

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

-----X
Duryea Borough

vs

Docket #
C-00992585

READING BLUE MOUNTAIN
AND NORTHERN RAILROAD
COMPANY, PENNSYLVANIA
DEPARTMENT OF
TRANSPORTATION AND
LUZERNE COUNTY

ORIGINAL

Initial Hearing
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Pages 1 through 137

Scranton State Office
Building
Third Floor
Scranton, PA 18503

Thursday, May 18 2000
Commencing at 11:38 a.m.

BEFORE:
GEORGE M. KASHI, Administrative Law Judge

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APPEARANCES:

BARRY CHROMEY, Esquire
126 South Main Street
Suite 201
Pittston, PA 18640
Counsel for Duryea Borough

ERIC M. HOCKY, Esquire
Gollatz, Griffin, Ewing, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
Counsel for Reading Blue Mountain and
Northern Railroad Company

JASON D. SHARP, Esquire
Assistant Counsel
Real Property Division
Office of Chief Counsel
555 Walnut Street
Ninth Floor
Harrisburg, PA 17101-1900
Counsel for Pennsylvania Department of
Transportation

DAVID A. SALAPA, Esquire
Assistant Counsel
Bureau of Transportation and Safety
Third Floor, Barto Building
Third and State Streets
Harrisburg, PA 17105-3265
Counsel for Bureau of Transportation and
Safety

CHARLES MCCORMICK, ESQUIRE
PNC Bank Building
76 Public Square
Wilkes Barre, PA 18701
Counsel for Luzerne County

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P R O C E E D I N G S

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2 -----
3 JUDGE GEORGE M. KASHI: This is the time and
4 place which is scheduled for hearing in the matter of
5 the Duryea Borough versus Reading Blue Mountain and
6 Northern Railroad, Delaware and Hudson Railroad
7 Company, Pennsylvania Department of Transportation
8 and the Luzerne County.

9 This particular matter arises from a complaint
10 which was filed sometime on June 28 of 1999, wherein
11 it was alleged that a number of gate crossings were
12 in deteriorated condition and in need of repair.
13 Specifically, as that which appears before me, are
14 those on highway of Foote Avenue, SR 2032; New
15 Street, Phoenix Street, SR 2027; Coxtton Road, SR
16 2033; Stevenson Street, SR 2031; Marcy Street, Hill
17 Street, York Avenue, SR 2029; and another York Avenue
18 at SR 2029.

19 There has already been a field investigation in
20 this particular matter and a conference was held at
21 the site of the crossings. The parties have been
22 disputing who is responsible to fund any repairs at
23 the crossings. And matter was then transferred to
24 the Office of Administrative Law Judge for hearing.

25 The parties of interest who were served in this

1 particular matter are the Borough of Duryea, the
2 Pennsylvania Department of Transportation, Luzerne
3 County, Reading, Blue Mountain and Northern Railroad
4 and Delaware and Hudson Railroad Company. The
5 purpose of this morning's hearing is to receive
6 testimony from all parties to the complaint and if
7 the complaint is to be sustained, the allocation of
8 cost which will be incurred in connection with that
9 in the assignment of any future maintenance
10 responsibilities. As is the case in these particular
11 matters, a question and procedural set of questions
12 was mailed out to the parties on December of 1999,
13 wherein a number of questions have been addressed to
14 each of the parties which they are expected to
15 present testimony on this morning.

16 Now, appearing on behalf of the Pennsylvania
17 Department of Transportation, Jason D. Sharp.

18 ATTORNEY SHARP: Yes, Your Honor.

19 JUDGE: On behalf of the Pennsylvania Public
20 Utility Commission, Bureau of Transportation and
21 safety, Mr. David A. Salapa, Esquire.

22 ATTORNEY SALAPA: Good morning, Your Honor.

23 JUDGE: Good morning, sir. On behalf of the
24 Reading Blue Mountain and Northern Railroad, Mr. Eric
25 Hocky, Esquire. On behalf of the Borough of Duryea,

1 Mr. Barry Chromey, Esquire.

2 ATTORNEY CHROMEY: Yes, Your Honor.

3 JUDGE: And the solicitor for Luzerne County,
4 Mr. Charles McCormick, Esquire. Have I missed
5 anyone? We will call witnesses, have the witnesses
6 take the witness stand. And I would just like, for
7 the record, to state that the parties have continued
8 into a negotiation in postures, however. Okay. And
9 this is my understanding, and correct me if I'm
10 wrong, that while there may be some agreement on some
11 of the crossings in question, the Pennsylvania
12 Department of Transportation is not prepared this
13 date to make any kind of agreements on any one or two
14 or three or number thereof given that the Department
15 is trying to settle the entire. Is that correct, Mr.
16 Sharp?

17 ATTORNEY SHARP: Yes, Your Honor. I just want
18 to express --- I think I misspoke before. My witness
19 has the full authority of the Department to express
20 the Department's opinions regarding this hearing.
21 And we're willing to set forth our opinion. But today
22 we were unable to resolve any full settlement of the
23 state highway crossings at issue. Obviously, we
24 really don't have any power over the local crossing.

25 JUDGE: When you say full settlement, okay,

1 you're talking --- you settle everything or you
2 settle nothing.

3 ATTORNEY SHARP: Maintenance and cost
4 responsibilities.

5 JUDGE: My question goes, does it go to all
6 the crossings or merely --- do you have to settle it
7 for all the crossings or none or are you able to
8 settle some of the crossings without ---?

9 ATTORNEY SHARP: I don't know that we can come
10 to settlement on maintenance and/or costs of any of
11 the crossings, considering --- and I should say
12 because the negotiations were a little bit different
13 than what we're talking about today.

14 JUDGE: All right. Let's go this way. I'm
15 Judge Kashi, Administrative Law from Harrisburg. I
16 used to be the Chief Counsel of the Public Utility
17 Commission years ago back in 1978 to 1980. And I
18 first came to the PUC in 1975 to the law bureau when
19 we began to professionalize and get rid of all
20 part-time people. Just a little history. Prior to
21 that, I was with the Justice Department. I don't
22 know any of the folks up here. That's why I'm saying
23 that.

24 I would like to hear, for the record, if there
25 are any statements from Counsel, beginning with the

1 Complainant, the Borough of Duryea. Counsel?

2 ATTORNEY CHROMEY: Thank you, Your Honor. Once
3 again, my name is Barry Chromey and I represent for
4 Borough of Duryea. I have with me here today
5 Councilman Keith Moss to testify as to the conditions
6 of --- I have listed seven crossings. By way of
7 clarification, I believe the Court mentioned two
8 crossings on York Avenue. One of those crossings
9 would in Avoca (phonetic) Borough and was not the
10 subject of our complaint. It's the one that involves
11 a different railroad, D and H Railroad owns that
12 crossing.

13 JUDGE: And that is not subject to this
14 Complaint; is that correct?

15 ATTORNEY CHROMEY: That's correct, Your Honor.
16 Also you mentioned New Street. And based upon the
17 geography of that, it's on a hill. We have not
18 included that in our complaint as well. So we can
19 withdraw any reference no to New Street.

20 Once we are talking about, as you indicated,
21 five of them involve state roads, Coxton, Foote,
22 Phoenix, York and Stevenson Street; and two involve
23 local roads Marcy Street and Hill Street. What I
24 have here today would be photographs of those
25 crossings and Mr. Moss to describe the condition of

1 them and the problems that the Borough has
2 experienced as far as complaints from motorists,
3 truck drivers, private companies. And we'd offer an
4 opinion as to how they should be repaired.

5 The issue as far as settlement is concerned,
6 Mr. Moss or myself cannot speak for the rest of
7 Council as far as accepting responsibility for future
8 costs, if we had an idea as to --- an estimate as to
9 what those costs would be, we'd be in a position to
10 present that to the rest of Council and give an
11 answer in that way. But today, without an idea, I
12 have no authority do that. And as I indicated, my
13 testimony will basically be from Mr. Moss as to the
14 condition, the present condition and the past
15 problems of these crossings. Thank you.

16 JUDGE: Thank you, sir. And you are prepared
17 --- you have received the questions and procedures
18 that were sent out?

19 ATTORNEY CHROMEY: Yes, I did, Your Honor.

20 JUDGE: And you are, in fact, to prepared to
21 submit all that information; is that correct, sir?

22 ATTORNEY CHROMEY: Yes, I am, Your Honor.

23 JUDGE: At this time, I would like it hear
24 from the Pennsylvania Department of Transportation.
25 Is there anything else you would like it put on the

1 record at this point?

2 ATTORNEY SHARP: Your Honor, just that the
3 Department is prepare to give testimony and answer
4 the questions and procedures presented by the
5 Commission relating to the five state highways named
6 in the complaint. The Department realizes, as the
7 Borough has pointed out, that the second York Avenue
8 crossing where the Delaware and Hudson line is
9 involved, the Department does have testimony
10 regarding that. But there have been some new
11 developments in that. That crossing has been newly
12 paved over. And I think that can probably dealt with
13 rather swiftly. The Department will agree today to
14 do any of the paving work on the approaches to the
15 state highway crossings in question that PUC
16 determines is necessary that's recommended by the
17 Bureau of Transportation and Safety. Other than
18 that, the Department would not agree to do any of the
19 work inside the rails as compared to the testimony
20 about the conditions at the state highway crossings.
21 And I do have exhibits and a witness that will
22 present that.

23 JUDGE: Thank you, sir. Mr. Salapa?

24 ATTORNEY SALAPA: Yes, Your Honor. The Bureau
25 of Transportation and Safety is here mainly because

1 we're concerned about the condition of various of
2 these crossings. I have is Mr. Hall who can present
3 testimony on the condition of the various crossings
4 as well as some prior Commission orders that have
5 dealt with either reconstruction or maintenance of
6 these crossings. And they're available as a factor
7 for the Court to use in determining cost allocation.

8 JUDGE: Thank you, sir.

9 JUDGE: Mr. McCormick, the Luzerne County
10 Solicitor.

11 ATTORNEY MCCORMICK: Yes, Your Honor.

12 JUDGE: You're a stakeholder?

13 ATTORNEY MCCORMICK: Well, I believe at least
14 for our purpose, Your Honor, that all parties could
15 be able to stipulate on the record that the County
16 owns no property nor any of the roads in question,
17 county-owned roads, under that circumstance, without
18 waiving the issue of what responsibility, if any, the
19 County would have under those limited factual
20 circumstances, and that perhaps could save some time
21 for the Court. Other than stipulation by all parties
22 that, in fact, those two factual circumstances are
23 true, we would not have any testimony on our side.

24 JUDGE: Okay. Mr. Hocky?

25 ATTORNEY HOCKY: Yes, Your Honor. As a

1 preliminary matter, I guess I have a question about
2 what crossings are being covered by this hearing.
3 You listed a number of them. Not all of them are
4 listed in the Complaint nor in the notice of hearing,
5 which I was relying on. Although I do understand
6 that the field conference, when they had it, looked
7 at additional crossings. The only ones that I have
8 that are part of the notice were Coxton, Foote,
9 Phoenix, Marcy and York. And the York Avenue one is
10 the one where D and H crosses, there's evidently a
11 second York Avenue one that crosses Reading Blue
12 Mountain. And the questions asked us not to respond
13 to York Avenue so we did not.

14 JUDGE: Let's to try to straighten that out
15 before we go any further at all. Now, you say sir,
16 that the notice today, today's notice ---.

17 ATTORNEY HOCKY: The notice of hearing that we
18 received, the paragraph at the top, which basically
19 recites what was in the complaint, I think, which
20 says site includes crossings on Coxton Road, Foote
21 Avenue, Phoenix Street, Marcy Street and York Avenue.
22 In our discussions, I should say, we've been talking
23 about all of them. But I don't view them as
24 necessarily subject to this complaint proceeding.

25 JUDGE: And were you notified and did you

1 participate in the field investigation at the
2 crossings there?

3 ATTORNEY HOCKY: Yes, I believe as a
4 representative of my client was at the field
5 conference. But we go to a lot of field conferences
6 that aren't subject of complaints necessarily.

7 JUDGE: Now, you heard Counsel for Department
8 of Transportation specifically state that the Hill
9 Street and York Avenue --- the Hill Street is not
10 involved here today. And the York Avenue which
11 involves the Delaware and Hudson Railroad is not
12 involved here today. That leaves us with Foote, New
13 Street, Phoenix, Coxtan, Stevenson Street, Marcy
14 Street and the other York Avenue. And you're saying
15 one more time to me, sir, that ---.

16 ATTORNEY HOCKY: Under my understanding, York,
17 Stevenson --- and I believe they stated New Street
18 was not part of it but Hill Street was. So Hill
19 would not be in, Stevenson would not be in and York
20 would not be in.

21 JUDGE: And you say that that by virtue of the
22 fact that that's what the hearing notice said?

23 ATTORNEY HOCKY: And the complaint as well.

24 JUDGE: And the complaint as well.

25 ATTORNEY HOCKY: York is listed. However, the

1 notice of hearing in the questions, as I read them,
2 it appeared to be talking about the York Avenue,
3 Delaware and Hudson crossing.

4 JUDGE: Well, as I have it, the notice as it
5 was published in the Pennsylvania Bulletin of April
6 8, 2000, states that the complaint and the site and
7 crossings for this hearing are as follows, Coxtton
8 Road, Foote Avenue, Phoenix Street, Marcy Street, and
9 York Avenue. Is that your understanding, sir?

10 ATTORNEY HOCKY: That complies with the list
11 that I have, except York Avenue, I guess there's some
12 confusion about which York Avenue.

13 JUDGE: Yeah, obviously. What we will do is
14 we will make sure that we develop the record as fully
15 as possible, specifically if the Borough of Duryea
16 needs to talk about some others that aren't
17 specifically listed here. And obviously, give the
18 railroad an opportunity to then be able to, at a
19 later date, cross examine that testimony and present
20 its own testimony on those particular matters. And
21 if need be, we would then go ahead with an amended
22 complaint. I just don't like to waste hearing time.
23 I mean, you gentlemen, just cost too much to the
24 ratepayers to do that. Anything further, sir?

25 ATTORNEY HOCKY: We have presented written

1 testimony. I don't know if it made its way to you.
2 Your Honor, I have an extra copy when I have my
3 witness called and I'll give you another copy of
4 that.

5 JUDGE: Listen, I barely got a copy of the
6 ticket I need to pick up a car.

7 ATTORNEY HOCKY: I understand, Your Honor.

8 JUDGE: The first matter that I would like to
9 deal with is there has been by the Solicitor for
10 Luzerne County a request and offer that a stipulation
11 be made by all parties that Luzerne County owns ---
12 you want to state it for the record, sir, because I'm
13 sure you can do it better than I can.

14 ATTORNEY MCCORMICK: Does not own any of the
15 property that is involved in any of the complained
16 upon crossings nor are any of the public
17 right-of-ways Luzerne County public right-of-ways,
18 other than obviously the PUC history that the County
19 is also in any location. Again, I'm not asking any
20 Counsel to waive that position.

21 JUDGE: Now, sir, since there seems to be some
22 confusion between notices that I've been given, when
23 you make those statements, are you making those
24 statements regarding the last description of the
25 crossings that I listed?

1 ATTORNEY MCCORMICK: The bulletin notices?

2 JUDGE: Yes, sir.

3 ATTORNEY MCCORMICK: Yes, Your Honor. And if
4 you are going to the additional hearing, my
5 understanding is all the additional --- the sites you
6 were talking about also were the same situation.

7 JUDGE: Okay. Can we have that so stipulated
8 to among Counsel? Mr. Sharp?

9 ATTORNEY SHARP: Yes.

10 JUDGE: Mr. Salapa?

11 ATTORNEY SALAPA: Yes, Your Honor.

12 JUDGE: Mr. Hocky?

13 ATTORNEY HOCKY: Yes, Your Honor.

14 JUDGE: Mr. Chromey.

15 ATTORNEY CHROMEY: Yes, Your Honor.

16 JUDGE: It has been and will be accepted for
17 the record a stipulation as stated by the solicitor
18 for Luzerne County. With that, sir, would you ask
19 that be excused?

20 ATTORNEY MCCORMICK: I would appreciate that,
21 sir.

22 JUDGE: You may be excused, sir.

23 ATTORNEY MCCORMICK: Thanks very much, Your
24 Honor.

25 JUDGE: Mr. Chromey, would you like to call

1 your first witness?

