All right, Ms. Moran, do you have any questions you'd
18 like to ask?

19 MS. MORAN: Yes, I do, Your Honor.

20 CROSS EXAMINATION

21 BY MS. MORAN:

22 Q. I'm sorry if I missed this in your testimony.
23 Did you testify whether you have ever inspected the site in
24 question personally?

25 A. I have been up there, yes, I have.

1 Q. Do you know when you would have inspected the
2 site?

3 A. January 26.

4 Q. Of this year?

5 A. Yes.

6 Q. In conjunction with that inspection, did you
7 issue a report of any kind?

8 A. I just took photographs and -- that's basically
9 it, just took photographs.

10 Q. Do you have those photographs with you today?

11 A. Yes, I do.

12 Q. Do we have copies of those?

13 A. I didn't make any copies. I just brought them
14 with me. If you want to make copies, everyone's welcome to
15 have them.

16 MS. MORAN: Your Honor, if I may, I would just like
17 to look at the photographs that were taken in conjunction
18 with that inspection.

19 MR. LEPORE: No objection.

20 (Pause.)

21 BY MS. MORAN:

22 Q. Wes, you did not prepare the report that I have
23 in front of me that's marked as Railroad No. 1, did you?

24 A. No, I did not.

25 Q. And you're not aware of the extent of the

1 inspection that was completed in conjunction with this
2 report, are you?

3 A. No.

4 Q. And the photographs that are appended to this
5 report, these are not photographs that you have taken?

6 A. No, they're not.

7 Q. Do you have a copy of the report with you?

8 (Witness indicating document.)

9 Q. Okay. If I can just refer you to page 3 of the
10 report. Do you have personal knowledge whether this would
11 be the active track or the inactive track?

12 JUDGE LOVENWIRTH: Well, there aren't any page
13 numbers on my copy.

14 MS. MORAN: I'm sorry. Just looking at --

15 JUDGE LOVENWIRTH: But you mean the third page?

16 MS. MORAN: The third page of the report, Your Honor,
17 which is the second page of photographs.

18 JUDGE LOVENWIRTH: Yes. Okay. Now, what was your
19 question? I'm very sorry.

20 BY MS. MORAN:

21 Q. With regards to that page and those three
22 photographs on that page, Wes, do you have any personal
23 knowledge of whether those pictures depict the active track
24 or the inactive track?

25 A. I might be able to figure it out in a second.

1 (Discussion off the record.)

2 JUDGE LOVENWIRTH: It's the east abutment. Well, one
3 is the east abutment and one is the west abutment.

4 BY MS. MORAN:

5 Q. Well, just to clarify, I know they are labeled on
6 the side of the photographs. I'm asking you personally if
7 you know whether those are accurate --

8 A. By looking at these photographs --

9 Q. -- depictions of the --

10 A. -- no, I cannot tell which side is the active
11 track.

12 JUDGE LOVENWIRTH: Well, the one in the middle says
13 in-service track.

14 MS. MORAN: And Your Honor, I see the designation on
15 there. But my question to the witness was just whether he
16 was personally aware of whether that was accurate.

17 JUDGE LOVENWIRTH: I understand. Thank you. And the
18 one on the bottom says the same thing.

19 MS. MORAN: Yes, Your Honor.

20 JUDGE LOVENWIRTH: And the one on the top says the
21 same thing.

22 BY MS. MORAN:

23 Q. Wes, you testified with regards to the jersey
24 barriers, and I'm just a little confused. It sounded like
25 the railroad would be willing to establish jersey barriers

1 on the ends --

2 A. Yes.

3 Q. -- of the track, or alongside of the track, which
4 would be parallel to the side of the bridge?

5 A. They would be perpendicular to the track; coming
6 across the bridge we would set them on these sides, blocking
7 any traffic that would ride along the tracks.

8 Q. Along the inactive tracks? Along the sides of
9 the --

10 A. Both.

11 Q. Okay.

12 MR. LEPORE: Judge, for the record, the witness
13 indicated a 90-degree angle to the active track.

14 JUDGE LOVENWIRTH: Did you not?

15 THE WITNESS: Yes, a 90-degree angle.

16 BY MS. MORAN:

17 Q. Wes, with regards to the wall next to the G&A
18 Hardware Store, are you aware of whether the borough
19 originally helped install or build that wall in any way?

20 A. I'm not aware.

21 MS. MORAN: I have no further questions, Your Honor.
22 Thank you.

23 JUDGE LOVENWIRTH: Mr. McCormick, do you have any
24 questions?

25 MR. McCORMICK: No questions, Your Honor.

1 JUDGE LOVENWIRTH: All right.

2 Mr. Sharp?

3 MR. SHARP: Just a few questions, Your Honor. Thank
4 you.

5 CROSS EXAMINATION

6 BY MR. SHARP:

7 Q. Mr. Westenhoefer, you're not asking, Reading's
8 not asking that the Department of Transportation come out
9 and do any maintenance or repair work to the crossing or the
10 wall, are they?

11 A. No, we're not.

12 Q. You had mentioned -- and I apologize for not
13 getting it. In your earlier responses you mentioned
14 something about asking for help. And I heard you mention
15 the state. Do you know if there is right now any funding
16 available for upgrade of this crossing or line at all?

17 A. No, I'm not aware of any funding.

18 Q. Okay. You mentioned that you would be looking
19 for help primarily to the borough. Are you asking that the
20 Department of Transportation -- if you had to, say,
21 undertake a major repair to the wall, are you asking that
22 the state and county also participate in those costs, in the
23 costs to cover such rehabilitation of the wall?

24 A. If it would be under --

25 (Pause.)

1 A. I'm not quite sure how the funds work yet through
2 state and borough, who's responsible or who wouldn't be.
3 But, yeah, I would ask.

4 Q. Let me ask you this. You're not particularly
5 saying you want the department or Luzerne County or the
6 borough or Reading to pay for it; you're saying you'd look
7 to all sources?

8 A. Yes.

9 Q. Are you aware if there's any Commonwealth of
10 Pennsylvania Rail Freight Assistance Grant money currently
11 available for upgrade of this line?