2 ATTORNEY CHROMEY: Yes. I call Mr. Keith
3 Moss.

4 JUDGE: Would you stand and raise your right
5 hand and be sworn.

6 KEITH MOSS, CALLED AND SWORN TO TESTIFY

7 JUDGE: Please be seated.

8 JUDGE: Can you, for the record, please state
9 your full name?

10 A. Keith A. Moss, Duryea Borough Councilman.

11 JUDGE: Counsel?

12 ATTORNEY CHROMEY: Thank you.

13 DIRECT EXAMINATION

14 BY ATTORNEY CHROMEY:

15 Q. Mr. Moss, you're a Councilman with Duryea
16 Borough; correct?

17 A. Yes.

18 Q. How long have you held that position?

19 A. Seven years.

20 Q. And sir, are you familiar with the crossings
21 involved --- first of all, let's start with Coxton?

22 A. Yes, sir.

23 Q. I'm going to show you.

24 JUDGE: Excuse me, sir, before we go that far,
25 ---

1 ATTORNEY CHROMEY: Yes.

2 JUDGE: --- could I get that he's, in fact,
3 authorized by Council to appear here today?

4 ATTORNEY CHROMEY: I'm sorry.

5 BY ATTORNEY CHROMEY:

6 Q. Mr. Moss, you're appearing here today on behalf
7 of Duryea Borough?

8 A. Yes, I am, the Council's chairwoman's called me
9 and asked me if I would proceed here with her
10 agreement.

11 Q. And as I understand it, the Borough secretary is
12 unavailable to appear today?

13 A. Yes.

14 Q. And you've been authorized by Council to testify
15 in this matter?

16 A. Yes.

17 Q. Thank you. In your position as Councilman, are
18 you familiar with these crossings?

19 A. Yes, sir.

20 Q. If we could start with the first one that was
21 listed, Coxtan Road, I'm going through you a
22 photograph and ask if could you identify that?

23 A. Yes, this is Coxtan Road, looking east towards
24 Coxtan. This is the railroad crossing that is in
25 very deplorable condition. And we have pictures of

1 it, Your Honor.

2 Q. Now, when you say deplorable condition, could you
3 describe exactly what the problems have been with
4 that?

5 A. There's heavy traffic on this road. There's
6 Airport Sand and Gravel behind the river and there's
7 Pulp and Talbert (phonetic) that's out in Ransom.
8 And there's heavy tractor-trailer traffic that goes
9 through here. And constantly they're going over this
10 railroad crossing. And it's just deteriorating away
11 and falling apart, the blacktop along with the wooden
12 ties.

13 Q. And, sir, what is your occupation?

14 A. I'm a truck driver.

15 Q. Have you ever had occasion as a truck driver to
16 drive over that crossing yourself?

17 A. I drive over this crossing every day because my
18 employer is right over this railroad crossing.

19 Q. I see. And do you know if the Borough has
20 received any complaints about that crossing?

21 A. Yes, we have received numerous complaints from
22 people in the area, along with Airport Sand and
23 Gravel which is a quarry behind the river.

24 ATTORNEY CHROMEY: I'm going to ask that this
25 one being be marked Duryea Borough Exhibit One.

1 JUDGE: So marked for purpose of
2 identification.

3 ATTORNEY CHROMEY: Thank you.

4 BY ATTORNEY CHROMEY:

5 Q. I'll show you the next photograph.

6 A. This photograph here is coming out of Coxtan
7 towards Main Street Duryea which is west. In the
8 picture it shows the holes right at the crossing on
9 the railroad ties deteriorated away. That's it.

10 Q. Do you know if any effort has been made to
11 contact the railroad concerning this matter?

12 A. There's been several complaints to the railroad
13 on that and just didn't get no answer from it.

14 Q. And were you on Council when this complaint was
15 filed?

16 A. Yes, I was.

17 JUDGE: Which railroad, sir?

18 A. Reading Blue Mountain Northern Railroad.

19 JUDGE: Thank you.

20 ATTORNEY CHROMEY: I'd would ask that that
21 photograph be marked Exhibit Number Two.

22 JUDGE: If for purpose of identification, that
23 will be marked Complainant Number Two.

24 BY ATTORNEY CHROMEY:

25 Q. Now, Mr. Moss, do you know if there's ever been

1 any accidents at this particular location?

2 A. To my knowledge, there has been no accidents but
3 there's plenty of tractor-trailers that come through
4 there with their dollies on their trailers and they
5 grab onto the rail and they rip the dollies off the
6 trailer.

7 Q. Now, this property is located in Duryea Borough;
8 correct?

9 A. Yes, sir.

10 Q. But it is not a borough road; is that correct?

11 A. No, it's a state road.

12 Q. Thank you. Is there any pedestrian traffic in
13 that area?

14 A. Very little. But there is some pedestrian
15 traffic that crosses through there.

16 Q. If we can move on then to the second --- I'm
17 sorry, I have additional photographs on Coxtton. I'm
18 sorry. Can you identify that photograph?

19 A. Yes, this is, again, Coxtton Road looking north
20 towards Duryea Borough. And in the picture it shows
21 here the rail crossing again with deterioration of
22 the railroad ties and macadam.

23 ATTORNEY CHROMEY: I ask that that photograph
24 be marked number three.

25 JUDGE: So marked for purpose of

1 identification as Complainant's Number Three.

2 BY ATTORNEY CHROMEY:

3 Q. The next one?

4 A. And this is the last photograph, I understand,
5 looking south towards Pittston of the railroad
6 crossing, same deteriorating away of the railroad
7 ties and the macadam. And if you look in the
8 foreground, Reading Blue Mountain Northern has a
9 track all set up to go in there and nothing's been
10 done with it. And that's been there or approximately
11 two months.

12 ATTORNEY CHROMEY: I'd ask that that be
13 marked Number Four.

14 JUDGE: Counsel, would you mind if I changed
15 the marking on those? I just realized that you're
16 probably going to be going through a lot of pictures
17 on a lot of the different ones. Would you mind, sir,
18 if I marked this series as Complainant's Exhibits
19 1-A, B, C and D?

20 ATTORNEY CHROMEY: That's fine, Your Honor.

21 JUDGE: All Counsel change your markings to
22 1-A, B, C, D.

23 BY ATTORNEY CHROMEY:

24 Q. Is there anything else you want to add about the
25 Coxtan crossing?

1 A. Not at this point in time.

2 Q. Then if we could, are you familiar with the
3 crossing on Foote Avenue?

4 A. Yes, I am.

5 Q. I'm going to show you a photograph and ask that
6 you identify that.

7 A. This is Foote Avenue in the Borough of Duryea.
8 It is State road. And this is looking towards Old
9 Forge, which would be north. And as you can see in
10 the picture, there's some deterioration of the wood.
11 And there's sets of tracks here, Your Honor. And
12 both of them are in deplorable condition.

13 Q. Now, did the Borough get any complaints about
14 that crossing?

15 A. Yes, we had several complaints from Germania
16 (phonetic) Hose Company and Excelsior (phonetic) Hose
17 Company, which is right here on the crossing and they
18 cross it constantly to go to fires.

19 Q. When you say Germania and Excelsior, those are
20 the volunteer fire companies?

21 A. Right.

22 Q. And they're located near that?

23 A. Right.

24 Q. And there's plenty of tractor-trailer traffic,
25 again, on that again on that crossing which comes

1 from the PT Corporation on Foote Avenue.

2 ATTORNEY CHROMEY: I'd ask that that
3 photograph be marked ---.

4 JUDGE: That will be marked for purposes of
5 identification as Complainant's 2-A.

6 BY ATTORNEY CHROMEY:

7 Q. Would you identify that photograph?

8 A. Foote Avenue crossing, this is looking south
9 towards Pittston. And this crossing, you could see
10 tractor-trailer traffic using this road and, again,
11 the deplorable condition of the rail crossing with
12 the macadam and the railroad ties.

13 ATTORNEY CHROMEY: I ask this one be ---.

14 JUDGE: Marked for purposes of identification
15 as 2-B.

16 BY ATTORNEY CHROMEY:

17 Q. And this picture?

18 A. This is another picture looking towards Old Forge
19 of the railroad crossing in the Borough of Duryea
20 which is, again, a PennDOT with a double crossing.
21 And you can see the sagging in the railroad ties and
22 railroad ties ate away and the macadam also.

23 ATTORNEY CHROMEY: Your Honor, I'd ask that
24 that be marked as well.

25 JUDGE: It shall be marked for identification

1 for as Complainant's Exhibit 2-C.

2 BY ATTORNEY CHROMEY:

3 Q. Is that Foote Avenue as well?

4 A. Yes, it is. This is the second rail that I spoke
5 of Foote Avenue. And this is looking west towards
6 the Borough of Avoca with the railroad crossing in
7 deplorable condition, as the first one comes over and
8 then this one sits down a little bit lower, and it
9 just puts more strain on this railroad crossing.

10 ATTORNEY CHROMEY: I'd ask that be marked for
11 identification.

12 JUDGE: So marked as Complainant Exhibit 2-D.

13 BY ATTORNEY CHROMEY:

14 Q. And that one, sir? Is that Foote Avenue?

15 A. Yes, sir. This is the first rail on Foote
16 Avenue. And this is looking towards Main Street in
17 Duryea east. And as you can see, the railroad ties
18 in this picture are deteriorated away and the macadam
19 also.

20 Q. Okay. Thank you.

21 ATTORNEY CHROMEY: I'd ask that that
22 photograph be marked as well.

23 JUDGE: 2-E.

24 BY ATTORNEY CHROMEY:

25 Q. Identify that one.

1 A. I believe this is the last picture of the Foote
2 Avenue crossing. And this is the Foote first
3 crossing towards is on Avoca which would be west.
4 And you could see the deterioration of the railroad
5 ties and the blacktop.

6 ATTORNEY CHROMEY: I'd ask that that
7 photograph be marked as well.

8 JUDGE: As 2-F for purposes of identification.

9 BY ATTORNEY CHROMEY:

10 Q. Mr. Moss, I have one more on Foote Avenue. Would
11 you identify that one for the Court, please?

12 A. This is the second rail on Foote Avenue facing
13 towards Main Street Duryea. Like I stated before,
14 it's a little bit lower than the other crossing and
15 puts a lots on the railroad ties and macadam here
16 with the traffic, heavy tractor-trailer traffic on
17 this PennDOT road.

18 Q. Thank you.

19 ATTORNEY CHROMEY: I'd ask that be marked as
20 well.

21 JUDGE: For purposes of identification, it
22 will be marked as 2-G.

23 BY ATTORNEY CHROMEY:

24 Q. Does Duryea have a crossing on Phoenix Street?

25 A. Yes.

1 Q. Did you have any complaints about that crossing?

2 A. Yes, we did.

3 Q. Is that a Borough road or a State road?

4 A. It's a State road.

5 Q. I'm going show you a photograph and ask if you
6 can identify that.

7 A. This picture is at that time Phoenix Street
8 crossing headed west towards is Avoca and this cross
9 was being was repaired about a year ago with new
10 railroad ties put in here. And as our officer was
11 taking these pictures, and I observed also, the
12 railroad ties that they put in are all loose and
13 falling apart. And this is another heavy traffic
14 area which there's a shopping center right next to
15 this rail. And this is a PennDOT road.

16 Q. Thank you.

17 ATTORNEY CHROMEY: I ask that photograph be
18 marked as well.

19 JUDGE: For purposes of identification, it
20 will marked as Complainant Exhibit 3-A.

21 BY ATTORNEY CHROMEY:

22 Q. And on this photograph, the same crossing
23 different angle?

24 A. Yes. This is a photograph of the Phoenix Street
25 crossing the crossing headed east towards Main Street

1 Duryea. And as you can see in the picture, the
2 deterioration of the railroad ties and the blacktop
3 which I stated in the last picture of new railroad
4 ties were put in last year but they are falling
5 apart.

6 ATTORNEY CHROMEY: I ask that that photograph
7 be marked as.

8 JUDGE: For purposes of identification, that
9 will be marked as Complainant's Exhibit 3-B.

10 BY ATTORNEY CHROMEY:

11 Q. Could you identify that for us?

12 A. This is Phoenix also. This is looking north
13 towards Old Forge. As you can see in the picture
14 here, the railroad ties are loose and out of line
15 here and they're falling apart in deplorable
16 condition.

17 ATTORNEY CHROMEY: I'd ask that that
18 photograph be marked.

19 JUDGE: Complainant's Exhibit 3-C for purposes
20 of identification.

21 BY ATTORNEY CHROMEY:

22 Q. And Mr. Moss, would you identify that photograph
23 please?

24 A. This is another photograph of Phoenix Street.
25 This is looking south towards Pittston. This is the

1 main line that goes no their junction, Coxton yards.
2 Again, this is the crossing with the railroad ties in
3 deplorable condition because they're loose. And the
4 macadam, you can see, is ate away.

5 ATTORNEY CHROMEY: I'd ask that that
6 photograph be marked as well.

7 JUDGE: Complainant Exhibit 3-D.

8 BY ATTORNEY CHROMEY:

9 Q. Mr. Moss, any other comments about the Phoenix
10 Street crossing?

11 A. Just that it is a PennDOT road and they did put
12 railroad ties in there last year but, like I stated
13 in my testimony, they are all loose and they are
14 falling out at this point.

15 JUDGE: Mr. Moss, when you say a PennDOT road,
16 you're saying that it's a State road?

17 A. Yes, sir.

18 BY ATTORNEY CHROMEY:

19 Q. And the Borough did have complaints?

20 A. Yes, we did.

21 Q. All right. Now, does Duryea have a crossing on
22 Marcy Street?

23 A. Yes, sir, we do.

24 Q. Would you take a look at that photograph and
25 identify it for me, please?

1 A. This is the Marcy Street crossing which is a
2 Borough-owned road. And we had several problems with
3 this crossing. There used to be two rails going
4 through here. And now there's only one rail. And
5 it's in very deplorable condition. And it's in a
6 very busy area for pedestrian walking because there's
7 a Uni-Mart right to the right of this.

8 Q. So Uni-Mart, that's a convenience store?

9 A. Yes, sir.

10 Q. Did you have complaints about Marcy Street?

11 A. Yes, we had several.

12 Q. Thank you. Ask that photograph be marked as
13 well.

14 JUDGE: That will be marked you purposes of
15 identification as Complainant Exhibit 4-A.

16 BY ATTORNEY CHROMEY:

17 Q. Take a look at that photograph, Mr. Moss.

18 A. This is a photograph of Marcy Street again
19 looking towards west Duryea towards Avoca. The
20 railroad ties are falling apart and macadam is in
21 deplorable condition. Again, it's a busy traffic
22 area for pedestrians walking across the tracks.

23 ATTORNEY CHROMEY: I ask that this photograph
24 be marked.

25 JUDGE: Marked for purposes of identification

1 as Complainant Exhibit 4-B.

2 BY ATTORNEY CHROMEY:

3 Q. Mr. Moss, two more photographs of the Marcy
4 Street. Take a look at that one, please.

5 A. This photograph is looking south towards Pittston
6 of Marcy Street. And, again, see the railroad ties
7 are eaten away and falling apart, along with the
8 macadam.

9 ATTORNEY CHROMEY: I ask that that photograph
10 be marked.

11 JUDGE: Marked for purposes of identification
12 as Complainant's Exhibit 4-C.

13 BY ATTORNEY CHROMEY:

14 Q. Sir, could you describe that one, please?

15 A. This is another picture of Marcy Street. This is
16 looking north towards Old Forge. And again, it's the
17 Marcy Street crossing. And the railroad ties ate
18 away and the macadam is also in very bad shape.

19 Q. Thank you.

20 ATTORNEY CHROMEY: I ask that that photograph
21 be marked as well.

22 JUDGE: For purposes of identifying that as
23 Complainant Exhibit 4-D. Do you have a set that
24 you're marking for me, I hope?

25 ATTORNEY CHROMEY: I have copies of them all,

1 Your Honor, and I'll mark them accordingly.

2 JUDGE: Thank you.

3 BY ATTORNEY CHROMEY:

4 Q. Mr. Moss, there were references to crossings on
5 York Avenue; correct?

6 A. Yes.

7 Q. Is one those crossings in the Borough of Duryea?

8 A. Yes, one is in Duryea Borough.

9 Q. And I'm going to show you a photograph and ask if
10 you can identify that one.

11 A. This is York Avenue crossing. This is the
12 Reading Blue Mountain Northern crossing which is on
13 York Avenue. And this is a very heavy business area
14 in Duryea Borough. We have Shot Glass Technologies
15 to the right and Shot Glass Technologies to the left.
16 As you look at this picture, you're looking towards
17 Avoca which would be west and the crossing is in very
18 deplorable condition which goes into Shot Optical's
19 building. And it is a State road.

20 Q. Did you have complaints about this?

21 A. Yes, we did.

22 ATTORNEY CHROMEY: I'd ask that that
23 photograph be marked, Your Honor.

24 JUDGE: For purposes of identification, it
25 will be marked as Complainant's Exhibit 5-A.

1 BY ATTORNEY CHROMEY:

2 Q. Mr. Moss, would you identify that one?

3 A. This is the railroad crossing at York Avenue and
4 this is looking east towards Duryea. Again, I see
5 Shot Optical in the picture here, Shot Glass
6 Technologies which is a heavy business area with
7 tractor-trailers and pedestrians crossing. When they
8 go for lunch, they walk across there. And did we did
9 have several complaints on the crossing deteriorated
10 away.

11 ATTORNEY CHROMEY: I'd ask that this
12 photograph be marked, Your Honor.

13 JUDGE: As Complainant's Exhibit 5-B for
14 purposes of identification.

15 BY ATTORNEY CHROMEY:

16 Q. Mr. Moss, I have two more photographs of that
17 particular crossing. Would you identify this one,
18 please.

19 A. This one here is looking south towards Pittston
20 of the York Avenue crossing of the Reading Blue
21 Mountain Northern railroad. And again, you can see
22 the that the crossing is in very deplorable
23 condition, the macadam is falling apart and there's a
24 lot of pedestrian traffic on it.

25 Q. Thank you. I'd ask that this photograph be

1 marked for identification.

2 JUDGE: As Complainant Exhibit 5-C?

3 A. There is another photograph of the York Avenue
4 crossing and this is looking north towards Old Forge
5 which the rail goes into Shot Glass Technologies.
6 And as you can see in the picture, there is large
7 potholes in the picture here. And there's heavy
8 pedestrian traffic along with the business district.

9 ATTORNEY CHROMEY: I'd ask that that one be
10 marked as well, Your Honor.

11 JUDGE: For purposes of identification as
12 Complainant Exhibit 5-D.

13 ATTORNEY CHROMEY: Your Honor, at this point
14 I'd like to introduce testimony and exhibits
15 concerning Stevenson Street and Hill Street. I don't
16 believe those two were listed in the original
17 complaint. Will the court entertain that testimony?

18 JUDGE: Are there other ones that are part of
19 the complaint? Can you just save those, perhaps,
20 until the end?

21 ATTORNEY CHROMEY: I think I covered the five
22 that were part of the complaint.

23 JUDGE: Well, then let's put that in.

24 ATTORNEY CHROMEY: Thank you, Your Honor.

25 BY ATTORNEY CHROMEY:

1 Q. Mr. Moss, is there a crossing on Stevenson Street
2 in Duryea?

3 A. Yes, there is it.

4 Q. I'll show you a photograph and ask you to
5 identify that for the Court, please?

6 A. Okay. This is a picture of the crossing at
7 Stevenson Street which I stated before this is the
8 same one that goes across Marcy Street. It was a
9 double rail in here. And as you can see, it's in
10 very deplorable condition of the railroad ties and
11 the macadam. And this is also a State road and this
12 is very heavy pedestrians crossing here. There is an
13 old age home, senior citizens high-rise, a post
14 office and churches right in the general area.

15 Q. And did you receive complaints about that?

16 A. Several.

17 ATTORNEY CHROMEY: I'd would like this one
18 marked as an exhibit for the Complainant.

19 JUDGE: Complainant's Exhibit 6-A for purposes
20 of identification.

21 BY ATTORNEY CHROMEY:

22 Q. Would you identify that one for the Court?

23 A. This is the Stevenson Street crossing and this is
24 looking south towards Pittston. And you can see that
25 the railroad ties are in deteriorating condition,

1 along with the material. And you can see in this
2 picture where there was a second crossing in here
3 also at one time. And right to the left you'll see
4 where the senior citizen's center is.

5 ATTORNEY CHROMEY: I'll ask that that
6 photograph be marked as well.

7 JUDGE: As Complainant's Exhibit 6-B for
8 identification purposes.

9 A. This is another picture of the Stevenson Street
10 crossing, it's looking west towards Main Street
11 Duryea. And you can see the railroad ties are
12 deteriorating away, along with the blacktop. Also
13 you can see in this picture there's a pharmacy and a
14 church right here in the corner and it's heavy
15 pedestrian traffic.

16 ATTORNEY CHROMEY: I'd ask that that
17 photograph be marked as well.

18 JUDGE: Complainant's 6-C for identification
19 purposes.

20 BY ATTORNEY CHROMEY:

21 Q. Mr. Moss, would you take a look at that
22 photograph? Would you identify it?

23 A. This is another picture of the Stevenson Street
24 crossing. This is looks west towards Avoca. And
25 this is another picture of the crossing with the

1 deteriorating ties and material, blacktop.

2 ATTORNEY CHROMEY: I'd ask that that
3 photograph be marked as well.

4 JUDGE: As Complainant's 6-D for purposes of
5 identification.

6 BY ATTORNEY CHROMEY:

7 Q. Is there a street in Duryea called Hill Street?

8 A. Yes, there is.

9 Q. And that a Borough road?

10 A. Yes, it is.

11 Q. I'll show you a photograph and ask you to
12 identify this for the Court.

13 A. This is the Hill Street crossing right at Main
14 street and this is looking towards Main Street
15 Duryea. This is the Hill Street crossing, the same
16 one that runs from Stevenson Street, Marcy Street and
17 Hill Street. There used to be a second rail along
18 here and the second rail has been taken out since.
19 And the blacktop is in very deplorable condition
20 along with the railroad ties. And this is very low
21 area for pedestrians. I mean, it's right off of Main
22 Street and it's on a hill.

23 Q. And has the Borough received complaints about
24 this?

25 A. Yes, we have. As a matter of fact, the Borough

1 has filled in potholes on that railroad crossing
2 several times.

3 Q. I see. Do you know how much the Borough spent in
4 that expenditure?

5 A. Approximately \$300 or \$400 at that time.

6 ATTORNEY CHROMEY: I'd like to this to be
7 marked as well.

8 JUDGE: Complainant 7-A.

9 BY ATTORNEY CHROMEY:

10 Q. Mr. Moss, tell us about that one, please.

11 A. It's another picture of railroad crossing at Hill
12 Street. And it is a Borough-owned road. And it is a
13 picture of the crossing with deteriorating material
14 falling apart, the blacktop and the railroad ties.

15 ATTORNEY CHROMEY: I'd would like to have
16 this one marked as well.

17 JUDGE: Complainant 7-B for purposes of
18 identification.

19 ATTORNEY CHROMEY: Thank you, Your Honor.

20 BY ATTORNEY CHROMEY:

21 Q. And Mr. Moss, I have another photograph here,
22 Hill Street. Would you identify that please?

23 A. This is the Hill Street crossing. This is
24 looking south towards Pittston. And this is another
25 picture of the crossing in this picture here. You

1 can see the railroad tie really eaten away. This is
2 like falling apart and a large pothole on the sides
3 of the crossing. And this is a Borough owned road.

4 Q. And we're auto Hill Street; correct?

5 A. Right.

6 ATTORNEY CHROMEY: I'd ask that that be marked
7 as well.

8 JUDGE: For purposes of identification that is
9 Complainant Exhibit 7-C.

10 BY ATTORNEY CHROMEY:

11 Q. Mr. Moss, take a look at that photograph?

12 A. This is another photograph of Hill Street. And
13 this is looking north towards is Old Forge. And in
14 this picture you can see that the railroad crossing
15 ties are all falling apart and eaten away. And also
16 in this picture there is no markings for the railroad
17 here. You can see the boxes falling down and
18 everything. It's a very dangerous crossing.

19 ATTORNEY CHROMEY: I'd ask that that
20 photograph be marked.

21 JUDGE: As Complainant's Exhibit 7-D for
22 purposes of identification.

23 BY ATTORNEY CHROMEY:

24 Q. And the final photograph, do you want to describe
25 that for us, Mr. Moss?

1 A. This is the photograph looking at Hill Street
2 also. This is just the side angle of it, showing the
3 railroad ties and that deterioration away with the
4 big pothole in the blacktop.

5 ATTORNEY CHROMEY: And I'd ask that this
6 photograph be marked as well.

7 JUDGE: Marked for purposes of identification
8 as Complainant Exhibit 7-E.

9 BY ATTORNEY CHROMEY:

10 Q. Mr. Moss, as far as you know, are all the
11 crossings owned by the same railroad?

12 A. Yes.

13 Q. And who do you have identified as owner?

14 A. Reading Blue Mountain Northern Railroad.

15 Q. And on each of those crossings, were complaints
16 made to them or information provided to them about in
17 problem?

18 A. Information was provided to them through the
19 Borough secretary.

20 Q. And do you know if any action was taken?

21 A. There was action take own Phoenix Street, as I
22 stated in my testimony for Phoenix Street crossing,
23 where they replaced the ties and the ties are worked
24 loose right now.

25 Q. Now, besides Phoenix Street, was there any action

1 taken on any of the other six crossings?

2 A. No, there wasn't. Like I stated in my testimony
3 for the Coxton Road crossing, as you can see in the
4 picture, there's a crossing all set up to go in there
5 which has been therein the last two months and
6 nothing has been done with it.

7 Q. In Moss, any other observations you would like to
8 add to the record?

9 A. Just that we fixed to the holes on Coxton Road
10 several times and the Borough did have an agreement
11 with Conrail before Reading Blue Mountain Northern
12 took over that we would have a guy blacktop it and
13 they would reimburse the Borough for the blacktop.
14 We tried to make the same agreement with Reading Blue
15 Mountain Northern and they refused to make the same
16 agreement with the Borough of Duryea.

17 ATTORNEY CHROMEY: I have no further
18 questions.

19 JUDGE: Mr. Chromey, do you have other
20 witnesses other than Mr. Moss?

21 ATTORNEY CHROMEY: No, Mr. Moss is my only
22 witness.

23 JUDGE: You'll have to bear with me then, Mr.
24 Moss. In the Borough's opinion, sir, what should be
25 done to improve the safety of these crossings?

1 A. In the Borough's opinion, Your Honor, the
2 crossing should be taken out and re-done over with
3 new rails and ties. The Borough's suggestion is for
4 the state roads that the crossings are on if we could
5 put the rubber crossings in like they did on
6 McKelpine (phonetic) Street in Avoca just recently
7 and York Avenue just recently which you had in the
8 complaint for D and H, that's what they just did in
9 their crossing.

10 JUDGE: Do you have, sir, information that you
11 can give me as to what the approximate class and
12 volume of the vehicular and pedestrian traffic is
13 crossing daily on the Borough ordained streets?

14 A. On the Borough ordained streets?

15 JUDGE: Yes.

16 A. There is ---.

17 JUDGE: And identify them as you go along.

18 A. On Marcy Street would be the first one. There is
19 a little convenience store there and there is people
20 constantly crossing over the railroad tracks there.

21 JUDGE: When we say constantly, what are we
22 talking about, ten people an hour, 15 people a day?

23 A. I would say about 25 to 50 people a day cross
24 over that railroad tracks.

25 JUDGE: All right. Go ahead, sir.

1 A. And on Hill Street, there's maybe ten people a
2 day there, very little pedestrian traffic on that.
3 And cars, daily there's maybe 75 cars on Hill Street
4 and probably about 200 cars on Marcy Street.

5 JUDGE: And in both of those situations, sir,
6 what's the speed limit through those areas?

7 A. Twenty-five (25) miles an hour.

8 JUDGE: Regarding crossings which you have
9 testified regarding about sir, have there been any
10 accidents involving trains in the past five years at
11 those crossings?

12 A. Not to my knowledge, Your Honor.

13 JUDGE: Trains and motor vehicles?

14 A. No. The only thing that there's been is just
15 tractor-trailers coming over Coxtan Road crossing
16 tearing their landing gear out from underneath the
17 trailer.

18 JUDGE: And there have been no accidents
19 involving just motor vehicles themselves, just two
20 motor vehicles?

21 A. Not to my knowledge, Your Honor. Maybe like a
22 car going over and tearing their tailpipe out or
23 their muffler off.

24 JUDGE: I'm talking about an accident,
25 smacking into somebody else.

1 A. None to my knowledge, Your Honor.

2 JUDGE: You mentioned that you performed some
3 repair work on one of the crossings and that the
4 extent of that was the to fill potholes in the amount
5 of \$300 to \$400; is that correct?

6 A. Yes, Your Honor.

7 JUDGE: Is there anything else that the
8 Borough has done at any of the crossings and repaired
9 anything or maintained anything?

10 A. All we did is, like I said, on Coxton Road, we
11 filled potholes in on the railroad track along with
12 help from PennDOT. They were all down there also
13 which is the State.

14 JUDGE: Okay.

15 A. And Marcy Street crossing.

16 JUDGE: Now, sir, what portion, if any, of
17 construction cost would the Borough be agreeable to
18 pay in order to bring that up to what you want it to
19 be?

20 A. Your Honor, I'm just one person from Council.
21 There's six other Council people and I do not have
22 the authority to say how much that Council is allowed
23 on spend on it.

24 JUDGE: You got a problem. I've got to know
25 that. And I've got to know what portion the Council

1 --- the Borough is prepared to pay towards is any
2 construction work to whatever cost of future
3 maintenance.

4 ATTORNEY CHROMEY: Your Honor, can I confer
5 with my client please?

6 JUDGE: Please.

7 ATTORNEY CHROMEY: If you could step down.

8 JUDGE: Sure.

9 WITNESS AND COUNSEL CONFER

10 ATTORNEY CHROMEY: May I direct questions to
11 the witness?

12 JUDGE: Yes.

13 BY ATTORNEY CHROMEY:

14 Q. Now, Mr. Moss, as far as expenses are concerned
15 for Borough roads, does the Borough have money
16 budgeted for that?

17 A. Not at this point. We have no money budgeted for
18 any repairs to that.

19 Q. To the railroad crossing?

20 A. Right.

21 Q. Do you have money budgeted for other road
22 problems in the Borough?

23 A. Yes, we do.

24 Q. And would you, as a Councilman, be willing to
25 budget money towards a reasonable share of this cost?

1 A. Yes, we would. Once the railroads are fixed, I
2 don't think it would be a problem for Council to
3 maintain the rails the right way that it should be at
4 the point maybe like just fixing the blacktop or
5 anything like that.

6 Q. Do you know if the Borough has made an
7 independent investigation as to what the cost of
8 repairing these crossings would be?

9 A. No, we didn't make an investigation.

10 ATTORNEY CHROMEY: That's all I have, Your
11 Honor.

12 JUDGE: Thank you very much, sir. Mr. Hocky?

13 ATTORNEY HOCKY: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY ATTORNEY HOCKY:

16 Q. Mr. Moss, my name is Eric Hocky. And I represent
17 Reading Blue Mountain and Northern Railroad. I'm
18 correct that all of crossings that you spoke about
19 today are in Duryea Borough?

20 A. Yes, they are, sir.

21 Q. And Duryea is in Luzerne County; is that correct?

22 A. That's correct.

23 Q. On Coxtan Road, I wonder if could you explain a
24 little more about the heavy traffic or the heavy
25 trucks that use that road. Is that the primary use

1 of it?

2 A. Yes, it is. That is the only road that goes into
3 Ransom from the Duryea side which is Pulp and Talbert
4 is up in there which is Plainwell (phonetic) Tissue
5 now is up there. There's a sand and gravel plant
6 which is up further which is the Keystone Sand and
7 Gravel and also closer to Duryea is the Airport Sand
8 and Gravel, that their trucks use it constantly. And
9 sewer authority, Lower Lackawanna Valley Sewer
10 Authority is there right there. They have trucks
11 coming in with containers on them constantly. And
12 the railroad uses it constantly. There's a railroad
13 company down in there called RMDI that fixes trains.
14 And they have tractor-trailers that come in and out
15 of there constantly.

16 Q. And are those businesses that you mentioned all
17 located in Luzerne County?

18 A. Yes. No, there's Plainwell Tissue which is in
19 Lackawanna County and Keystone.

20 Q. And how about, are they in the Borough itself?

21 A. No, they're in Lackawanna County and Ransom
22 Township, the two that I mentioned.

23 Q. And how about Airport Sand and Gravel?

24 A. Airport Sand and Gravel, Lower Lackawanna Valley
25 Sewer Authority and RMDI is in Duryea Borough,

1 Luzerne County.

2 Q. When you talk about --- I think you mentioned
3 that you fixed some potholes at Coxtton Road, although
4 it may have been back when Conrail ---?

5 A. Right.

6 Q. Was that outside the rails or inside the rails'
7 do you remember?

8 A. Right at the approach to the rails and in the
9 middle of the rails.

10 Q. And the potholes you filled at Hill Street, were
11 those outside the rails or within the rails?

12 A. Both inside the rails and then that was at Marcy
13 Street, sir.

14 Q. And do you have a copy of the agreement with
15 Conrail that you had? Do you have had with you
16 today?

17 A. No, I don't have that with me today.

18 Q. Can you explain what was in that agreement? Was
19 it simply on that crossing or was it a broad
20 agreement between the Borough and ---?

21 A. It was a verbal agreement between the secretary
22 and Conrail which she called Conrail up and they
23 says, any repairs they have do with blacktop, just
24 make the repairs, send the bill to us and we will
25 reimburse the Borough the money.

1 Q. So there was nothing formal written?

2 A. No, there wasn't.

3 JUDGE: Get it in writing.

4 BY ATTORNEY HOCKY:

5 Q. Are there sidewalks at any of these crossings?

6 A. Yes, there are sidewalks at the Stevenson Street
7 crossing, which I mentioned that the senior citizen's
8 home is there. There's a handrail also there on the
9 left-hand side.

10 Q. Yes.

11 ATTORNEY HOCKY: Your Honor, can I ask him to
12 look at Exhibit --- I can't see any sidewalks or
13 handrails on my copies. Can I take a 6-A, B, C and
14 D?