12 A. I know there's Rail Freight Assistance money
13 available --

14 Q. Let me say, you know it's available generally?

15 A. Yes.

16 Q. But you don't know if there's any available for
17 this line?

18 A. No, I do not.

19 Q. Okay. Do you know if Reading's made any grant
20 applications to the department for funding for this line?

21 A. Not yet. They're due April 30. I just got it
22 about a week ago.

23 Q. Do you know if you'd be intending to ask for any
24 grant applications for this line?

25 A. For this line, possible.

1 Q. Okay.

2 MR. SHARP: That's all I have, Your Honor.

3 JUDGE LOVENWIRTH: Thank you.

4 Mr. Andreuzzi?

5 MR. ANDREUZZI: Just a few questions.

6 CROSS EXAMINATION

7 BY MR. ANDREUZZI:

8 Q. What, again, is your job at the railroad company?

9 A. My title's chief financial analyst. I'm involved
10 heavily in the real estate end, and myself and one other
11 person, we run the maintenance of way department.

12 Q. Well, did you field inspections at all? You said
13 you inspected this railroad, this problem?

14 A. Do you mean as the bridges or as the rail itself?

15 Q. Any kind of inspection.

16 A. Yeah, for our FRI standards, we have a track
17 inspector out all the time.

18 Q. And how about you personally?

19 A. My personally?

20 Q. Yes.

21 A. I do not go out and inspect --

22 Q. You're a financial analyst. What exactly do you
23 do, again? Submit costs of repairs and such?

24 A. I work -- financially, I do a lot with state
25 money and with expenses for the railroad, budgets. But as

1 well as that, administratively, another person and I direct
2 the maintenance of way department.

3 Q. Okay. In terms of orders, telling them what to
4 do?

5 A. Yes.

6 Q. Okay. Are you aware of any complaints made by
7 the borough or Dennison Township concerning blocked draining
8 pipes along the railroad --

9 A. I'm not aware of that.

10 Q. -- in that township?

11 A. I'm not.

12 Q. Have you set aside any money for the repair of
13 this project or a Dennison Township project?

14 MR. LEPORE: Your Honor, I don't believe that that's
15 relevant to the issue before the Commission. I'd invite
16 counsel to confer with Mr. Westenhoefer following the
17 hearing.

18 JUDGE LOVENWIRTH: Objection sustained insofar as the
19 question relates to the railroad facilities in Dennison
20 Township.

21 MR. ANDREUZZI: Okay.

22 BY MR. ANDREUZZI:

23 Q. So I gather from your answers that you're willing
24 to do these items of repair, although you haven't exactly
25 done a cost analysis or set aside money, given orders or

1 hired people to do it; is that correct?

2 A. That's correct.

3 Q. Okay. And you're not aware of any projects in
4 the making or complaints that Dennison Township may have
5 filed with you or asked repairs to be done in that area?

6 A. I am not aware, no.

7 Q. Has your company repaired and maintained this
8 area in the past?

9 A. Are you talking specifically the bridge, or the
10 rail line?

11 Q. Well, let's say from White Haven past Dennison
12 Township.

13 A. There's been rehabilitation.

14 Q. When was that?

15 A. I have to estimate three years ago. But --

16 Q. Do you know what was done, briefly?

17 A. From what I know, ballast was laid down and it
18 was tamped.

19 Q. So it's your company's policy to do inspections
20 and maintain these areas; is that correct?

21 A. Yes.

22 Q. And you decide what should be done --

23 A. Yes.

24 Q. -- in any particular project?

25 (Witness nodding head affirmatively.)

1 MR. ANDREUZZI: I don't have any other questions.

2 JUDGE LOVENWIRTH: Mr. Salapa?

3 MR. SALAPA: Thank you, Your Honor. A couple
4 questions.

5 CROSS EXAMINATION

6 BY MR. SALAPA:

7 Q. Do you know, does the railroad contemplate an
8 increase in train traffic over this line, say, in the next
9 two or three years?

10 A. Possibly. It's always a possibility. We have
11 nothing pressing right now that's going to bring more
12 traffic that we know, but it can always happen.

13 Q. You're always looking for additional business?

14 A. Yes.

15 Q. Do you know what the maximum allowable speed is
16 for the trains through this area?

17 A. No, I do not.

18 Q. Thank you.

19 MR. SALAPA: That's all that I have, Your Honor.

20 JUDGE LOVENWIRTH: The D&H Lines, you say there's two
21 trains a day that run. Do you know the terminal points of
22 those D&H runs, where the train begins and where it ends?

23 THE WITNESS: No, I do not.

24 JUDGE LOVENWIRTH: Or the terminal points within the
25 Commonwealth of Pennsylvania?

1 THE WITNESS: I'd have to guess that they start from
2 Binghamton, New York.

3 JUDGE LOVENWIRTH: From Binghamton, New York?

4 THE WITNESS: Yes.

5 JUDGE LOVENWIRTH: So your tracks, either alone or
6 connecting with the facilities of other railroads, go to
7 Binghamton, New York?

8 THE WITNESS: Yes.

9 MR. LEPORE: Your Honor, we would be willing to
10 stipulate that we interchange in interstate commerce, if
11 that's the point of Your Honor's question. We interchange
12 with both CP Rail and NSX in interstate commerce.

13 JUDGE LOVENWIRTH: By interchange, you mean that the
14 tracks connect one with the other?

15 MR. LEPORE: Yes. We don't physically operate
16 trains, but our cars interchange.

17 JUDGE LOVENWIRTH: I don't understand what you said.
18 I don't understand the stipulation. The witness said that
19 your client's trains don't go outside the Commonwealth of
20 Pennsylvania.

21 That's what you said, isn't it?

22 MR. LEPORE: That's correct, Your Honor. But the
23 traffic that we handle does, in fact.

24 JUDGE LOVENWIRTH: You mean D&H, perhaps?

25 MR. LEPORE: Or traffic that originates in

1 Pennsylvania that we then hand over to another railroad.

2 JUDGE LOVENWIRTH: Okay.

3 Do you agree with what Mr. Lepore said?

4 THE WITNESS: Yes. By trains I meant our locomotives
5 don't leave.

6 JUDGE LOVENWIRTH: All right.

7 Do you have any redirect?

8 MR. LEPORE: No, sir.

9 JUDGE LOVENWIRTH: Thank you.

10 (Witness excused.)