15 JUDGE: Sure. Could the Court Reporter please
16 provide the actual photograph is 6-A, B, C and D?

17 ATTORNEY HOCKY: Maybe I should clarify my
18 question.

19 BY ATTORNEY HOCKY:

20 Q. Look at either 6-A, B, C or D. When you way
21 there's sidewalks, at the crossings themselves?

22 A. Yes, there is. If you can see at this photograph
23 of 6-C, Stevenson Street, right there is the sidewalk
24 with the rail that goes right alongside the building.
25 Here's a better picture.

1 JUDGE: Would you speak up, sir, so the Court
2 Reporter can hear you?

3 A. This is another picture of Stevenson Street where
4 the sidewalk comes up over the tracks. And on this
5 other picture, this is the other side of Stevenson
6 street looking towards is Old Forge, there's sidewalk
7 going down the other side.

8 BY ATTORNEY HOCKY:

9 Q. And if we look at Exhibit 6-B at the sidewalk in
10 particular which I think is at the far sides of the
11 ---?

12 A. It's on both sides. Yeah, it's on the far side
13 of the road but both sides of the tracks.

14 Q. Right. Is the deterioration worse outside the
15 timbers? It appears to be worse on the left-hand
16 side of the picture outside of the timbers?

17 A. Yeah, that's where the second rail came through.

18 Q. And the second rail at all these crossing is no
19 longer there; is that correct?

20 A. The rail not there but I don't know if the ties,
21 the timbers are still underneath the roadway or not.

22 JUDGE: One second.

23 OFF RECORD DISCUSSION.

24 JUDGE: Go ahead, Mr. Hocky.

25 BY ATTORNEY HOCKY:

1 Q. At Foote Avenue, you talked again about
2 tractor-trailer traffic from a local business?

3 A. Uh-huh (yes).

4 Q. What business is that?

5 A. TP Corporation.

6 Q. And that's located within the Borough?

7 A. Borough of Duryea, County of Luzerne.

8 Q. And Phoenix Street, I believe you testified that
9 much of the highway traffic is headed to shopping
10 center?

11 A. Yes.

12 Q. And is the shopping center in the Borough?

13 A. Shopping center is in the Borough of Duryea,
14 County of Luzerne.

15 Q. Is that mostly local residents using that road?

16 A. Local residents using the road and they come from
17 Avoca and Pittston.

18 Q. And York Avenue, Shot Glass Technologies; is that
19 correct?

20 A. Yes.

21 Q. Is that industry located in the borough?

22 A. Yes, it's located in Duryea Borough and Luzerne
23 County.

24 ATTORNEY HOCKY: I think that's all I have for
25 now.

1 JUDGE: Thank you very much, sir. Mr. Sharp?

2 ATTORNEY SHARP: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY ATTORNEY SHARP:

5 Q. Mr. Moss, I just have a couple of questions. In
6 regard to Foote Avenue, you had said during your
7 Direct Examination that the crossing is in the
8 deplorable condition, that there's some sagging?

9 A. Uh-huh (yes).

10 Q. Were you referring to the rails and ties?

11 A. Yes.

12 Q. You weren't referring to the an approach
13 roadways?

14 A. No.

15 Q. And I think you may have clarified this. But in
16 regard to Phoenix Street, you said someone did tie
17 work that has now failed; is that correct?

18 A. Yes.

19 Q. Who did that work?

20 A. Reading Blue Mountain Northern.

21 Q. In regards to Coxton Street, and you may have
22 answered this for Mr. Hocky, you discussed a number
23 of businesses that utilized the Coxton Street
24 crossing?

25 A. Coxton Road.

1 Q. Coxtton Road, I'm sorry. Where are those
2 businesses located?

3 A. Most of them are located in Duryea Borough. The
4 two others that I mentioned which was Plainwell
5 Tissue and Keystone Sand and Gravel is located in
6 Ransom Township, Lackawanna County.

7 Q. Okay. So that's Lackawanna County. In general,
8 and if you could confine your answer on this question
9 on the state highways that you've testified about,
10 what would you say is the general condition of the
11 approach roadways coming up to the crossings?

12 A. In general, the approaches are in halfway decent
13 shape. Some of them are in bad shape. Coxtton Road
14 is rough coming into the approach of the rail on
15 Coxtton Road. Foote Avenue is not bad. Phoenix
16 Street is just a little bit wavy. You know, it's not
17 that bad there. And Stevenson Street is pretty good.

18 ATTORNEY SHARP: May I approach, Your Honor?

19 JUDGE: Surely.

20 BY ATTORNEY SHARP:

21 Q. I'd like to you take a look at what is marked
22 previous previously as Borough Photograph 6-B. This
23 is Stevenson Street?

24 A. Yes.

25 Q. Can you identify what's shown on that the

1 photograph in the left-hand side, what appears to be
2 a three or four-inch pavement cut that is to the left
3 of the outermost rail there?

4 A. Right. That is where the second rail used to
5 come through on the Reading Blue Mountain Northern
6 Railroad.

7 Q. Do you know if that specific little piece of
8 paving, do you know if that is a utility trench?

9 A. That I couldn't tell you.

10 Q. Okay.

11 A. I don't think it is going through there. Like I
12 said, that's where the second rail did come through.

13 Q. And that second line has been completely ripped
14 out?

15 A. Right.

16 JUDGE: Was that the one that went to New York
17 City for the casinos?

18 A. No, this one goes up into Taylor.

19 OFF RECORD DISCUSSION

20 BY ATTORNEY SHARP:

21 Q. Mr. Moss, if Reading Blue Mountain were to
22 perform routine maintenance to the crossing areas,
23 and when I say crossing I'm referring to the area
24 from the rails and the ties, the inner ties, outer
25 ties and the paving between the rails, would that

1 satisfy the Borough's complaint?

2 A. It would satisfy the Borough's complaint about 90
3 percent. Like I said, there is that ten percent of
4 the approaches to the railroad crossings.

5 Q. And is the Borough willing to do approach work on
6 Borough roads?

7 A. To my knowledge, yes, we're willing to do some
8 maintenance to it.

9 ATTORNEY SHARP: That's all I have, Your
10 Honor.

11 JUDGE: Thank you very much. Mr. Salapa?

12 ATTORNEY SALAPA: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY ATTORNEY SALAPA:

15 Q. With regard to Coxtton Road, are you aware of
16 whether that road had a name or the area around that
17 road had a name of Everhart?

18 A. Never heard of it.

19 Q. When you've referred in your testimony to ties at
20 the various crossings being loose, are you referring
21 to the timbers that run parallel to the rails?

22 A. Yes.

23 Q. And they're both on the inside and outside of the
24 rails?

25 A. Uh-huh (yes).

1 Q. They're not the tie is that run across and
2 connect the rails?

3 A. No.

4 Q. All right. Thank you. With regard to the York
5 Street crossing ---?

6 A. York Avenue.

7 Q. York Avenue, excuse me. Do you know did that
8 line service what formerly was known as the Tops
9 Bubble Gum or Tops Gum Factory?

10 A. Tops Chewing Gum.

11 Q. Yes. Is that factory still open?

12 A. Tops Chewing Gum sold out to Shot Glass
13 Technologies. They bought the building of Tops
14 Chewing Gum.

15 Q. So there is still a business using that ---?

16 A. Yes, there is.

17 Q. Do you know from your own personal observations,
18 has this crossing at York Avenue received any rail
19 traffic within the last year or two?

20 A. I haven't seen any rail cars go in there within
21 the last two years. I don't know if they still ship
22 out of there because I know Kane Warehouse is renting
23 part that have space out for Shot Glass Technologies.
24 They have a trucking firm there. But I don't know if
25 they have any material that goes in and out by rail.

1 Like I said, I haven't seen any rail cars there
2 within the last two years.

3 Q. And previous to that, did the Tops Factory
4 receive rail traffic to the best of your knowledge?

5 A. Yes, they did.

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

8 JUDGE: Because there was further Direct
9 testimony raised by Counsel concerning the railroad,
10 I'm going to allow Mr. Hocky, if you wish to ask a
11 few questions on those particular items that were
12 raised about the railroad, if you want, I mean, you
13 don't have to.

14 ATTORNEY HOCKY: No, Your Honor, I'm fine.
15 Thank you.

16 JUDGE: Redirect, Counsel?

17 ATTORNEY CHROMEY: No questions, Your Honor.

18 JUDGE: Thank you, sir. You're excused. We
19 appreciate your testimony. Do you wish to move your
20 exhibits, sir?

21 ATTORNEY CHROMEY: Yes, Your Honor. I move
22 for admission into the record of all my photographs
23 and exhibits.

24 JUDGE: That which has been previously marked
25 as Complainant Exhibit One through Seven, A through

1 whatever the series are, they are received into the
2 evidentiary record without objection. Thank you very
3 much. We will then --- I'm going to now break for
4 lunch. And I explained -- you weren't in the room
5 when explained to Counsel why that had to take place.

6 And we will return and at that time we will begin
7 with PennDOT and its witness. And I understand, sir,
8 that you have the direct testimony and pre-marked
9 exhibits. Now might be a good time to distribute
10 that so Counsel would have an opportunity to take a
11 look at it, if they wish, while they're eating their
12 lunch.

13 ATTORNEY SHARP: Yes, Your Honor.

14 JUDGE: We'll stand in recess until 1:30.

15 LUNCH RECESS TAKEN

16 JUDGE: I'd like you all to know that Judge
17 Lovenwirth's daughter-in-law's had a baby. It's a
18 baby girl. Mother and daughter are doing fine. And
19 we wish him, her and everybody well.

20 OFF RECORD DISCUSSION

21 JUDGE: Prior to the lunch hour we finished
22 with the Direct case and Cross Examination of the
23 Borough and were to begin to the Department of
24 Transportation. During the lunch hour, the written
25 testimony of the Department of Transportation and the

1 prepared testimony on behalf of Reading Blue Mountain
2 and Northern Railroads has been distributed to the
3 parties. I would, at this time, ask Mr. Sharp,
4 please call your first witness.

5 ATTORNEY SHARP: Yes, Your Honor. I'd like to
6 call Joseph Strok.

7 JOSEPH STROK, CALLED AND SWORN TO TESTIFY

8 JUDGE: Please be seated. Could you state
9 your name for record, sir.

10 A. Joseph Strok.

11 JUDGE: Go ahead.

12 ATTORNEY SHARP: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY ATTORNEY SHARP:

15 Q. Mr. Strok, are you familiar with Department
16 Statement Number One which has been presented to the
17 parties and the Court in this case, the statement you
18 have in front of you?

19 A. Yes.

20 Q. Was Department Statement Number One prepared an
21 and at your direction and control?

22 A. Yes, it was.

23 Q. Excluding some questions I have for you regarding
24 both your York Avenue crossings in this proceeding,
25 do you have any additions, corrections or deletions

1 to your testimony?

2 A. No, I do not.

3 Q. Do you adopt Department Statement Number One as
4 your testimony today?

5 A. Yes, I do.

6 ATTORNEY SHARP: Your Honor, at this time, I
7 would ask that Department Statement One be adopted
8 into record subject to Cross Examination, would waive
9 a reading upon stipulation of the parties.

10 JUDGE: That which has been previously marked
11 as Department Statement Number One with the attendant
12 exhibits thereto will be admitted into the
13 evidentiary record subject to Cross Examination. And
14 Mr. Chromey? I'm sorry, you have you said a few
15 other questions.

16 ATTORNEY SHARP: I just have a few I want to
17 clarify, the York Avenue crossing questions and just
18 one or two questions Department's adoption of
19 maintenance in this case.

20 JUDGE: Go ahead.

21 BY ATTORNEY SHARP:

22 Q. Mr. Strok, could you please describe the York
23 Avenue crossing at --- with Delaware and Hudson
24 Railway Company in Luzerne County,
25 Luzerne/Susquehanna Rail Authority, what work has

1 recently been done there?

2 A. There was an application filed with the Public
3 Utility Commission to install high-type rubber
4 surface crossings. There's a two-track crossing with
5 the Delaware and Hudson Railroad and a one-track
6 crossing with the Luzerne/Susquehanna Railway Company.
7 That work was just recently completed last week.

8 Q. And you stated a PUC application was filed?

9 A. Yes, it has.

10 Q. Do you happen to know that off the top of head
11 what number that is?

12 A. Not off the top of my head.

13 ATTORNEY SHARP: Your Honor, may I approach?

14 JUDGE: Yes, please.

15 ATTORNEY SHARP: And if I could have this
16 marked as Department Exhibit F.

17 JUDGE: So marked of identification.

18 BY ATTORNEY SHARP:

19 Q. Mr. Strok, can you please describe the three
20 photographs that have been marked as Department
21 Exhibit F, please?

22 A. The top photograph say overall view of the newly
23 installed rubber crossings. The two closest tracks
24 are tracks owned by the Delaware and Hudson Railway
25 company. The farthest track in the background is

1 owned by the Luzerne/Susquehanna Railway Company.

2 Q. And could you just describe the other two other
3 pictures that are attached there?

4 A. This is the approach looking west of the crossing
5 after the work is done. And the Department also
6 installed --- Department forces installed new
7 pavement markings at the crossing. And the last
8 picture is the approach from the other side with the
9 new pavement markings. The application also included
10 future installation of lights and gates.

11 Q. Mr. Strok, who took these photographs?

12 A. I did.

13 Q. Did these photograph is accurately depict the
14 conditions at the crossing?

15 A. Yes, it does.

16 Q. In your opinion, is this crossing surface now
17 adequately safe for vehicular traffic?

18 A. Yes, sir.

19 Q. And rail traffic as well?

20 A. Yes, sir.

21 Q. Now, if I could turn your attention to the York
22 Avenue crossing that carries the Reading Blue
23 Mountain and Northern Railroad line, which has also
24 been referred to, I think, the tops crossing?

25 A. Okay.

1 Q. Does the Department have any opinion as to what
2 should be done at that crossing?

3 A. We would like the crossing suspended and the ties
4 and rail removed.

5 Q. Would the Department be willing to participate in
6 removal in any way, shape or form?

7 A. It's been our district policy that we would pay
8 50 percent of the cost associated with removal and
9 replacement of the pavement.

10 Q. And is there a cap on that 50 percent
11 participation?

12 A. No.

13 Q. And what type of money would that ---?

14 A. That would come right out of the County's general
15 fund.

16 Q. In the Department's opinion, who would be
17 responsible for the other 50 percent, if that were to
18 be offered?

19 A. The railroad.

20 ATTORNEY SHARP: I just have a few other
21 questions, Your Honor.

22 BY ATTORNEY SHARP:

23 Q. Does the Department agree to abide by --- bear
24 the cost and do the work that the PUC orders in this
25 case?

1 A. Yes, sir.

2 Q. What is the Department volunteering to do as far
3 as the state highway crossings involved in this
4 matter?

5 A. The Department is willing to maintain the roadway
6 approaches up to within two feet of the rail. That
7 includes the basic inch and a half or one-inch
8 overlays on an eight to ten-year cycle. And as far
9 as the Coxtan Road and specific, same thing there, we
10 probably need to put a little base course in or a
11 little deeper restoration. But we're willing to go
12 within two feet of the head of the rail and do
13 pavement restoration.

14 Q. Mr. Strok, this is just a question based on the
15 testimony of the Borough. The Borough had indicated
16 they'd like to see rubber high type surfaces at
17 either crossings. Do any of these roadways warrant a
18 high type surface?

19 A. Currently, none of them are on our Section 130
20 list or have ever been asked to be put the Section
21 130 list by any municipal authority or any railroad.

22 Q. Do any of these roads have a significantly high
23 AVT that would warrant a high type surface of any
24 material?

25 A. No, not normally.

1 ATTORNEY SHARP: That's all I have, Your
2 Honor, for Mr. Strok.

3 BY ATTORNEY SHARP:

4 Q. Unless you have anything to add to the crossings,
5 any additions or corrections?

6 A. No.

7 ATTORNEY SHARP: That's all I have for Mr.
8 Strok. I would just ask to move the Department
9 Exhibit F into the record, assuming that the original
10 Exhibits One and A through E were moved in with
11 Statement Number One.

12 JUDGE: That was marked and identified in
13 addition to the earlier exhibits. Department Exhibit
14 F will be received into the evidentiary record,
15 subject to Cross Examination and/or objections.
16 Prior to having Cross Examination, for the record,
17 Mr. Strok, would you tell us --- we're talking about
18 high type rubberized crossings. You mentioned
19 Section 130. For the record, could you explain that,
20 sir?

21 A. That a federal money program given to the state
22 to install safety devices which can include new
23 rubber surfaces and lights and gates.

24 JUDGE: Now, that does not exclude other types
25 of materials for the crossings or is it specifically

1 limited to rubberized crossings?

2 A. It's limited to rubber or full-depth concrete.

3 JUDGE: Now, your Counsel asked you about the
4 high AVT. Is there a specific bottom limit on the
5 daily vehicular traffic while we're talking about
6 rubberized --- there's no bottom level AVT. However,
7 to administer the limited amount of funds the
8 district gets, we try on make the biggest impact the
9 higher AVT. That's not to a that lower AVT roadways
10 do not get high type surfaces.

11 JUDGE: All right. Can you give me, for my
12 understanding, what the Department considers the
13 parameters, okay, vehicular traffic, population,
14 whatever that you consider parameters for installing
15 a high rubberized crossing?

16 A. We'll look at like things like the approach
17 grades of the roadways, both entering and leaving the
18 crossing. Sometimes we can make improvements such as
19 we did at York. That was one of the primary reasons
20 why we did this York Avenue crossing. We ended up
21 raising the one set of tracks over seven inches
22 because the approaches had severe grades to them. We
23 look at existing conditions. If we've got an
24 existing condition that we know is bad and it
25 continues to be bad and it's more of a --- due to the

1 number of trains, assist in the deteriorating the
2 surface, the number of vehicles assist in
3 deteriorating the services. We look at safety as far
4 as --- like I said, it's mostly grade problems and
5 the number of vehicle, the proximity to
6 intersections. There's a list that comes out from
7 our central office unit that we specifically look at
8 that lists probabilities. And we look at the --- we
9 should be noting our highest probability accident
10 locations off of that list. That's a main priority.
11 We look at all of those.

12 JUDGE: Sir, your Section 130 funds are
13 allocated on the bases of approach grades, existing
14 conditions which include the number of trains at the
15 crossing, the number of the vehicles at the crossing,
16 the safety factors, the proximity to the crossing and
17 a list that you have for the probability of accidents
18 at the crossing?

19 A. Yes, sir.

20 JUDGE: Is there anything else, sir, that you
21 can think of?

22 A. Just to reiterate, Section 130 money is also used
23 for lights and gates. So a lot of our money --- we
24 don't tend to spend a lot at the --- try not to spend
25 a lot of it for surface but a lot more towards light

1 and gates.

2 JUDGE: I know they weren't happy when I
3 insisted that lights and gates go up at the Wal-Mart.
4 I wanted to sleep at night. So anything else, sir?

5 A. No.

6 JUDGE: Okay. Cross examine, Mr. Chromey?

7 ATTORNEY CHROMEY: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY ATTORNEY CHROMEY:

10 Q. Mr. Strok, is it?

11 A. Yes.

12 Q. This exhibit that was offered which depicts York
13 Avenue; correct?

14 A. Yes.

15 Q. Can we agree that's the York Avenue crossing in
16 the Borough of Avoca?

17 JUDGE: Are we talking about Exhibit F?

18 ATTORNEY CHROMEY: Yes, sir.

19 JUDGE: Actually, the borough line for Avoca
20 and Duryea runs right down the middle of the road
21 through that area.

22 ATTORNEY CHROMEY: I see.

23 BY ATTORNEY CHROMEY:

24 Q. Now, this repair maintenance that was done to
25 this it crossing, is that the high type rubberized

1 surface you're talking about?

2 A. That's a high type rubberized surface, yes.

3 Q. What were the conditions that warranted the
4 remedial action in this location?

5 A. The biggest problem there was the difference in
6 elevation between the two D and H tracks and third
7 Luzerne/Susquehanna tracks and the approach of the
8 roadway grades. Nothing lined up very well and just
9 a poor situation. And that crossing was on the
10 safety list for over four years before ---.

11 JUDGE: So you have three sets of tracks here
12 that we're looking at?

13 A. Yes, sir.

14 BY ATTORNEY CHROMEY:

15 Q. Did the amount of vehicular traffic play a role
16 in this decision?

17 A. Not in that one specifically, no.

18 Q. Could we agree that this crossing would have
19 approximately the same amount of traffic as the York
20 Avenue crossing that's wholly within Duryea?

21 A. I don't believe there's any major intersections
22 between the two. One other --- let me add one other
23 contributing factor this being done was that D and H
24 line has now become the main line and they've had a
25 significant increase in the number of trains and the

1 size of the trains and the speed of the trains within
2 the last year and that was another reason why it was
3 important to get it in there.

4 Q. Is this line the same line that crosses Foote
5 Avenue in Duryea?

6 A. Yes, I believe it is.

7 Q. So wouldn't the Foote Avenue crossing then
8 warrant the same type of remedial action?

9 A. We would like to improve Foote Avenue. But the
10 reason that that has been is because there's no big
11 difference in the elevation. The only two tracks
12 there --- roadway approaches are not designed as we'd
13 love them to be because it's an old area. But a high
14 type surface really wouldn't help the situation
15 there. You know, I mean, it would smooth out the
16 ride. But there's no other safety benefit.

17 Q. Not to go over each one individually, but
18 obviously you were here for the testimony of Mr.
19 Moss; correct?

20 A. Yes.

21 Q. Do you disagree with any of testimony as far as
22 any of the crossings needing any some sort of repair
23 at least?

24 A. No, I do not disagree.

25 ATTORNEY CHROMEY: I have no further

1 questions, Your Honor.

2 JUDGE: Mr. Hocky?

3 CROSS EXAMINATION

4 BY ATTORNEY HOCKY:

5 Q. Before we get off the subject, when you say it's
6 the same line that goes through the Foote Avenue
7 crossing, your Exhibit F, am I correct, is the D and
8 H line?

9 A. The first ---.

10 Q. Now, the D and H main line, those first ones?

11 A. The first track would be the D and H main line,
12 the second track is a D and H siding line and third
13 track a Luzerne/Susquehanna line.

14 Q. Now, at Foote Avenue we're talking about RBMN
15 line, not the D and H line?

16 A. Yes.

17 Q. So that at Foote Avenue, the crossing we're
18 talking about in this hearing ---- I don't know if D
19 and H crosses ----?

20 A. Yes. I'm sorry, yes.

21 Q. Again, on the York Avenue, did you have Section
22 130 funds for Exhibit F?

23 A. Yes.

24 Q. And are there any Section 130 monies for any of
25 the other crossings in this hearing?

1 A. None of them are scheduled at this time, no.

2 Q. And when you use Section 130 monies, what's the
3 railroad's share of the cost?

4 A. If it's on a State-owned roadway, there's no cost
5 to the railroad. If it is on a locally-owned roadway
6 other than the state, there's a \$5,000 cost for
7 engineering that has to be borne by somebody else.

8 We don't dictate who that is. It can be either borne
9 by the railroad or the by the local municipality.

10 And the actual construction of the crossing is no
11 cost to the railroad.

12 Q. As far as you know, are all of these crossings
13 currently safe for railroad operations?

14 A. I don't know. I couldn't answer that.

15 JUDGE: There was an on-line inspection wasn't
16 there?

17 A. Yes, but I couldn't testify to railroad
18 operations. I look more from a vehicular, public
19 operational standpoint.

20 JUDGE: All right.

21 BY ATTORNEY HOCKY:

22 Q. The York Avenue crossing that's the RBMN York
23 Avenue crossing, that goes into a facility right next
24 to the railroad, what's been referred to as Tops?

25 A. Tops Chewing Gum Factory, yes.

1 Q. Do you know if that's currently owned by an
2 industrial authority?

3 A. As far as I know, I believe the testimony is
4 correct that Shot Optical now is the owner, to my
5 understanding.

6 Q. Do you know if that particular track is owned by
7 the railroad or by the owner of the industry up
8 there?

9 A. No, I do not.

10 Q. There was some testimony this morning about some
11 of the crossings previously having had a second
12 track, rail track through the roadway; do you
13 remember that?

14 A. Was I alive then? From what I understand, there
15 was.

16 Q. Do you know when those tracks were removed?

17 A. No, I do not.

18 ATTORNEY HOCKY: That's all I have, Your
19 Honor.

20 JUDGE: Mr. Salapa?

21 ATTORNEY SALAPA: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY ATTORNEY SALAPA:

24 Q. Mr. Strok, with regards to Coxtton Road, are you
25 familiar whether that roadway was ever called

1 Everhart or Everhart's Road?

2 A. No. I'm not familiar with that.

3 Q. And you don't know whether or not that was ever
4 previously known as State Highway Route 35011?

5 A. No, I'm not familiar with that system.

6 Q. With regard to the York Avenue crossing where the
7 Tops factory is, do you know personally how long it's
8 been since rail traffic moved over that crossing?

9 A. I was there a week or so ago and I just took a
10 quick glance at it and I did not see a flangeway
11 (phonetic) cut in the pavement there. So I'm
12 assuming since the last time any blacktop was placed
13 there. And I can't ever remember a train going over
14 there since Tops has moved out.

15 Q. When approximately did Tops move out?

16 A. That has to be six or seven years ago, I would
17 say, at least.

18 Q. And is that the reason why the Department is now
19 advocating removing the crossing?

20 A. The Department, we like to get rid of crossings
21 if they're not being used. They become a nuisance to
22 both the motoring public and the maintenance of the
23 roadway.

24 Q. And if that crossing were suspended and the
25 facilities removed, would that also entail removing

1 any kind of cross warning signs or railroad advance
2 warning sign warning signs?

3 A. If the rails are taken out, yes, we would remove
4 them.

5 Q. And would the Department do that?

6 A. Yes, sir.

7 ATTORNEY SALAPA: That's all that I have, Your
8 Honor.

9 JUDGE: Redirect, Counsel?

10 ATTORNEY SHARP: Just a few, Your Honor. I
11 think Mr. Hocky cleared up the question but I just
12 want it make sure.

13 BY ATTORNEY SHARP:

14 Q. The York Avenue line of Delaware and Hudson is
15 not the same line running through Foote Avenue; is
16 that correct?

17 A. Correct.

18 Q. In the York Avenue line that's the Delaware and
19 Hudson line, you said that's the main line. Who is
20 that the main line for?

21 A. Delaware and Hudson but they ---.

22 Q. Go ahead.

23 A. They carry primarily a lot of Norfolk Southern
24 freight since the merger.

25 Q. Who else operates on that line, if you know?

1 A. As far as I know, I think that's the only two.

2 Q. Does Norfolk Southern have operating rights on
3 that line?

4 A. I don't know for a fact.

5 ATTORNEY SHARP: Your Honor that's all I have.

6 JUDGE: Thank you, sir. Mr. Hocky, do you
7 wish to present a witness? You're excused, sir. And
8 that which was marked and identified previously as
9 Department Statement Number One together with the
10 attendant exhibits and later introduced as Exhibit F
11 are received into the evidentiary record without
12 objection. Mr. Hocky?

13 ATTORNEY HOCKY: Yes. I'd like to call Andrew
14 Muller.

15 JUDGE: Mr. Muller, would you raise your right
16 hand to be sworn, sir?

17 ANDREW MULLER, CALLED AND SWORN TO TESTIFY

18 JUDGE: Would you please state your full name
19 for the record?

20 A. My name is Andy Muller, M-U-L-L-E-R, Jr.

21 JUDGE: Go ahead, sir.

22 DIRECT EXAMINATION

23 BY ATTORNEY HOCKY:

24 Q. Mr. Muller, I'm going give you a copy of
25 something called prepared testimony of Andrew Muller

1 and ask you to take a look at it.

2 ATTORNEY HOCKY: I'll give two copies to the
3 Court Reporter and I believe everybody else has it.

4 JUDGE: Can we mark it for purposes of
5 identification as Railroad Statement Number One?

6 BY ATTORNEY HOCKY:

7 Q. First, would you state your name and business
8 address for the record?

9 A. My name or the railroad's name?

10 Q. Yours.

11 A. My name is Andy Muller and our business address
12 is Port Clinton, Pennsylvania.

13 Q. And what your title with the railroad?

14 A. President. I own it.

15 Q. And you're authorized to speak on behalf of the
16 railroad today?

17 A. Yes.

18 Q. Have you taken a look at the statement that we
19 handed you?

20 A. (Indicates yes).

21 Q. Is that your signature at the end?

22 A. Yes.

23 Q. And do you adopt, subject to the other questions
24 that we ask you today, do you have adopt these
25 statements an as your testimony today?

1 A. Yes, I do.

2 ATTORNEY HOCKY: Your Honor, if nobody
3 objects, we would waive reading of this into the
4 record and just proceed.

5 JUDGE: Sure. Subject to objections and/or
6 motion, pending Cross Examination, that which has
7 been marked as the Railroad's Statement Number One
8 will be received into the evidentiary record as
9 noted.

10 BY ATTORNEY HOCKY:

11 Q. The rail lines that are involved in these
12 crossings, when did Reading Blue Mountain purchase
13 those lines?

14 A. We purchased them from Conrail in August of 1996.

15 Q. And with respect specifically to the York Road
16 crossing into Tops, do you, at this time, know
17 whether that track there was part of what you
18 purchased from Conrail?

19 A. Okay. Because I think we maybe mistakenly
20 assumed that York Avenue was D and H track, I didn't
21 do my homework on that. I don't think I bought that.

22 I think that belongs to the industrial authority up
23 there. I don't think the railroad bought that track.
24 But I can't swear to it. We're going to check on
25 that because I just wasn't prepared. But I don't

1 think we own that.

2 Q. And there was some discussion earlier today about
3 second tracks at some of the crossings having been
4 removed. Did Reading Blue Mountain remove any of
5 these tracks at any of these crossings?

6 A. No, they were already moved when he purchased the
7 property.

8 Q. How many at-grade crossings are at Reading Blue
9 Mountain these days approximately?

10 A. It was lot more than an 100. I don't know how
11 many, but 100 or more.

12 Q. In your opinion, are the crossings that are the
13 subject to the hearing today all safe for rail
14 operation?

15 A. Absolutely. They're safe for rail operation,
16 yes.

17 Q. I would like you to turn to question 20 and your
18 answer which is on page six of your statement?

19 A. Okay.

20 Q. And in that it says that Reading Blue Mountain
21 would not agree to bear any of the costs of any of
22 the repairs; is that correct?

23 A. Yes.

24 Q. At this time, does Reading Blue Mountain wish to
25 modify that answer?

1 A. Yes, we would be willing to modify that.

2 Q. If it is determined that the entire panel of the
3 crossing needs to be replaced, how would Reading Blue
4 Mountain suggest that the costs be allocated?

5 A. We suggest they be allocated in a fair and
6 reasonable way. And what we would like to see is we
7 would like to see the somebody pay for the detour.
8 And we would come in and tear the road out, rebuild
9 the whole crossing, including the flangeways. We'd
10 probably use steel instead of timber on most of
11 these. And then we provide flagmen free of charge
12 that the local municipality or county or State could
13 come in and pave right over the railroad.

14 ATTORNEY HOCKY: Nothing further, Your Honor.

15 JUDGE: Thank you very much. Mr. Chromey?

16 ATTORNEY CHROMEY: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY ATTORNEY CHROMEY:

19 Q. Mr. Muller, you indicated you purchased the
20 railroad in 1996; is that correct?

21 A. August of '96, yes.

22 Q. Since August of 1996, have you had any
23 communication from the Borough of Duryea concerning
24 complaints about these crossings?

25 A. Man, I'll tell you, we've got hundreds of

1 complaints over dozens of years. I mean, all of the
2 crossings were bad when we bought the railroad so
3 it's possible. Me personally, I don't generally get
4 involved with this.

5 Q. So you don't have personal knowledge of specific
6 complaints from the Borough of Duryea but you know
7 there have been complaints about other crossing?

8 A. Sure.

9 Q. Did you just say that all crossings were in bad
10 state of repair?

11 A. No. What I said many crossings, when we
12 purchased it, were in bad state of repair. And we've
13 done many crossings since then.

14 Q. Now, let's consider these individually. Have you
15 ever visited the Coxtton crossing yourself?

16 A. Yes.

17 Q. Has your company expended any money on that
18 particular crossing as far as repairs are concerned?

19 A. On that particular crossing, we've done a few
20 little things to it. I don't specifically what but
21 haven't torn the whole thing out and redone it.

22 Q. You know that for certain or you think that you
23 did some small things?

24 A. I know pretty sure we did some small little
25 things.

1 Q. Can we agree it's still in need of some repairs?

2 A. Are you referring to highway or railroad?

3 Q. Railroad.

4 A. In my opinion, no, we don't need to do anything
5 to the railroad track.

6 Q. How about the highway?

7 A. I'm not really qualified to answer that. I have
8 four-wheel drive. I get over it.

9 Q. How about the Foote Avenue crossing, have you
10 personally visited that one?

11 A. Yes.

12 Q. Has any repairs been made since 1996?

13 A. Probably not.

14 Q. Can we agree that one is in need of repair, as
15 far as the railroad is concerned?

16 A. From the railroad point of view, definitely not.

17 Q. Now, as far as Phoenix Street, did you personally
18 visit that one?

19 A. Yes.

20 Q. And has any money been expended on repairs on
21 Phoenix Street?

22 A. I don't know.

23 Q. Have visited the Marcy Street one?

24 A. Which one?

25 Q. Marcy Street. That's one of the local roads.

1 A. Yeah, I know where that is. Yes.

2 Q. Have any repairs been made on this one that you
3 since you took ownership?

4 A. Not that I know of.

5 Q. Now, York Avenue, the one by Tops and Shots, have
6 you personally visited that one?

7 A. I haven't been up for about three years. About
8 three years ago I was there.

9 Q. Is that the one you're unsure of the ownership as
10 to whether you actually own that?

11 A. Yeah. I don't think we own it but we can check
12 it.

13 Q. Is that safe to say that you haven't spent any
14 money on repairs if you're unsure of the ownership?

15 A. Well, there's traffic on it.

16 Q. As far as you know, there's been no traffic since
17 to 1996 ---?

18 A. There's been no traffic --- the last car moved in
19 there about two years ago.

20 Q. Okay.

21 A. We were serving Tops. And that's why we're not
22 happy about take tearing things out we like maintain
23 our options. It's hard enough to get business. We
24 don't want to rip the railroad out and try to get
25 business after that.