11 MR. LEPORE: Your Honor, if I might, just for Your
12 Honor's benefit, Exhibit A includes an estimate of the date
13 when this bridge was constructed, in response to one of
14 them.

15 JUDGE LOVENWIRTH: Thank you. Exhibit 1, you mean?

16 MR. LEPORE: Exhibit 1, that's correct. The first
17 paragraph.

18 JUDGE LOVENWIRTH: Around 1920 or 1930. Thank you
19 for highlighting that for my attention.

20 All right, let's get Luzerne County out of the way,
21 please.

22 Do you want to call a witness, please?

23 MR. McCORMICK: Your Honor, I'd just ask to move the
24 answers which have been previously distributed and
25 submitted, including the photocopies and the location map

1 which has been substantiated by testimony of Mr. Sturgeon,
2 into the record as the county's testimony in response to the
3 questions of the PUC.

4 JUDGE LOVENWIRTH: All right. Now, as I understand
5 your motion, you move into the record the February 2, 2001
6 letter from James J. Brozena, professional engineer, along
7 with the three pages of photographs which are attached,
8 along with the street map which is attached; is that
9 correct?

10 MR. McCORMICK: Yes, Your Honor.

11 JUDGE LOVENWIRTH: All right. I'm going to mark that
12 as County Exhibit No. 1.

13 (Whereupon, the document was
14 marked as Luzerne County Exhibit
15 No. 1 for identification.)

16 JUDGE LOVENWIRTH: Are there any objections to the
17 admission into the record of County Exhibit No. 1?

18 MR. LEPORE: No objection.

19 MS. MORAN: No objection.

20 JUDGE LOVENWIRTH: All right, there being none, it's
21 made part of the record.

22 (Whereupon, the document marked
23 as Luzerne County Exhibit No. 1
24 was received in evidence.)

25 JUDGE LOVENWIRTH: Now, Mr. McCormick, do you have

1 any extra copies?

2 MR. McCORMICK: Yes.

3 JUDGE LOVENWIRTH: Would you be kind enough to give
4 two copies to the court reporter?

5 MR. McCORMICK: Yes.

6 JUDGE LOVENWIRTH: Thank you.

7 Mr. Andreuzzi, do you have any witnesses?

8 MR. ANDREUZZI: Well, Your Honor, we have witnesses,
9 but they more or less pertain to the problems that Dennison
10 Township has with the railroad. I don't know how far you
11 would permit that line of testimony.

12 JUDGE LOVENWIRTH: Well, I appreciate your being
13 here. And there is a question asking you about problems
14 along the line, whatever that means, the rail line. I don't
15 know why.

16 Do you, Mr. Salapa?

17 MR. SALAPA: No, Your Honor, I don't.

18 JUDGE LOVENWIRTH: Well, I think that your witness
19 can be excused.

20 Is there any objection to Mr. Andreuzzi's witnesses,
21 or Dennison Township's witnesses being excused?

22 MR. LEPORE: No, Your Honor. And I've requested that
23 Mr. Westenhoefer just confer with them briefly, and perhaps
24 we can address those issues.

25 MR. ANDREUZZI: We've had a problem with there are

1 collapsed draining tunnels along the state highway, which
2 will not allow free flow of the water.

3 Consequently, the water backs up and freezes the
4 state highway. And there's a lot of complaints and
5 accidents.

6 And Mr. Jarreck (phonetic) himself is our fire chief,
7 and he has problems with fire trucks during emergencies at
8 that location, and we've been complaining since 1997, and
9 the railroad has not even bothered to reply in terms of
10 trying to work something out.

11 JUDGE LOVENWIRTH: Well, this is what we can do. We
12 can tell Dennison Township to file a complaint, and then it
13 will come back here again. That's one thing we can do.
14 Maybe that's the best thing to do, since maybe the railroad
15 and the railroad attorney isn't prepared to discuss those
16 problems.

17 Or we could do it now while everybody's here, and
18 expand the scope of our inquiry.

19 Which would you rather do, Mr. Lepore?

20 MR. LEPORE: With Your Honor's indulgence, what I'd
21 like to do, Your Honor, is allow my witness to confer with
22 counsel and his witnesses. I would proceed not to proceed
23 today. I'm hoping that we can stave off the filing of a
24 complaint with the Commission and burdening Your Honor with
25 this matter.

1 MR. SHARP: Your Honor, if I might also, with all due
2 respect to Dennison Township, because their complaint
3 necessarily involves a state highway, the department's
4 certainly not ready to testify or give testimony regarding
5 that. Really, we would have to go out and investigate it,
6 and we wouldn't be prepared today to present testimony.

7 JUDGE LOVENWIRTH: All right. So the best thing to
8 do then would be to ask you to come back, Mr. Andreuzzi,
9 file a complaint, and we'll hear it. Unless, of course, the
10 matters can be rectified amicably.

11 MR. ANDREUZZI: Yes, Your Honor. Thank you.

12 JUDGE LOVENWIRTH: Thank you.

13 MR. ANDREUZZI: There was one question directed in
14 the questionnaire attached to the effect that were we
15 willing to share in any of the costs.

16 At last night's township meeting it was unanimous
17 that we won't share in any of these costs, or we don't want
18 to.

19 JUDGE LOVENWIRTH: I'm shocked.

20 (Laughter.)

21 JUDGE LOVENWIRTH: Thank you, Mr. Andreuzzi.

22 Mr. Sharp, do you want to call a witness, please?

23 MR. SHARP: Thank you, Your Honor. I'd like to call
24 Joseph Strok.

25 JUDGE LOVENWIRTH: Give us your full name, and spell

1 your last name, please.

2 MR. STROK: Joseph Strok, S-T-R-O-K.

3 Whereupon,

4 JOSEPH STROK

5 having been duly sworn, testified as follows:

6 JUDGE LOVENWIRTH: Give my regards to Roger, will
7 you?

8 THE WITNESS: I certainly will.

9 JUDGE LOVENWIRTH: Mr. Sharp.

10 MR. SHARP: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. SHARP:

13 Q. Mr. Strok, by whom are you employed?

14 A. Department of Transportation.

15 Q. In what capacity are you employed by the
16 department?

17 A. One of my duties is the grade crossing
18 coordinator for the District 40.

19 JUDGE LOVENWIRTH: Is Harvey still there?

20 THE WITNESS: Harvey? Sure.

21 JUDGE LOVENWIRTH: Give my regards to Harvey, too.

22 THE WITNESS: Why certainly.

23 JUDGE LOVENWIRTH: Thank you.

24 BY MR. SHARP:

25 Q. District 40; what areas does that encompass?

1 A. Lackawanna, Luzerne, Pike, Susquehanna, Wayne and
2 Wyoming Counties.

3 Q. So that includes the subject of today's hearing?

4 A. Correct.

5 Q. Could you just generally for the Court describe
6 your duties as the District 40 grade crossing coordinator?

7 A. I administer the Section 130 grade crossing
8 safety money. I also act as a liaison between the
9 department and the roadway in all state construction
10 projects or state activities.

11 Q. And you said the Act 130 program. Just
12 generally, could you describe what that's for?

13 A. That's federal dollars that are set aside to
14 improve safety at at-grade rail highway crossings.

15 Q. At-grade, not separated grade?

16 A. Correct.

17 Q. What are your duties as far as when rail highway
18 projects are conducted, under your grade crossing duties?

19 A. I coordinate the efforts between the department
20 and the railroad as far as pre-engineering, engineering,
21 reimbursement agreements, inspection. I act as liaison
22 between the two entities.

23 Q. In your involvement with the Public Utility
24 Commission, what are some of your duties with regards to how
25 you interact with the PUC?

1 A. I file applications for abolitions, suspensions
2 and upgrades of crossings; file applications for state
3 highway projects, testify at hearings.

4 Q. Okay. How long have you been with the
5 department?

6 A. Seventeen and a half years.

7 Q. And how long have you held the position of
8 District 40 grade crossing coordinator?

9 A. Approximately five years.

10 Q. Just for purposes of the record, what other
11 positions do you hold within the department?

12 A. I'm also the roadway management systems
13 coordinator, the lighting coordinator, the pavement
14 engineer; also a summer program called STAMPP, coordinator;
15 and a highway performance monitoring system federal
16 reporting program coordinator.

17 JUDGE LOVENWIRTH: Did you say stamp, S-T-A-M-P?

18 THE WITNESS: Two P's.

19 JUDGE LOVENWIRTH: Two P's.

20 BY MR. SHARP:

21 Q. For the record, just state what that is. I don't
22 think it's relevant, but.--

23 A. Systematic technique to analyze and manage
24 Pennsylvania's pavements.

25 Q. So you'd handle a number of things that involved

1 pavement and at-grade crossings?

2 A. Correct.

3 Q. Okay. Are you authorized to testify on behalf of
4 the department today?

5 A. Yes, I am.

6 Q. Have you visited this crossing?

7 A. Yes, I have.

8 Q. The Susquehanna Street crossing?

9 A. Correct.

10 Q. Do you remember when?

11 A. I believe it was during the July PUC field
12 conference.

13 Q. Okay. Do you remember who all was there?

14 A. The PUC, Mr. Hull was there from the Public
15 Utility Commission, myself, Fred Daniels, from central
16 office grade crossing, the borough, borough engineer, and a
17 few citizens.

18 Q. Okay. Not to throw us back to another issue, but
19 I want to clarify for the record. The Berwick Street
20 crossing that was originally mentioned. Does the department
21 have any problem with that crossing?

22 A. No, we do not.

23 Q. Okay. And another question that we should
24 address. Does PennDOT have or know of any past orders of
25 the Commission regarding the Susquehanna Street crossing?

1 A. No, we do not.

2 Q. Okay. Mr. Strok, I want to direct you to
3 questions and procedures as issued by the Commission, nos.
4 25 and 26. Let me address this first question.

5 Department submit testimony indicating whether, in
6 its opinion, there are safety concerns along the rail line,
7 and particularly the rail highway crossing at Susquehanna
8 Street, and the work required to rectify those safety
9 concerns.

10 Could you discuss the Susquehanna Street crossing
11 generally?

12 A. It's stone abutments holding up two steel
13 structures. They may be interconnected. We really didn't
14 look at them that close. And there's some failure, some
15 retaining of the ballast, and the rotting timbers that was
16 previously testified to.

17 Q. You were present for the testimony of both the
18 borough and Reading, Blue Mountain and Northern?

19 A. Yes.

20 Q. Having heard the statements made by those two
21 witnesses, what's the departments position as to what should
22 be done generally to alleviate some of the problems that
23 were addressed?

24 A. The department is pretty much neutral on it in
25 that it's something between the borough and the railroad.

1 JUDGE LOVENWIRTH: Yes, but that's not the question.
2 The question is: Do you have an opinion as to what should
3 be done?

4 MR. SHARP: Let me rephrase that question.

5 BY MR. SHARP:

6 Q. Mr. Strok, what does the department think needs
7 to be done at this point, and maybe either as far as a
8 repair or looking into repair? What needs to be done?

9 A. I think, yes, if the ballast is falling on the
10 road and there is timber from the crossing falling on the
11 road, something needs to be done to rectify that, obviously.

12 As far as the movement of the stone wall adjacent to
13 the hardware store, I think engineering needs -- a study
14 needs to be done there to see exactly what's causing the
15 failure and what can be done to rectify it.

16 Q. Has the department prepared, or is it willing to
17 prepare any plans to do any of this work?

18 A. No.

19 Q. Let me move to question 26. Department submit
20 testimony indicating what portion of any cost and what
21 portion of the cost of construction it will agree to assume
22 if any improvements are ordered by the Commission.

23 A. We would not assume any costs.

24 Q. Now, the second part of that question is: If
25 not, which party or parties should assume such

1 responsibilities?

2 A. I believe it's something between the borough and
3 the railroad. They're the two entities.

4 Q. Okay. Very quickly, I asked Mr. Westenhoefer
5 some questions about funding. Does the district administer
6 the rail highway, rail freight, railroad assistance program?