1 Q. When you purchased the property in August of '96,
2 was Tops still operating at that point in time?

3 A. Oh, yes.

4 Q. Can we agree that Tops has only been closed for
5 three or four years, perhaps?

6 A. What year is it now?

7 Q. It's 2000.

8 A. So I bought the railroad three and a half years
9 ago, right, and we served them for at least a year.

10 Q. Well, they're operating in '96. You said you
11 served them for how long?

12 A. '96. We served them, I think, probably in '97,
13 too. I know we served Tops since we bought the
14 property. So we run trains over that crossing.

15 Q. Thank you. Let's move on Stevenson Street, are
16 you familiar with that one?

17 A. Which one?

18 Q. Stevenson Street?

19 A. No, I'm not aware of that.

20 Q. Do you know if your company is spending money
21 repairing that one?

22 A. I don't even know where it is.

23 Q. How about Hill Street, that's one the local
24 Borough roads?

25 A. That's Taylor secondary?

1 Q. Pardon?

2 A. Is that on the Taylor secondary? I'm not sure
3 where that is either.

4 Q. It's in Duryea, close to Old Forge Borough
5 boundary line?

6 A. This is one that was not mentioned on the
7 original complaint, right, Eric? The reason I'm not
8 familiar with it is because I don't think it was in
9 my complaint that I got.

10 JUDGE: Which one were you talking about
11 again, sir?

12 ATTORNEY CHROMEY: Hill Street. It's a
13 borough road. It was not on the original complaint.

14 JUDGE: It was not to the original complaints?

15 A. Right, so I'm not ---.

16 BY ATTORNEY CHROMEY:

17 Q. You don't have any knowledge of that one at all?

18 A. Well, I've read over it and I think I know where
19 it is. But, no, I'm not prepared to answer questions
20 about it.

21 Q. But do you know if your company has spent any
22 money on it? That's all I'm really concerned about.

23 A. I don't know.

24 ATTORNEY CHROMEY: Can I have just one second,
25 Your Honor.

1 JUDGE: Sure.

2 ATTORNEY CHROMEY: No further questions, Your
3 Honor.

4 JUDGE: Thank you. Mr. Sharp?

5 ATTORNEY SHARP: I have some questions, Your
6 Honor.

7 CROSS EXAMINATION

8 BY ATTORNEY SHARP:

9 Q. Mr. Muller, in your written testimony, which I've
10 managed to misplace, you said that some other
11 railroads have operating rights or operate on your
12 lines. Just could you just reiterate? What other

13 railroads have operating rights on your two lines in
14 this area? I'm assuming it's two different lines?

15 A. The one line where I guess you're referring to
16 the Hill Street crossing is we call it the Taylor
17 secondary. That connects our railroad at Pittston,
18 we own that over to the Delaware and Hudson yard at
19 Taylor. And the Delaware Lackawanna railroad company
20 has operating rights over that line.

21 Q. Okay.

22 A. And the other companies Luzerne and Schuylkill.
23 They have operating rights over he what we call the
24 Duryea branch, that would be Foote Street.

25 Q. Foote Avenue?

1 A. Right.

2 Q. Do any of these other lines to who have operating
3 rights on your lines or operate, do they participate
4 either monetarily or physically in any track or
5 crossing maintenance on your lines?

6 A. They don't even pay to use these lines, but there
7 is a temporary arrangement right now. They're paying
8 a little amount of money for more for small time but
9 these tracks are free to them and they don't
10 participate in any of the maintenance, although there
11 may be a state grant in the works to do the some work
12 on the one branch. But again, I don't really get
13 into that too much.

14 Q. Okay.

15 A. They don't pay us, per se, that I know of.

16 Q. Do you carry any freight from either CSX or NS on
17 this line?

18 A. Well, we interchange directly with Norfolk
19 Southern in Reading, Pennsylvania, and Lehighton. We
20 get traffic from CSX also from all the railroads but
21 not directly.

22 Q. Does Reading Blue Mountain or either of the two
23 rail lines that operate on your tracks, do they do
24 any traffic regarding --- and I probably don't know
25 the technical term, the truck trailer ---

1 A. No.

2 Q. --- traffic transmission?

3 A. No.

4 Q. None of that work at all?

5 A. Intermodal, no.

6 Q. On a different subject, you testified about
7 Coxtton Road. Would you agree that there is a split
8 rail at Coxtton road in the crossing?

9 A. Yes, there is.

10 Q. I think your testimony is that it doesn't hamper
11 your rail traffic?

12 A. Right.

13 Q. Would you agree that having the split rail there
14 increases the chance that there would be an incident
15 or derailment involving your trains?

16 A. No.

17 Q. You're saying there's absolutely no way possible
18 a train will derail because that rail is split?

19 A. Well, I mean, it's possible for trains to derail
20 on the northeast corridor at 90 mile an hour a track.
21 To explain in a little more detail, that whole branch
22 line is in such terrible condition that speed is than
23 ten miles an hour. So we haven't had the resources
24 to fix the branch line up, much less worry about
25 split rail in a crossing that's of no danger to the

1 railroad. It's not an illegal rail.

2 Q. You had also stated in your testimony that it
3 doesn't hamper highway traffic. Would you agree with
4 the statement that was given by Mr. Moss from the
5 Borough that vehicles are hitting the rails because
6 of the deteriorated crossing area?

7 A. No. My experience has been that these low-boy
8 trucks hit the rail is because they're too heavy and
9 they hit the rail and they break them and they tear
10 them out. We've had numerous incidents of that. And
11 we have never been able to be blaming it on the
12 crossing. It's the trucks that hit it. I don't know
13 the kind of trucks he's talking about. I'm referring
14 to these low-boys that haul these heavy loads. I
15 don't know what he's talking about.

16 Q. When you say low-boy, why don't you explain what
17 you refer to, how high off the ground?

18 A. Again I'm not an expert on trucks or highways.
19 But we've had this happen at two of the crossings.
20 They have these extra long trucks and they sit real
21 low and they put a lot of extra weight on to get
22 permits. And then they go across the crossing sit
23 real low and put a lot of extra weight on to get
24 permits and then they go across the crossing, get
25 hung up and break the rail and then we're supposed to

1 fix them. Unless we catch them, we can't do that
2 anything about it. And that's what happened at
3 Coxtton. My understanding is a low boy truck hit
4 that, broke the rail. We didn't get his license
5 number. So the truck broke the railroad and we're
6 supposed to pay for it.

7 Q. But you didn't witness that? Of course, you
8 didn't witness that personally?

9 A. I didn't witness that personally.

10 JUDGE: In conjunction with that, do you
11 recall do you recall Mr. Moss testifying about
12 dollies on the trucks?

13 A. Right. Yes, I did. Yes.

14 JUDGE: And do you know what that is?

15 A. Not really, to be honest with you. I don't know
16 anything about trucks.

17 ATTORNEY SHARP: May I approach, Your Honor?

18 JUDGE: Surely.

19 BY ATTORNEY SHARP:

20 Q. That's is what has been marked as Exhibit 1-D.
21 It was a picture entered into the record by the
22 Borough of a crossing panel located adjacent to the
23 Coxtton Road crossing?

24 A. Uh-huh (yes).

25 Q. Is that panel to be used to replace the Coxtton

1 Road crossing?

2 A. I didn't even know that panel was there.

3 Q. So you don't know how long that panel has been
4 sitting there?

5 A. No.

6 Q. Would you agree with me that it's been in there
7 for at least the last three weeks?

8 A. I have no clue.

9 Q. You have no idea what that panel is there for?

10 A. I didn't say that. You asked ---.

11 Q. What is that panel there for?

12 A. I assume my maintenance-of-way people put a panel
13 there to probably sometime to do something with the
14 crossing but I didn't know it was there.

15 Q. Is there any reason why your force would have put
16 this crossing there but not taken steps to install
17 the crossing at Coxtton at this point?

18 A. Is there any reason why?

19 Q. Yes.

20 A. No money.

21 Q. I have a few specific questions about --- and I'm
22 going to limit it to Foote, Phoenix and Stevenson
23 when was the last time you visited each or any of
24 those crossings, if you remember?

25 A. Probably sometime in early March.

1 Q. I'm talking about the Foote Avenue crossing.
2 Would you agree there that that there's some timber
3 shifting in that location that the timbers are loose
4 in the flangeways?

5 A. That's certainly possible, yeah.

6 JUDGE: Can we have that question completely
7 reread and rephrased because we started out with
8 could you dispute then and you --- and I don't want
9 one brief telling me he disputed it and another one
10 telling me ---.

11 ATTORNEY SHARP: I apologize for the
12 inarticulate phrasing, Your Honor.

13 JUDGE: That's all right.

14 BY ATTORNEY SHARP:

15 Q. Would you agree with me that at Foote Avenue the
16 timbers and the flangeways are loosened and moving?

17 A. I imagine. You know, again, that's a problem at
18 some crossing and it may be there. I wouldn't
19 dispute it, let's put it that way.

20 Q. That's fine. Let's just take Foote Avenue, for
21 example. Is there a way for the railroad to either
22 tighten those timber flangeways or replace them to
23 get them in a more solid condition in a non-moving
24 condition?

25 A. Oh, yes.

1 Q. Would it improve ride conditions at the crossing?

2 A. For whom?

3 Q. For rail and highway traffic.

4 A. Not for rail.

5 Q. Would it improve the highway traffic?

6 A. I guess. I don't know. I would imagine.

7 Q. Would Reading be willing to do paving and timber
8 tightening or replacement work at these crossings if
9 that were to create a smoother, safer crossing area
10 for highway traffic?

11 A. Yes.

12 Q. And if that could be accomplished, would it be
13 Reading's preference to accomplish an adequate
14 crossing area by maintenance rather than full-depth
15 replacement?

16 A. Full-depth what?

17 Q. Full depth, and I'll leave it at asphalt and
18 timber?

19 A. Quite frankly, over time, we would probably
20 prefer to do the whole crossing if the cost could be
21 shared fairly. For the time being, to solve the
22 immediate problem, we'd be willing to take care of
23 that, yes.

24 Q. I would ask you the same series of questions
25 about Stevenson Street. Would you agree that there's

1 some movement in the timber there?

2 A. That was on the list, I think --- I'm not aware
3 of that. I don't know where it is.

4 Q. Then I won't ask questions about that if you're
5 not prepared to answer.

6 A. I might as well help you. I'll say it's probably
7 true because these crossings haven't been repaired
8 for a period of time. We'd like to see a longer-term
9 solution to these problems. That's what we're trying
10 to accomplish.

11 ATTORNEY SHARP: Your Honor, may I have one
12 minute.

13 JUDGE: Sure?

14 ATTORNEY SHARP: May I approach, Your Honor?

15 JUDGE: Please.

16 BY ATTORNEY SHARP:

17 Q. Mr. Muller, I would like you to refer to what's
18 been previously marked and entered as Department
19 Exhibit 3-B. It's an up-close photograph of the
20 Phoenix Street crossing.

21 A. (Indicates yes).

22 Q. Would you agree that that photograph depicts a
23 situation where the actual rail, top of rail, is ---
24 I'm making an approximation, maybe an inch, inch and
25 a half, two inches below the top of the wooden timber

1 flangeway?

2 A. It looks like the rail is a little lower, yes.

3 Q. What would be the cause of that? What do you
4 think is the cause of that?

5 A. Well, deteriorating conditions of the track.
6 Sometimes these timbers, when they get rotten like
7 that, they actually expand.

8 Q. And isn't it the case that the rail and the
9 wooden flangeway should be should probably be at an
10 even level?

11 A. Oh, definitely.

12 Q. Is there any work that can be done at that
13 crossing other than replacing the existing crossing
14 with a new timber and asphalt crossing that could
15 alleviate that situation, to your knowledge?

16 A. I would think that we could probably replace some
17 of the timbers that parallel the rails.

18 Q. Is the railroad willing to do --- and if the PUC
19 orders it, is it willing to accept the routine
20 maintenance crossing areas within what we call the
21 traditional area within two feet of rail from the
22 rail head out --- the end of each rail out 24 inches
23 from each side?

24 A. Yes.

25 ATTORNEY SHARP: Your Honor, if may just have

1 one moment.

2 JUDGE: Uh-huh (yes).

3 ATTORNEY SHARP: Your Honor, that's all I
4 have. .

5 JUDGE: Thank you very much, sir. Mr. Salapa?

6 ATTORNEY SALAPA: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY ATTORNEY SALAPA:

9 Q. Mr. Muller, correct me if I'm wrong, did you
10 testify earlier that you have not been to the
11 Stevenson Street crossing?

12 A. Well, I didn't research it because it wasn't on
13 the list. I've been there probably in March. But
14 I'm not sure where it is. I know it's on the Taylor
15 secondary so ---.

16 JUDGE: I think his testimony is that it's not
17 on the list.

18 BY ATTORNEY SALAPA:

19 Q. Do you know personally or in your capacity as
20 president of the railroad, are you aware that one of
21 the flashing light signals there is located
22 approximately 30 feet from the edge of the rail?

23 A. I'm not personally aware o that. But it doesn't
24 surprise me.

25 Q. In your experience, should that flashing light

1 signal be relocated somewhere closer to the rail?

2 A. My understanding is we don't make any decisions
3 on crossing protection. That's all done by the PUC
4 and the fed government, I guess. We don't make
5 decisions on the locations of flashers or when
6 they're installed or when they're removed. Do you
7 want my opinion? I mean, obviously the flash her
8 should be a certain location on the railroad, but I
9 don't think we move those on our own without federal
10 money or ---.

11 JUDGE: You don't do them without our orders?

12 A. Okay. Thank you. He's answered the question for
13 me.

14 BY ATTORNEY SALAPA:

15 Q. Is Stevenson Street on the rail line where one of
16 the sets of tracks has been removed; do you know?

17 A. I suspect it is. If it's on the Taylor
18 secondary, that was double track.

19 Q. And you say the Reading Blue Mountain Northern
20 did not remove any of the rail from that crossing or
21 any of others?

22 A. No. We bought 106 miles from Conrail and we have
23 never removed anything.

24 Q. It's possible then that the flashing light signal
25 a Stevenson Street is where it is because there used

1 to be a second track there?

2 A. I'm sure that would be the case, yes.

3 Q. Would the railroad be willing to relocate that
4 flashing light to a point where it was closer to the
5 track?

6 A. What does that mean? Like if I get a PUC order
7 do it or what?

8 Q. Let me rephrase it. Would the railroad volunteer
9 to move the flashing light signal closer to its
10 track?

11 A. I mean, I have no problem to do it if it's legal
12 for us to do it. I don't know that we've ever done
13 that. We have other locations that is double track
14 and the flashers are further away. We don't move
15 them ever. But I don't know --- I would be willing
16 to do it if it's the right thing to do. I don't
17 know.

18 ATTORNEY SALAPA: Thank you. That's all that
19 I have.

20 JUDGE: Before I allow your Counsel to
21 Redirect, you said that you're looking for a longer
22 term solution at these crossings. Do you want to
23 expand on that for me, sir?

24 A. Well, we would like to see these crossings
25 redone, obviously. Many of them have been this way

1 for many years. One of the problems we have, it's a
2 nice problem to have, but we have so much State money
3 to given to us for so many other things, we have a
4 hard time coming up with the matching monies, the 25
5 percent. And if you get State money for certain
6 projects, you have to spend it any certain amount of
7 time. Now, like we're doing nothing but working on
8 state projects until June 30th. I mean, we're a
9 small railroad with limited traffic but we have a
10 sort of lot of mileage. And we're bombarded with
11 requests. So what I would like to see is resolution
12 to this is. I would like to see if we could do some
13 patching to make everybody happy for the time being
14 and then over the next two to three years, we'd like
15 to rebuild all of these crossings if they would
16 allocate the costs fairly. I mean, I find it very
17 interesting, I have to sit here and listen to all of
18 the problems with these crossing because all the
19 trucking companies are wrecking them. They are our
20 direct competition. And I have a real problem
21 philosophically subsidizing the trucks, which we do
22 every day. And I think that's why we end up in these
23 hearings.