7 A. No, we do not.

8 Q. That's not part of the grade crossing funding
9 projects; is that correct?

10 A. Not through the district, no.

11 JUDGE LOVENWIRTH: What do you mean, not through the
12 district?

13 THE WITNESS: Well, we have the safety section, the
14 Section 130 money. But the Rail Freight Assistance Program
15 is strictly comes out of the Harrisburg central office.

16 BY MR. SHARP:

17 Q. Could you describe for the Court the difference
18 between the funding for, say, a crossing improvement and
19 versus work the Rail Freight Assistance Program gives money
20 out for?

21 A. The Section 130 money is to improve safety at
22 particular crossings based on history, ADT train traffic,
23 existing conditions; many factors.

24 The Rail Freight Assistance Program is to assist
25 railroads in upgrading their facilities along the line, not

1 necessarily at a crossing. Although a crossing could be
2 included.

3 Q. Would Act 130 money even be available to be used
4 in this case?

5 A. No, we normally would not use it at grade
6 separated -- we've never in the past used it at separated
7 crossings.

8 Q. Okay. Do you know whether or not there's been
9 any application made by Reading for upgrade through Rail
10 Freight Assistance to do any work on this line?

11 A. No, the new round of money is due out, and the
12 applications are due in the next couple months for the next
13 round of money.

14 MR. SHARP: Your Honor, that's all I have.

15 JUDGE LOVENWIRTH: Thank you.

16 Do you have any questions, Mr. McCormick?

17 MR. McCORMICK: No questions, Your Honor.

18 JUDGE LOVENWIRTH: Mr. Lepore?

19 MR. LEPORE: No, sir.

20 JUDGE LOVENWIRTH: Ms. Moran?

21 MS. MORAN: No, Your Honor.

22 JUDGE LOVENWIRTH: Mr. Andreuzzi, the record will
23 indicate, I think he was excused. And he availed himself of
24 the opportunity to leave.

25 Mr. Salapa?

1 MR. SALAPA: No questions, Your Honor.

2 JUDGE LOVENWIRTH: Thank you.

3 You may step down. Thank you very much.

4 (Witness excused.)

5 JUDGE LOVENWIRTH: Mr. Salapa, do you have a witness?

6 MR. SALAPA: Yes. I would call Mr. Hull.

7 JUDGE LOVENWIRTH: Nice to see you again, Mr. Hull.

8 How are you?

9 MR. HULL: Nice being here, Your Honor.

10 JUDGE LOVENWIRTH: What happened to your hand? Did
11 you talk back to your wife, or what?

12 (Laughter.)

13 MR. HULL: No, it was the last hearing I attended.

14 JUDGE LOVENWIRTH: Really? What happened?

15 MR. HULL: It was a ski accident. Me and a snow
16 board didn't see eye to eye.

17 JUDGE LOVENWIRTH: Okay. I'm sorry. I hope you're
18 soon feeling better. All right.

19 For the record, your name is Ronald J. Hull, H-U-L-L;
20 is that correct?

21 MR. HULL: That is correct.

22 Whereupon,

23 RONALD J. HULL

24 having been duly sworn, testified as follows:

25 JUDGE LOVENWIRTH: Mr. Salapa?

1 MR. SALAPA: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. SALAPA:

4 Q. Mr. Hull, could you please state by whom you are
5 employed?

6 A. Yeah, I'm employed by the Pennsylvania Public
7 Utility Commission, Bureau of Transportation and Safety, the
8 Rail Safety Division.

9 Q. And in what capacity are you employed?

10 A. I monitor rail proceeding before the Commission
11 involving public highways and rails under, at-grades or
12 grade separated. They can deal with abolition, alterations,
13 safety issues such as this.

14 Q. What is your official job title there?

15 A. I'm a civil engineer consultant.

16 Q. And how long have you been employed by the
17 Commission?

18 A. Approximately thirteen years.

19 Q. Are you licensed as a professional engineer in
20 the commonwealth?

21 A. Yes, I am.

22 Q. And are you authorized to testify today on behalf
23 of the Bureau of Transportation and Safety?

24 A. Yes, I am.

25 Q. And are you familiar with the particular crossing

1 at issue here, at Susquehanna Street, in White Haven
2 Borough?

3 A. I am.

4 Q. When was the last time that you visited the site
5 of this particular crossing?

6 A. I visited it on February 22, 2001.

7 Q. And did you, prior to that, have any visits to
8 the crossing?

9 A. Yes, I conducted an informal field conference on
10 July 28, 2000, responding to an informal complaint filed by
11 the borough.

12 Q. And are you aware of any previous Commission
13 proceedings regarding this paragraph crossing?

14 A. Yes, I am. And I searched the PUC records, and
15 we found one order that dealt with this crossing.

16 Q. And I call your attention to what has been marked
17 as Staff Exhibit No. 1.

18 (Whereupon, the document was marked
19 as PUC Staff Exhibit No. 1 for
20 identification.)

21 (Document handed to witness.)

22 Q. Could you please identify that?

23 A. Okay. Staff Exhibit No. 1, it's a three-page
24 document that dealt with a PUC order.

25 JUDGE LOVENWIRTH: Does everyone have a copy of this?

1 MR. SALAPA: Yes.

2 JUDGE LOVENWIRTH: And you gave two copies to the
3 court reporter?

4 MR. SALAPA: Yes, I gave two to the court reporter.

5 THE WITNESS: And it dealt with a PUC order that was
6 entered October 6, 1988, at Commission Docket, Application
7 Docket 00105685.

8 BY MR. SALAPA:

9 Q. And how does the order that's marked as Staff
10 Exhibit 1 involve the Susquehanna Street crossing?

11 A. What it was was an application filed by the
12 preceding railroad before Reading, Blue Mountain and
13 Northern, from Consolidated Rail Corporation. And it was
14 basically to alter the crossing by removal of one set of
15 tracks.

16 Paragraph 3 of the order directs Conrail to remove
17 the rails from the track at the above-grade crossing at
18 Susquehanna Street.

19 Then paragraph 9 of the order directs Conrail to
20 maintain its facilities at the crossing.

21 Q. And have you reviewed the inspection report that
22 has been submitted by the railroad regarding this structure?

23 A. No, I didn't. I didn't have time to review it.

24 JUDGE LOVENWIRTH: Do you want to take five minutes
25 to do it; ten minutes?

1 We'll take a five-minute recess.

2 (Recess.)

3 JUDGE LOVENWIRTH: Back on the record.

4 Did you look at the Railroad Exhibit No. 1?

5 THE WITNESS: Yes, I did, Your Honor.

6 BY MR. SALAPA:

7 Q. And do you have any comments or observations
8 about the report?

9 A. Yeah, the report's very vague. I think maybe to
10 appease the concerns of the parties, I think probably a more
11 in-depth inspection should be performed maybe by a
12 registered civil engineer in the state of Pennsylvania.

13 Q. And when you were at the crossing in February,
14 did you also visually inspect the structure?

15 A. Yes, I did.

16 Q. And the crossing area around it?

17 A. Yes, I did.

18 Q. And could you describe the crossing area?

19 A. Okay. The crossing consists of an open deck
20 girder bridge. Basically it's two superstructures that are
21 adjacent. I don't believe they're integrated.

22 Both superstructures are supported by stone masonry
23 abutments, and that passes over a two-lane macadam roadway.
24 There's retaining walls that extend from the abutments and
25 rain walls parallel to track for several hundred feet in

1 both directions.

2 The track, of course, is elevated in this area. And
3 the retaining walls hold, of course, the material supporting
4 the track in place. Parts of the retaining wall are just
5 stone masonry, and parts of them are timber.

6 Q. And could you describe the condition of the
7 structure itself that's over Susquehanna Street?

8 A. Generally the structure appears to be in fair
9 condition. There's some section -- there's some rust,
10 there's some section loss on some of the steel members.

11 I don't have enough information, of course, to form a
12 more in-depth opinion on how the section loss or rust would
13 affect the load-carrying capacity of the structure, since I
14 only conducted a cursory visual inspection.

15 Since the bridge carries train traffic on a regular
16 basis, it does not appear that the bridge is in immediate
17 danger of collapse.

18 And of course, but like I already mentioned, I
19 believe the railroad should probably perform a more in-depth
20 load rating analysis of the bridge to verify its load-
21 carrying capabilities.

22 In addition, on the inactive section, which is what I
23 refer to as the western superstructure, several of the
24 timber ties are deteriorated.

25 Q. And what about the dimensions of the structure

1 itself; particularly the vertical and horizontal clearances?
2 Do you agree with the prior testimony of the borough's
3 witness that there is a vertical and horizontal restriction
4 at this location?

5 A. Yes, I do. There is, on the uphill side, there
6 is a posted sign. It's right now, it says eight feet. And
7 I believe it said eight inches, even though I think the
8 inches was a little smudged.

9 If the bridge remains intact as is, I would think
10 that sign should be replaced so -- because the sign is
11 vague. It looked like the "eight inch" was kind of faded
12 that you could barely read it.

13 Q. And can you describe the condition of the
14 retaining walls that are in the vicinity of the crossing?

15 A. Okay. Basically, the northeast quadrant of the
16 crossing, where the retaining wall runs parallel to the
17 railroad, and, you know, it meets the abutment, there are
18 several trees growing on top of the walls.

19 These trees are each four or five inches in diameter.
20 They appear to be holding a timber cribbing wall basically
21 near the top of the, what I'm going to refer to as the north
22 abutment.

23 And the roots from the trees are growing behind the
24 retaining wall and abutment. And this, of course, creates a
25 pressure behind these walls. And as the roots grow bigger

1 it, you know, could push the walls out.

2 Q. Are these trees and other growth what's generally
3 been depicted in some of the Borough's Exhibit No. 4, the
4 pictures?

5 A. Yes, they have.

6 JUDGE LOVENWIRTH: This is the one about 60 feet from
7 the intersection, near the hardware store; is that right?

8 THE WITNESS: Well, there's trees throughout. I
9 mean, there's a couple that hold -- there's a couple in the
10 immediate vicinity of the bridge which basically there was
11 testimony how some of the trees are maybe helping support a
12 timber cribbing up near the top.

13 Then there's trees behind the stone masonry wall that
14 they want to basically not grouted. That runs up that
15 alley; and then, of course, behind the hardware store.

16 And there's also some on the other quadrant, which I
17 guess we'll get to. And that's a timber retaining wall down
18 there. There's some trees down there. There's pretty much
19 trees throughout.

20 BY MR. SALAPA:

21 Q. And getting to that, are there other portions of
22 the crossing area or retaining wall where this tree growth
23 is a problem?

24 A. Yes, at the northeast quadrant of the crossing
25 along the retaining wall, parallel to the track, I'd say

1 approximately 20-30 feet to the track. And that's where
2 we're talking about the alley and the hardware store.

3 There's a very large tree growing from the top of the
4 retaining wall. And I'd say that tree might be even seven,
5 eight inches in diameter.

6 And below where that tree, you know, is located,
7 that's where part of the retaining wall is bulging. And
8 it's probably from the results of the roots growing again
9 and putting the pressure.

10 It could be drainage, too. But that wall is of such
11 great size that I'm sure it's probably putting some pressure
12 on that wall.

13 Q. Are there any other areas of the retaining wall
14 that caused you any kind of concern?

15 A. Yes, along the south retaining wall, along
16 basically, approximately 40 feet from Susquehanna Street, a
17 portion of the retaining wall has collapsed. And -- excuse
18 me, I say south. I mean north.

19 And there's bracing that appears to be keeping the
20 wall in place now. But a large portion of the wall
21 apparently has fallen down.

22 As the wall continues to deteriorate, the bracing
23 will have to support more of the weight of the fill behind
24 the wall, and the trains, of course, on top of the fill.

25 Q. And that's the area that's previously been

1 testified to where the repair was made approximately 30
2 years ago?

3 A. Yes.

4 Q. Okay. And is this a concern because of the
5 volume of the fill that this wall holds back?

6 A. Well, it's a concern not only because of the
7 volume of the fill, but of course, as we've heard testimony,
8 the track is active.

9 And there's even more of a load, of course, on that
10 area when the trains pass. And of course, if it would fail
11 when a train passes, there's potential that could undermine
12 the track structure, and, of course cause derailment of a
13 train.