24 JUDGE: I'm just speculating here. I'd stop
25 anybody else from doing it but since I'm the Judge, I

1 do it. If there were some way which could you take
2 some of the other monies that you're receiving and,
3 with the cooperation of PennDOT and/or the federal
4 government, either contribute or work with someway or
5 other to contribute to long-term solution of high rub
6 Bering these crossings, would you be willing to do
7 that?

8 A. Yes. We've done dozens and dozens of these. The
9 problem is there were so many. All these railroads
10 were bankrupt, and you understand the history.

11 JUDGE: I understand.

12 A. We have a great working relationship with
13 PennDOT. The problem is you get hit with so much at
14 once and we have to come up with matching money.
15 There's only limited funds. But PennDOT has been
16 very good to us. Without what they've done for us,
17 we couldn't be in business. But now we're getting
18 hit with eight or nine at one time here --- you know,
19 we're willing to fix them. The detour is the big
20 thing.

21 JUDGE: How many of these can we sell off to
22 Rails to Trails?

23 A. Actually, I am. I'm selling them 18 miles.
24 Actually, I might give it to them, I don't know yet.
25 But not these, we're going to keep these. But we're

1 very supportive of Rails to Trails.

2 JUDGE: Mr. Sharp wants to jump in on my
3 expansion there.

4 ATTORNEY SHARP: Your Honor, just before Mr.
5 Hocky Redirects, if I could maybe ask a few questions
6 that would clear that up.

7 RECROSS EXAMINATION

8 BY ATTORNEY SHARP:

9 Q. Mr. Muller, when you talk about State grants, are
10 you talking about funding the Department's Bureau of
11 Rail Freight for Track Improvements?

12 A. I mean, we get money from everybody. I don't do
13 the --- John Waters, who you probably know, does it
14 for me. I don't know where the money comes --- I
15 know it come in tremendous amounts because everybody
16 is trying it save these railroads.

17 Q. As to your knowledge, isn't it a fact that the
18 money that comes in must be specifically spent on the
19 projects that it is earmarked for?

20 A. Well, if we get --- let's say we get a \$1 million
21 grant on the Lehigh line, which is sort of specific.
22 And if we run into a problem like this, sometimes we
23 can go back to PennDOT, explain the problem and they
24 sometimes will move that money around. But it's site
25 specific, I think, when it's federal money. I don't

1 know enough about that, you know. But we have been
2 able to move monies around that we've gotten from
3 PennDOT to do some things. But it's almost up to
4 their discretion if they say, no, it doesn't move.
5 But that's really something I'm not exactly sure
6 about.

7 JUDGE: But they haven't told you they don't
8 have money?

9 A. Everybody says they don't have the money.
10 Really, except for me, I'm willing to take something.

11 ATTORNEY SHARP: That's all, Your Honor.

12 JUDGE: Redirect, Mr. Hocky?

13 ATTORNEY HOCKY: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY ATTORNEY HOCKY:

16 Q. When Mr. Sharp from PennDOT was asking you
17 whether the railroad would be willing to for example,
18 tighten the timbers or replace the timbers and do
19 some paving at the crossings, what about an
20 associated costs like detours or paving the
21 approaches, is the railroad agreeing to bear those
22 costs voluntarily at this point?

23 A. I don't think we're responsible for the
24 approaches. And the detour is always a problem we
25 would like to have some help with the detour.

1 Q. And when he asked you about taking care of ---
2 maintaining the crossings within what's been the
3 traditional two feet outside of each rail, were
4 talking about future maintenance after these are
5 fixed up?

6 A. Yes. We would be willing to maintain them.
7 There's just been so many of them, we just can't get
8 caught up. But, yes, once they're re-done, I think
9 we've done a great job of maintaining grade
10 crossings.

11 Q. When Mr. Salapa was asking you about moving the
12 lights at Stevenson Road, even though we haven't
13 looked at that one yet, when you said you're willing
14 to move it, were you necessarily agreeing that that
15 would be at the railroad's cost to move that?

16 A. I mean, I'm not here to quibble about a few
17 hundred dollars here and there. If that would be a
18 request to do that, I think we could do that. But
19 I'm not sure we're supposed to do that legally. I
20 mean, I don't think we --- I mean, Dave, you know,
21 are we allowed to do that without PUC order?

22 Q. I think we'll ask you the questions.

23 A. I don't want to say I'm going to do something if
24 I'm not allowed to do it.

25 Q. I'll tell you what, you're allowed to do it.

1 ATTORNEY HOCKY: That's all I have, Your
2 Honor.

3 JUDGE: Thank you very much. You're excused.
4 That which has been previously marked and identified
5 as the Railroad Direct Statement Number One is
6 received into evidentiary record without objection.
7 Are there any further witnesses for the Railroad?

8 ATTORNEY HOCKY: No, Your Honor.

9 JUDGE: Mr. Salapa, please call your
10 witnesses.

11 ATTORNEY SALAPA: I'll call Mr. Hull.

12 JUDGE: Would you raise your right hand to be
13 sworn, sir?

14 RONALD HULL, CALLED AND SWORN TO TESTIFY

15 JUDGE: Please be seated.

16 DIRECT EXAMINATION

17 BY ATTORNEY SALAPA:

18 Q. Would you please state your name for the record?

19 A. My name is Ronald J. Hull, H-U-L-L.

20 Q. And Mr. Hull, how are you employed?

21 A. I'm a civil engineer employed by the Bureau of
22 Transportation and Safety of the Public Utility
23 Commission.

24 Q. And how long have you been in that position?

25 A. Approximately 12 years.

1 Q. And what are your duties with the Commission?

2 A. My duties are monitor assignments as far as
3 alterations to crossings, you know, monitoring the
4 complaint proceedings such as this, testifying at
5 hearings such as this if there's no amicable
6 solutions.

7 Q. And are you a licensed professional engineer in
8 the Commonwealth?

9 A. I am.

10 Q. And are you authorized to testify on behalf of
11 the Bureau of Transportation and Safety in this
12 proceeding?

13 A. Yes, I am.

14 Q. And are you familiar with the crossings that are
15 the subject of this complaint?

16 A. I am.

17 Q. And when was the last time you visited the site
18 of these crossings?

19 A. I visited the site last Monday, May 15th.

20 Q. And when you were at the site of these crossings,
21 did you do cursory visual inspection of the crossing
22 areas?

23 A. Yes, I did.

24 Q. With regard, turning first to Coxtton Avenue,
25 could you describe the crossing at Coxtton Avenue?

1 A. Coxtton Avenue is on a Taylor secondary. It's
2 protected signals and gates. There's probably a bad
3 subgrade problem because there's a lot of mud pumping
4 around the area. The crossing surface has failed.
5 The approach roadways are rutted and potholed.
6 There's a cracked rail at the crossing on the --- I'm
7 not familiar with the geographics. But the I'm going
8 to say the west rail has a crack in it. Actually,
9 there's two cracks, one on the inside, one on the
10 outside.

11 Q. When you refer to they're being a subgrade
12 problem and water in the area, are you referring to
13 the area where the roadway is or the tracks or what
14 exactly are you referring to?

15 A. Basically the roadway and the track is like in a
16 low area there's a lot of water that ponds at the
17 crossing and the surrounding areas.

18 Q. And when you were at the crossing, did you
19 observe any train or vehicular traffic using the
20 crossing?

21 A. I notice vehicular traffic.

22 Q. And would you agree with the previous testimony
23 that there are a fairly substantial number of truck
24 that is use this crossing?

25 A. From my gathering, there would be a lot of heavy

1 trucks, a lot of tri-axle trucks, which is the three
2 axle trucks.

3 Q. And when you were there, did you observe any of
4 what are called the low-boys using the crossing?

5 A. I didn't see any low trailers at that time.

6 Q. And are you aware of any prior Commission orders
7 with regard to this crossing?

8 A. Yes, I am.

9 Q. If you could please identify what has been
10 previously marked as Staff Exhibits Number One and
11 Two?

12 A. Okay. Exhibit Number One was an application. It
13 was docketed at 95397. There was an application the
14 Erie Lackawanna Railway Company to alter numerous
15 crossings, including what I believe are the crossings
16 subject to the proceeding --- the crossings on the
17 Taylor secondary and specifically Hill Road, Marcy,
18 it said Everhart's but our records show that the LR
19 conforms to Coxton Road and Stevenson. The
20 application was to remove one of the two tracks on a
21 line. And the Commission which by order May 4th,
22 1970, granted the application. Then Exhibit Two, the
23 same application by orders of September 14th, 1970,
24 was an answer to a petition filed by the Erie
25 Lackawanna Railway Company that they did not remove

1 to remove the second track on several of the
2 crossings. And it would include the ones in this
3 proceeding again on the Taylor secondary, Hill Road,
4 Marcy, Everhart's and Stevenson. So from our
5 records, it was a two-track system still then.

6 Q. And do you recall specifically if the order
7 that's marked as Exhibit One, did that assign
8 maintenance responsibilities to any entity or
9 entities at Coxtan Road?

10 A. Yes, it assigned it to the current --- not
11 current railroad, the railroad operator at that time
12 which was the Erie Lackawanna Railway Company.

13 Q. And that would be for the area where?

14 A. It's basically the area inclusive the tracks, in
15 between the tracks and two foot outside of rail. The
16 approach roadways then would have been assigned to
17 the highway entity. And in this case, that would be
18 the Department of Transportation.

19 Q. And that would be at paragraph 22 of the orders?

20 A. Yes.

21 JUDGE: Which order?

22 ATTORNEY SALAPA: Exhibit Number One, Your
23 Honor.

24 BY ATTORNEY SALAPA:

25 Q. And then paragraph 23 of Exhibit Number One is

1 the portion of the order that directs Erie Lackawanna
2 to maintain the area between the rails?

3 A. Yes. I don't see a need to read the paragraph.
4 It's admitted as an exhibit but pretty much is
5 explicit of what the maintenance assignment is or
6 assigned to the railroad at that time.

7 Q. And does the current condition of the crossing
8 raise any concerns in your mind regarding the safety
9 of the crossing and its use by vehicular and
10 pedestrian traffic?

11 A. Yes. It's a very uneven ride. It's, of course,
12 as previous testimony, extremely rutted. And I guess
13 if an individual would be exceeding the speed and
14 hitting the uneven surface, they could lose control
15 at the crossing. So ---.

16 Q. Were you present when Borough Councilman offered
17 testimony regarding vehicles being damaged at the
18 crossing?

19 A. Yes, I was.

20 Q. And is that another likely outcome?

21 A. It could, of course, cause vehicles, of course.
22 I wouldn't classify it as an accident, if you could
23 damage the underneath sides of a vehicle.

24 Q. And in your opinion, based on your observations
25 at the crossing, what would need to be done at the

1 crossing in order to provide a smooth crossing
2 surface for vehicular traffic?

3 A. Well, my opinion is at this crossing the subgrade
4 that has failed. So the whole crossing needs to be
5 rebuilt, the crossing from ties up. The approaches
6 are poor so they needs to be constructed too due to
7 the subgrade. I believe you have a subgrade problem.

8 And if you don't correct the subgrade, no matter
9 what you build on top of it, you're going to have
10 problems in the future.

11 Q. Now, with regard to the next crossing, Marcy
12 Street, could you please describe that crossing?

13 A. Okay. Marcy Street is, again, part of the Taylor
14 secondary, signal track protected by signals,
15 consists of timber flangeways and bituminous approach
16 roadways.

17 JUDGE: Could I stop you for one second, sir?
18 I hate to do this to you, Counsel. But I had a
19 question. And before we get onto another crossing,
20 could I just ask one more question?

21 ATTORNEY SALAPA: Certainly, Your Honor.

22 JUDGE: Counsel presented two Staff Exhibits,
23 One and Two. And unless I fell asleep in the middle
24 of it, I thought that he said that on the first one,
25 whatever the railroad was, the Erie and Lackawanna, I

1 guess, requested that they be allowed to remove one
2 of the tracks?

3 A. Yes, sir.

4 JUDGE: And that on May 4th, 1970, that that,
5 in fact, was granted. Okay?

6 A. Yes.

7 JUDGE: And then the second order they came in
8 and they said that they did not want to remove the
9 track. Okay. And I didn't get an answer as to ---
10 or I didn't hear the answer as to whether or not that
11 request was granted and they left both the tracks in?

12 A. Okay. Commission granted it by May 4th, 1970, to
13 leave both tracks in. Now, from my observation ---.

14 JUDGE: So they denied the request to remove
15 the track?

16 A. No, the Commission granted it. But they must
17 have later come out and taken the track out without a
18 PUC order.

19 ATTORNEY SALAPA: If I may, Your Honor, I
20 believe that what happened was the Commission issued
21 an order on May 4th, 1970, granting the application
22 of the Erie Lackawanna railway company to remove one
23 track along this line. Subsequently after that order
24 was issued, apparently, the railroad filed a petition
25 to modify the order of May 4th, 1970, due to changed

1 circumstance and wished to leave that rail line in.
2 Subsequently, the Commission issued an order that's
3 marked as Staff Exhibit Two on September 14th, 1970,
4 which modified the May 4th order and allowed the
5 track to remain in place and simply, I believe,
6 ordered the railroad to rehabilitate or reconstruct
7 the crossings.

8 JUDGE: All right.

9 A. Removing, I guess, some of the other crossing.
10 But the crossings in this proceeding, the four of
11 them that are on the Taylor secondary, they granted
12 the petition. So that means the railroad, at that
13 time, requested that the two tracks remain.

14 JUDGE: All right. Now, I'm sorry. But I
15 didn't have that clear. Go ahead back to Marcy
16 Street.

17 BY ATTORNEY SALAPA:

18 Q. With regard to Marcy Street, could you describe
19 the condition of the crossing there, please?

20 A. The timber flangeways, and I stood out there for
21 several minutes, the timber flangeways actually were
22 satisfactory in this location. The approach work was
23 rutted and potholed. And that would need some rehab
24 work. But the timber flangeways at this location
25 seemed satisfactory.

1 Q. And are you aware of any prior Commission orders
2 regarding the Marcy Street crossing?

3 A. Yes, I am. I'm going, again, refer to the orders
4 of May 4th, 1970, and September 14th, 1970, which is
5 our Exhibits One and Two which dealt with the Marcy
6 Street crossing by the Erie Lackawanna Railway
7 Company.

8 Q. And would that basically be the same thing that
9 happened at Coxtton Road, the one order granted
10 removing one track and the other one ordered it to
11 leave in place?

12 A. Yes. Second one basically, rescinded --- not
13 rescinded but modified the order and allowed the
14 second track to remain.

15 Q. And with regard to the current condition of the
16 crossing, does that condition raise any concerns in
17 your mind regarding the safety of the crossing or its
18 use of vehicular traffic?

19 A. Again, if somebody was exceeding and hit one ever
20 potholes in the asphalt, they could lose control.
21 Therefore, the approach roadway does need some work
22 at this location.

23 Q. And what kind of work would need to be done in
24 order to provide a smooth crossing surface at this
25 location?

1 A. The uneven areas, the potholes should be filled
2 in.

3 Q. And that would also all be on the approach
4 roadways?

5 A. Well, the approach roadways and maybe --- you
6 know, we assign two foot outside of rail. And that's
7 what these other orders did. So most of it is
8 outside of the two-foot section. But there's some
9 holes within the two feet, too. But the majority of
10 it is outside the two foot of rail.

11 Q. And nothing within --- nothing between the two
12 rails then that ---?

13 A. At this location, that really was satisfactory.

14 Q. With regard to the York Street crossing which I
15 think we've described at as the Tops Bubble Gum
16 crossing, could you please describe that briefly?

17 A. Okay. York Avenue, of course, was --- it's a
18 single track and it's just an asphalt crossing,
19 timber flangeways. On the east approach it was
20 missing a cross buck. And our recommendation, of
21 course --- well, now, I can't say recommendation yet.
22 But the track definitely appeared inactive. You
23 didn't see any, you know, rail grooves from a train
24 that would have cut into the asphalt. There was some
25 material on the tracks that, again, you could tell

1 the track's been inactive for quite a while. It
2 appears, though, as the rails had been paved over at
3 some point or another?

4 A. Yes. This certainly is where that was some
5 asphalt placed over the rails.

6 Q. And I don't know if you said earlier, is this
7 crossing protected by flashing lights or gates?

8 A. It was originally cross bucks. But like I
9 mentioned, the east approach cross buck was missing.

10 Q. And are you aware of any prior orders regarding
11 the York Avenue crossing? If I could direct your
12 attention to what has been marked as Staff Exhibit
13 Five?

14 A. Yes. That was application, the Pennsylvania Gas
15 and Water Company where they intended to install a
16 20-inch water line at the crossing. And that was
17 application 109312.

18 Q. And does the current condition of this crossing
19 raise any concerns, in your mind, with regard to its
20 use by vehicular traffic?

21 A. Again, it's uneven. It would be my
22 recommendation if the crossing is, indeed, inactive,
23 if the crossing is suspended, the rails can be
24 removed and highway restored. The cross bucks then
25 can be removed. Of course, one has been removed.