14 Q. And are there other areas of the crossing that
15 are of concern as well with regard to this kind of growth?

16 A. Yes. And this is where I guess I said south. At
17 the southeast quadrant of the crossing there's tree growth
18 at the base of the ring wall. And a tree is approximately
19 four to five inches in diameter. And these roots are
20 probably putting some pressure on that timber retaining wall
21 that's on that side of the quadrant.

22 Q. And are there also trees growing on top of a
23 smaller timber wall on the south side of the right of way?

24 A. Yes, there's trees up there too that are along
25 the south side, extending from the southeast quadrant

1 parallel to the railroad tracks. And of course, these roots
2 are growing in back of the timber wall and will continue, of
3 course, to push, put a pressure on that wall.

4 Q. From your observations, have any of these
5 conditions changed between the time of your first visit back
6 in July of last year and your most recent visit in February
7 of this year?

8 A. No, I didn't notice any significant changes.

9 Q. What work would need to be done to the structure
10 itself in order to address some of the concerns that you
11 have?

12 A. Well, since the western superstructure is
13 inactive, and of course, if the railroad determines there is
14 no future need for this superstructure, I believe the timber
15 ties should be removed and consideration should be taken to
16 remove this section of superstructure in its entirety. And
17 that would not, you know, hinder, of course, the
18 substructure in any way.

19 And this also could alleviate the potential of any of
20 those timber ties from falling onto the roadway below.

21 The railroad, of course, should periodically inspect
22 the structure and perform a load-rating analysis with regard
23 to the structure.

24 Even though the clearances do not meet current design
25 criteria, I don't have information, you know, to determine

1 whether it serves the community. And of course, I didn't
2 hear any testimony today, except that it might hinder some
3 of the emergency vehicles.

4 So that would be up to the borough and, of course,
5 the local township whether they felt, you know, that the
6 clearances should be enhanced. Especially, I would say, the
7 vertical clearance.

8 Q. So the only purpose in removing a portion of the
9 superstructure would be in order to enhance the vertical
10 clearance of the bridge for vehicles going under it?

11 A. Well, that would be one benefit. The other
12 benefit, of course you wouldn't have to maintain that second
13 superstructure. You would eliminate the hazard of
14 trespassers being up there.

15 The railroad can, of course, post signs. The
16 maintenance walkway that's there, I mean that can be
17 eliminated.

18 There's a lot of railroad bridges across the state
19 where there's pedestrian facilities installed, because
20 they're not designed to carry pedestrians. If they're up
21 there, they're trespassing.

22 And so just eliminating that section of
23 superstructure would alleviate that attraction to, you know,
24 a trespasser.

25 Q. And what about the retaining walls and the

1 abutments? What work should be done with regard to the
2 growth either on top of or in those walls?

3 A. The trees, of course, that are growing behind
4 those walls should be cut down. This would prevent the tree
5 roots from further damaging the walls.

6 Where the walls have already failed, or displays a
7 potential for a failure, a more permanent repair could be
8 explored. I would recommend that, you know, an investigate
9 and a report be performed by a certified engineer to that
10 structural capacity of that wall.

11 And then that could include possible remedial action
12 on that wall. I mean, that could include rebuilding the
13 wall, or constructing another wall in front of the existing
14 wall, some sort of shoring. And, you know, this would
15 provide a more permanent, lasting repair.

16 Now, the timber crib wall that was discussed, which
17 was the northeast quadrant, you know, of course, those trees
18 could be removed and, you know, some beams or some sort of
19 supports can be driven in front of those to support that
20 cribbing.

21 If the cribbing needs repaired, some of the ties that
22 maybe come off the other superstructure can utilized to help
23 support that.

24 And so I would say that a study should, you know,
25 solve a lot of the concerns of the borough. So that's what

1 I would highly recommend, is an engineering study of this
2 site, the bridge, and, of course, the surrounding abutments
3 and retaining walls.

4 Q. Thank you.

5 MR. SALAPA: That's all that I have, Your Honor.

6 JUDGE LOVENWIRTH: All right, thank you, Mr. Salapa.

7 Mr. McCormick, do you have any questions?

8 MR. McCORMICK: No questions.

9 JUDGE LOVENWIRTH: Mr. Lepore?

10 MR. LEPORE: None, Your Honor.

11 JUDGE LOVENWIRTH: Ms. Moran?

12 **CROSS EXAMINATION**

13 BY MS. MORAN:

14 Q. I just have one question with regards the
15 recommendation to cut the trees.

16 A. Uh-huh.

17 Q. Would you also recommend a treatment like a
18 herbicide treatment to prevent the growing of the roots or
19 the return of the roots under those trees? Is there any
20 further consideration or condition that could be placed on
21 that?

22 A. You would want the -- and I'm not what you'd call
23 a horticulture expert, or whatever the field is. But you do
24 want vegetation growth to some extent for stability of the
25 fill. So of course, you don't want the tree growth, but you

1 do want some sort of cover for stability. Otherwise erosion
2 would become a problem.

3 Q. Okay.

4 MS. MORAN: That's all. Thank you.

5 JUDGE LOVENWIRTH: Thank you.

6 Mr. Sharp?

7 MR. SHARP: No questions, Your Honor.

8 JUDGE LOVENWIRTH: Very good.

9 Any redirect, Mr. Salapa?

10 MR. SALAPA: No, Your Honor.

11 JUDGE LOVENWIRTH: All right, thank you, sir.

12 (Witness excused.)

13 MR. SALAPA: I would move my Exhibit No. 1 into the
14 record.

15 JUDGE LOVENWIRTH: Any objections?

16 MS. MORAN: No, Your Honor.

17 MR. LEPORE: None, Your Honor.

18 MR. SHARP: No, Your Honor.

19 JUDGE LOVENWIRTH: There being none, then PUC Staff
20 Exhibit No. 1 is made part of the record.

21 (Whereupon, the document marked as
22 PUC Staff Exhibit No. 1 was received
23 in evidence.)

24 JUDGE LOVENWIRTH: Are there any other parties here
25 and interests who have any relevant testimony to offer?

FORM 2

1 (No response.)

2 JUDGE LOVENWIRTH: I have received no audible
3 response, nor have I received a visual response to that
4 inquiry.

5 Is there any other business that we should transact
6 today, folks?

7 (No response.)