1 And therefore, you wouldn't need to replace that
2 cross bulk. And then, of course, if it's ever
3 reactivated, an application could be filed at that
4 time to make the crossing active again.

5 Q. Is it your understanding, based on the testimony
6 of other witnesses here today that this crossing is
7 currently not being used?

8 A. Obviously, from my --- from the testimony and
9 what my physical observation, it's been inactive for
10 several months at least.

11 Q. Turning to Foote Avenue crossing, could you
12 please describe that crossing?

13 A. Foote Avenue consists of two tracks, one main,
14 one siding, protect bid signals and gates. Again,
15 several of the timber flangeways are failing or
16 deteriorated. Some are split and creates an uneven
17 surface. There's an uneven surface between the
18 tracks, too. There's some potholes and deterioration
19 leading up between the two rails.

20 Q. And with regard to Foote Avenue, are you aware of
21 any prior Commission orders on this crossing? In
22 particular, I draw your attention to Staff Exhibits
23 Three and Four?

24 A. Yes. Okay. Exhibit Three has dealt with
25 Complaint Docket 902790 and by order entered March

1 2nd, 1994, the railroad was directed to, you know,
2 rehabilitate the crossing. And then, of course,
3 paragraph three of that order assigned Conrail, was
4 who was the operator at that time, maintenance of
5 that crossing. And the Department of Transportation
6 was assigned the approachway, the approach roadway
7 maintenance. The next order happened to with an
8 application of Conrail. And it was application
9 Docket 111309. And by Commission order entered in
10 this PUC, Staff Exhibit Number Four, by orders
11 entered December 13th, 1994, Conrail filed an
12 application to alter several crossings along the
13 Lehigh line, including crossing at Foote Avenue and.
14 This crossing granted the application of Conrail.
15 And they removed the rail and then, of course,
16 directed maintenance responsibilities on Conrail in
17 paragraph 15 as far as the surface and crossing --- I
18 mean, paragraph number ---.

19 Q. With regard to Exhibit Number Four on page two of
20 the order, the third paragraph down, does it note the
21 prior proceeding at C902790?

22 A. Yes, it does. I got a little confused. That's
23 why maintenance wasn't assigned at Foote Avenue,
24 because it was assigned in a complain docket. So I
25 only had to deal with two others as far as the

1 Department of Highways.

2 Q. And that paragraph also acknowledges that the one
3 track was removed under the C docket number?

4 A. Yes.

5 Q. With regard to the conditions at this crossing,
6 are there any conditions here that raise concerns
7 with you regarding its use by vehicular traffic?

8 A. Yes. Again, due to the uneven crossing surfaces
9 and the vehicles do travel on this one at a higher
10 rate of speed, they could lose control. The one
11 approach has a pretty sharp grade leading from the
12 crossing surface. Somebody could lose control if
13 they hit the uneven surface.

14 Q. And what kind of work would need to be done at
15 this crossing in order to provide a smooth crossing
16 surface?

17 A. Some of the timber flangeways that are failing
18 needs to be replaced. And then the asphalt between
19 the two sets of tracks needs to be redone to a smooth
20 condition.

21 Q. Now, you heard testimony earlier, I think, from
22 Mr. Muller, suggesting that the railroad would use
23 steel instead of the timber flangeways. Is that an
24 acceptable option as well?

25 A. Yes, that would be fine.

1 Q. With regard to Phoenix Street, could you please
2 describe the crossing at Phoenix Street?

3 A. Okay. Phoenix Street, has a single track
4 protected by existing signals. There's no gates at
5 this crossing. And the surface, again, consists of
6 timber flangeways. And again, it's part of the
7 Lehigh secondary.

8 Q. And could you describe the condition of the
9 crossing?

10 A. Some of the flangeways are loose and some have
11 deteriorated, specifically the west approach, the
12 flangeways on the west approach are deteriorated.
13 The flangeways, the timber flangeways on the east
14 approach, in my opinion, appear satisfactory. Also
15 on the west approach the asphalt is high
16 transitioning into the flangeways, it's humped. So
17 that creates an uneven surface.

18 Q. And are you an aware of any prior Commission
19 orders with regard to the Phoenix Street crossing?

20 A. Yes, I am.

21 Q. And would that be Exhibit Four?

22 A. That would be Exhibit Four, the application
23 109312 of Conrail to --- excuse me, sorry. That
24 would be the application. 111309 which that would be
25 alteration of the crossings by Conrail of removal of

1 one of the two tracks.

2 Q. And does the uneven condition of the crossing
3 raise some concerns with you regard to the vehicles
4 using the crossing?

5 A. Yes. Again, the vehicles could be traveling at a
6 high rate of speed. And because of uneven surface,
7 they could lose control.

8 Q. And what would be necessary at this point at this
9 crossing in order to provide a smooth crossing
10 surface?

11 A. The deteriorated timber flangeways could be
12 replaced, the approach roadway, the rest approach.
13 The asphalt needs to be milled down to meet those
14 flangeways.

15 Q. When you say milled down, what does that
16 basically mean?

17 A. It means basically removing the asphalt so you
18 have a smooth transition into the timber flangeways.
19 Right now it's maybe one or two inches higher. So
20 when a vehicle comes off the approach roadway, it
21 comes down on the flangeways, creates a bump.

22 Q. So you would simply grind off several inches of
23 the asphalt?

24 A. Yes, grind. Mill is the construction
25 terminology. But, yes, grind it down.

1 Q. And would the suggestion of steel instead of
2 timber be acceptable here as well?

3 A. Yes, it would.

4 Q. With regard to Stevenson Street, could you please
5 describe the crossing at the this location?

6 A. Stevenson Street is a single track protected by
7 signals and gates. And the timber crossing surface
8 consists of timber flangeways.

9 Q. Could you describe the condition of the crossing
10 at Stevenson Street?

11 A. Again there's some deteriorated timber
12 flangeways. The west side on the outside, I would
13 say those flangeways are okay. But basically the
14 cart path of where the vehicles travel, the inside
15 with the four sections of timber inside where most of
16 the vehicle traffic subjected to --- they're
17 deteriorated and split. And they would need replaced
18 because they create an uneven surface. Also, the
19 east side of the approach shows some potholes and
20 rutting on the east approach on the crossing. And
21 the east signals we --- I paced it off. And I showed
22 a signal base 30 feet from the center line of tracks.
23 And the manual uniform control traffic devices,
24 actually they suggest that the signals be no closer
25 than 12 feet. But you want to get them as close as

1 you can to prevent a vehicle from the gates and the
2 track. Apparently when the second track was removed,
3 the railroad at that time did not relocate the
4 signal. I heard testimony today about, does the
5 Commission grant that. Usually when they file an
6 application to remove a track, there would be an
7 order in there telling the railroad to relocate that
8 signal to a closer location. But from our records,
9 we don't have an application by a railroad to remove
10 the second track.

11 Q. And are you aware of any prior Commission orders
12 with regard to Stevenson Street crossing?

13 A. Yes. Again, it would be Exhibit One and Two.

14 Q. And that be the one where the Erie Lackawanna was
15 directed to remove a track and later that order was
16 modified?

17 A. Yes, sir.

18 Q. And with regard to the current conditions of the
19 crossing, does that raise any concerns in your mind
20 about the safety of the crossing for vehicular uses?

21 A. Yes, the uneven surface, again, could create a
22 hazard to the public. My believe is the signals are
23 too far in the east approach and should be relocated.
24 So if the signals are activated, a car would not be
25 past a signal and closer to the track. So that my

1 recommendation is that signal should be relocated and
2 the Commission should issue an appropriate order
3 directing the railroad to relocate that.

4 Q. And with regard to the crossing surface itself,
5 what work should be done there in order to provide a
6 smooth crossing surface?

7 A. Obviously, the east side --- east approach should
8 be some resurfacing there. And then, of course, the
9 failed timber flangeways, which are like I said most
10 of them are the interior of the roadway, the ones
11 that have deteriorated should be replaced or in lieu
12 of a new surface put in consisting of rail, which in
13 my terminology I think they call that a Nelson rail
14 crossing where instead of timbers they use rails as
15 flangeways.

16 Q. With regard to Hill Road, could you please
17 describe that crossing?

18 A. That is, again, part of the Taylor secondary.
19 It's a single track protection consists of cross
20 bucks. The surface consists of timber flangeways and
21 asphalt.

22 Q. And could you describe the condition of the
23 crossing at Hill Road?

24 A. From my observations, I showed the west rail was
25 loose and needs to be tightened. The surface of the

1 timber flangeways, in my opinion, seemed
2 satisfactory. The east approach was rutted with
3 potholes and that needs to be resurfaced.

4 Q. And are you aware of any previous Commission
5 orders with regard to the crossing at Hill Road?

6 A. Yes, again, it would be Exhibits One and Two the
7 application of the Erie Lackawanna Railway Company.

8 Q. And does the current condition of the crossing at
9 Hill Road raise any concern in your mind with regard
10 to its safe use by vehicular operators?

11 A. With some minor approach reconstruction, you
12 know, filling in the potholes you correct any safety
13 problems because it's really not that severe.

14 Q. Would that require any repaving or work between
15 the rails then, at least from your observation?

16 A. No, nothing between the rails. It's satisfactory
17 right now.

18 ATTORNEY SALAPA: Your Honor, that's all I
19 have on Direct Exam. I move for admission Staff's
20 Exhibits One through Five subject to Cross
21 Examination.

22 JUDGE: Subject to any motions or objections,
23 pending Cross Examination that which has been
24 pre-marked and identified as PUC Staff One through
25 Five will be received into the evidentiary record Mr.

1 Chromey?

2 ATTORNEY CHROMEY: I have no questions, Your
3 Honor.

4 JUDGE: Mr. Sharp?

5 ATTORNEY SHARP: Just one or two, Your Honor

6 CROSS EXAMINATION

7 BY ATTORNEY SHARP:

8 Q. Mr. Hull, do you agree with Mr. Strok's testimony
9 that a high type surface of either the full-depth
10 rubber or full depth concrete are necessary at any of
11 the crossings in this proceeding?

12 A. Are necessary?

13 Q. That's correct.

14 A. This is my personal opinion. I believe the whole
15 condition of a surface basically has to deal with the
16 subgrade. If you have a good subgrade, even a timber
17 asphalt holds up. So I've never seen a crossing that
18 really demanded a higher type surface. It's all the
19 subgrade, in my opinion.

20 Q. In regards to Coxton, the crossing at Coxton, is
21 that crossing safe for both highway and rail
22 operations?

23 A. Obviously, I don't think it's safe for highway
24 use right now because it's so uneven. Vehicles go
25 extremely slow due to the severe conditions of the

1 surface conditions. As far as the rail, I'm not an
2 expert. But there is the cracked rail. Okay. I
3 would say, I'm going to leave that up to the
4 expertise of our FRA inspectors. They're aware of
5 the situation and I'll defer to their judgment.

6 Q. Has the PUC sent FRA inspectors out to inspect
7 this track?

8 A. They will send one.

9 ATTORNEY SHARP: That's all I have, Your
10 Honor.

11 JUDGE: Mr. Hocky?

12 CROSS EXAMINATION

13 BY ATTORNEY HOCKY:

14 Q. Am I correct that there have not been any prior
15 PUC complaints on these crossings against Reading
16 Blue Mountain?

17 A. Not to my knowledge.

18 Q. And on these prior orders, I believe you said
19 when --- what are the standard procedures when a
20 railroad asked to remove a track?

21 A. Normally when a railroad files to remove a track,
22 they're directed to remove the rails, the ties and
23 all their facilities and restore the highway to the
24 specifications of that road entity. Then the
25 maintenance --- basically the maintenance --- the

1 remaining track, two foot outside rail, goes to that
2 various railroad. But the area that was occupied by
3 that previous track goes to the highway entity. And
4 that's normally how it's handled. And then any
5 signals or cross bucks are directed to be relocated
6 closer to the track because, obviously, they don't
7 have to be as far as away.

8 Q. For example, if I can direct to you Staff Exhibit
9 Number One, I think, paragraph six of the order, for
10 example, it orders Erie Lackawanna to relocate the
11 flashing light railroad crossing warning signals?

12 A. Yes.

13 Q. And that's what you would generally expect?

14 A. That's what we would expect.

15 Q. And in terms of these lines or these crossings,
16 is the PUC aware of what railroad actually removed
17 the second track at these crossings?

18 A. I have no knowledge who removed it. But I don't
19 have any records of an order ever being issued that
20 directed the removal of them.

21 Q. Do railroads ever remove them without an order?

22 A. They can, yes.

23 Q. If we look at, for example, Staff Exhibit Three
24 --- in fact, in this instance on page two, it recites
25 that Conrail has, in fact, removed a track from the

1 crossing. So that would be, for example, one of
2 those instances where a railroad just went and did
3 something without an order?

4 A. That's correct.

5 Q. How long have been monitoring this area for the
6 PUC?

7 A. The only ---.

8 Q. This geographic area, how long have you been
9 assigned to this?

10 ATTORNEY SALAPA: I'm going to object only
11 because I don't think there's been any testimony that
12 Mr. Hull is responsible for monitoring a certain
13 geographic area. He monitors any proceedings that
14 are assigned to him and that can be state-wide.

15 ATTORNEY HOCKY: Okay.

16 JUDGE: We'll sustain that for that particular
17 point. I mean, if you want to ask him how familiar
18 he is with this particular area, geographically,
19 that's fine with me.

20 BY ATTORNEY HOCKY:

21 Q. Do you have any reason to contradict the
22 testimony of the railroad that Reading Blue Mountain
23 is not the party that removed the rails at these
24 crossings?

25 A. Is not the party that removed them? I have no

1 definite knowledge. I had a previous proceeding.
2 The application --- I was personally involved with
3 the application that dealt with the Lehigh secondary
4 of Conrail. But the Taylor secondary, that first
5 time I've been exposed to Taylor secondary was this
6 complaint proceeding.

7 Q. And that's the ones that are covered by the Staff.
8 One and Two?

9 A. Exhibits Staff One and Two, yes.

10 ATTORNEY HOCKY: That's all I have, Your
11 Honor.

12 JUDGE: Thank you very much. Redirect,
13 Counsel?

14 ATTORNEY SALAPA: No, Your Honor. Thank you.

15 JUDGE: That which was previously marked as
16 PUC Staff Exhibits One through Five are received into
17 the evidentiary record without objection. Any
18 further witnesses for Staff?

19 ATTORNEY SALAPA: No, Your Honor.

20 JUDGE: All right. I would anticipate that
21 we're on a three-week schedule, is that correct, on
22 the transcript. I'm going expect briefs and Proposed
23 Findings of Fact from the parties. I'm not
24 interested in reply briefs unless the parties insist.
25 And we're not --- we're talking about simultaneously

1 filed briefs. So what what's your pleasure, 30 days
2 after set receipt of transcript? Does that work? I
3 don't know what your schedule is like. Three weeks
4 from now is the end of June. Thirty (30) days
5 thereafter, we're in the middle of July. Vacation
6 schedules, et cetera, et cetera. I get to do the
7 hearings on the Columbia and I-Source (phonetic)
8 merger the week of the 4th of July so there goes my
9 4th of July.

10 ATTORNEY HOCKY: Your Honor, if we could just
11 make it maybe 40 days or 45 days, judging that some
12 people are going to be unavailable somewhere in that
13 time.

14 JUDGE: All right. Forty-five (45) days
15 after receipt of transcript?

16 ATTORNEY SALAPA: Yes, Your Honor.

17 JUDGE: There be will an order upon receipt of
18 transcript that briefs will be due with Proposed
19 Findings of Fact within 45 days. Okay.

20 ATTORNEY HOCKY: Your Honor, we mentioned at
21 the beginning of the hearing that if we have
22 something extra on those crossings that weren't ---
23 wasn't handled. What I suggest is that what I'll try
24 and do is I'll circulate something that I can
25 stipulate to with the other Counsel and submit it

1 that way. That way we won't have to have other
2 hearings.

3 JUDGE: Also, from what I have seen and from
4 what I have heard, I would not tell parties to sit
5 down and get ready with the transcript and write the
6 briefs. I think that there's sufficient room here
7 for something to come out of this yet. And I
8 genuinely believe that. I personally love high
9 rubber. But, you know, that's with my look to the
10 future as far as technology, that high rubber is
11 already outdated. But anyway, that being the case,
12 you know, we do what we have do to get things in the
13 best condition that we can with the resources that
14 are available. And I assume also always of the
15 opinion that reasonable people can come to a
16 reasonable solution of their problems without resort
17 to litigation. And while that's what they pay us to
18 do here, I'm always of the opinion after 20 years on
19 the bench that nobody really likes my rulings. I
20 always feel I do a good job because nobody is happy.
21 Okay. Anything further?

22 ATTORNEY SALAPA: No, Your Honor.

23 ATTORNEY SHARP: No, Your Honor.

24 JUDGE: With nothing further, we stand
25 adjourned.

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HEARING CONCLUDED AT 3:00 P.M.


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