8 JUDGE LOVENWIRTH: Okay. Again, I have received no
9 response to that.

10 Now, Mr. Lepore, you mentioned something about
11 jurisdiction of the Commission with respect to the retaining
12 wall near the hardware store, I think. Do you think that
13 there's a problem with Commission jurisdiction?

14 MR. LEPORE: Your Honor, I think it depends on how
15 one characterizes the wall. I suspect the Commission will
16 take a position that it's part of the approach to the
17 bridge.

18 It's the railroad's position that once we get some
19 number of feet from the bridge, we're no longer really
20 talking about a crossing issue, we're talking about a
21 retaining wall.

22 JUDGE LOVENWIRTH: Well, supposing we were. Doesn't
23 the Commission have jurisdiction over other safety matters
24 other than rail highway crossings?

25 MR. LEPORE: You have jurisdiction over safety of

1 operational facilities. And I don't know that we
2 characterize this necessarily as operational.

3 JUDGE LOVENWIRTH: So do you think there's a problem
4 with jurisdiction?

5 MR. LEPORE: I believe there's a potential problem
6 with jurisdiction, Your Honor.

7 JUDGE LOVENWIRTH: All right. Do you want to brief
8 it then?

9 MR. LEPORE: Your Honor, ten days? I can have
10 something to you in ten days.

11 JUDGE LOVENWIRTH: All right.

12 Do other folks want to brief that issue?

13 MR. SHARP: Your Honor, are you talking about
14 strictly the jurisdictional issue?

15 JUDGE LOVENWIRTH: That's all I'm talking about now.
16 We can talk about other issues in a moment or two.

17 MR. SHARP: The department would be willing to brief
18 it based on the fact that if you're talking about retaining
19 wall only versus crossing, we're certainly a concerned party
20 to crossing cases.

21 The department's position is that the Commission has
22 no jurisdiction when it's talking about solely rail
23 facilities under something other than Section 2702 and 2704.
24 We would be willing to submit something in that regard.

25 JUDGE LOVENWIRTH: Well, I don't think that's so.

1 I've had cases where we exercised, and properly so, I think,
2 jurisdiction over flush toilets in trains.

3 MR. SHARP: I agree with that, Your Honor. However,
4 the department is, we believe, not a proper party under
5 those sections of the Code.

6 JUDGE LOVENWIRTH: So you're not saying we don't have
7 jurisdiction?

8 MR. SHARP: Correct.

9 JUDGE LOVENWIRTH: You're saying that unless it's to
10 be considered an approach to the bridge, to the rail highway
11 crossing, then you have nothing to do with it?

12 MR. SHARP: That's correct, Your Honor.

13 JUDGE LOVENWIRTH: All right. Well, that's a
14 different issue altogether. All right.

15 Does anybody else want to file a brief appertaining
16 to the jurisdiction issue?

17 MS. MORAN: Your Honor, just as a point of
18 clarification, the borough's position is obviously that the
19 Commission has jurisdiction. Would Your Honor request we
20 file a reply brief to the brief in question?

21 JUDGE LOVENWIRTH: Yes.

22 All right, within ten days a brief -- you don't need
23 the transcript in order to file a brief, I don't think.

24 MR. LEPORE: No, sir.

25 JUDGE LOVENWIRTH: So within ten days a brief from

1 the railroad and in-hand served upon other parties; and
2 within ten days thereafter, all other parties may file a
3 reply brief. All right, thank you.

4 Now, how about the other issues? Are there any other
5 issues you folks want to brief?

6 (No response.)

7 JUDGE LOVENWIRTH: Okay, I haven't received any reply
8 to that either.

9 It seems to me, and I could be wrong, that since this
10 railroad doesn't have any facilities outside the
11 Commonwealth of Pennsylvania and doesn't operate any trains
12 outside the Commonwealth of Pennsylvania, that we have
13 jurisdiction over everything concerning that railroad.
14 Maybe even the tariffs.

15 But you might address that, Mr. Lepore.

16 MR. LEPORE: I will, Your Honor.

17 JUDGE LOVENWIRTH: Thank you.

18 All right. Is there any other business we should
19 transact?

20 (No response.)

21 JUDGE LOVENWIRTH: There being none, we stand
22 adjourned. Thank you very much.

23 (Discussion off the record.)

24 JUDGE LOVENWIRTH: Back on the record.

25 A question's been asked about filing briefs which

1 would contain proposed findings of fact and proposed
2 conclusion of law and what else have you.

3 Do you want to file a brief generally concerning the
4 issues attendant upon this proceeding, Mr. Lepore?

5 MR. LEPORE: Your Honor, it would be my suggestion
6 not necessarily to file a brief, but to file proposed
7 findings of fact and conclusions of law to assist Your
8 Honor. I believe there are a number of issues that the
9 railroad really doesn't contest.

10 JUDGE LOVENWIRTH: Well, you'll need a transcript for
11 that.

12 MR. LEPORE: Yes.

13 JUDGE LOVENWIRTH: All right. Well, then this is
14 what we'll do. That certainly will be helpful.

15 Then I will get a briefing letter out in this case,
16 and we'll set a briefing schedule for the general issues in
17 this case.

18 MR. LEPORE: That's fine.

19 JUDGE LOVENWIRTH: And if you want to, instead of
20 filing two briefs, you can do it all in one brief.

21 MS. MORAN: That would be better.

22 MR. SALAPA: That's better.

23 MR. SHARP: Yes.

24 MR. LEPORE: That would be better, absolutely.

25 JUDGE LOVENWIRTH: All right. Then what we'll do is,

1 since the railroad is taking the position that there may be
 2 a jurisdictional problem, and since the other parties,
 3 especially the borough, doesn't seem to think that there is,
 4 only the railroad -- and since that issue is going to be
 5 part of the main brief, I'll have the railroad file the
 6 first brief, and all parties filing a reply brief. That's
 7 what I'll do.

8 All right. There being no further business to
 9 transact, we stand adjourned. Thank you.

10 (Whereupon, at 1:55 p.m., the hearing was concluded.)

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FORM 2

C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically
by me, and thereafter reduced to typewriting by me, or under
my direction; and that this transcript is a true and
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COMMONWEALTH REPORTING COMPANY, INC.

By: William J. Horst
William J. Horst

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