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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Borough of Tamaqua

v.

Docket #: C-00992533

Reading, Blue Mountain and
Northern Railroad Co.

Initial Hearing

DOCKETED
OCT 12 1999

Pages 1 through 68

North Office Building
Commonwealth and
North Streets
Hearing Room One
Harrisburg, PA

ORIGINAL

Tuesday,
September 21, 1999
Commencing at 10:10 a.m.

BEFORE:

HERBERT S. COHEN, Administrative Law Judge

APPEARANCES:

Jeffrey P. Bowe, Esquire
Bowe, Lisella and Bowe
109 West Broad Street
P.O. Box 290
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(For Borough of Tamaqua)

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P R O C E E D I N G S

JUDGE HERBERT S. COHEN: This is a hearing in the matter of the Borough of Tamaqua versus Reading, Blue Mountain and Northern Railroad Company. The matter is docketed to docket number C-00992533. Basically, the allegations of the complaint are that the Borough feels that the condition of a certain crossing on West Broad Street in the borough endangers the safety of pedestrians using the sidewalks and motor vehicles travelling in the opposite direction, the drivers swerve to miss significant depressions in the crossing area.

By written notice dated July 29, 1999, the parties were advised that an evidentiary hearing was being held today in Harrisburg, commencing at 10:00 a.m., Tuesday, September 21, 1999. Appearances this morning have been entered by the following: Mary Kay Bernosky, Solicitor for the County of Schuylkill; Jason D. Sharp, from PennDOT; Gregory Lepore for Reading and Blue Mountain and Northern Railroad Company; Mr. Salapa, David A. Salapa for the PUC, Bureau of Transportation and Safety; Jeffrey P. Bowe for the Borough of Tamaqua.

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There are Responsive Answers filed to the Complaint. In response to the Commission's Questions and Procedures forms that were proposed in July of 1999, the Borough, the Railroad and the County have filed appropriate Answers to those questions. Perhaps you might elaborate upon them in the hearing, if necessary, and the County has also submitted pictorial representations of the crossing in question and proposed exhibits which will help all concerned.

In an off the record discussion, the parties indicated that inasmuch as we are all together with Counsel for the first time, there was a field meeting at the crossing site without Counsel but they are willing to sit down and discuss this matter to see what, if anything, can be worked out in an amicable fashion. With the attendance of Mr. Charles Hilmer, Alternative Dispute mediation; James Carmines, PUC trial staff being the other one.

I don't know if I have noted on the record, but for the record, sir, can you identify yourself?

MR. CARMINES: I'm with the office of Administrative Law Judge technical staff.

JUDGE: Thank you. There being nothing

1 further, I will excuse myself from the hearing room
2 and the Reporter will call me at the appropriate
3 time. Good luck.

4 OFF RECORD DISCUSSION

5 JUDGE: Mr. Carmines suggested to me that
6 Mr. Salapa prepare a written stipulation as to the
7 existing condition at the crossing. I don't think
8 it's necessary for everybody to repeat what the
9 condition is. Do you have a comment on that?

10 ATTORNEY SALAPA: Well, Your Honor, I could
11 certainly do that, but everybody here --- I could
12 put on my witness and have him testify as to what
13 the condition of the crossing is.

14 ATTORNEY LEPORE: And then we'd have to
15 stipulate as to the testimony as to the existing
16 condition of the crossing.

17 ATTORNEY SALAPA: Sure.

18 ATTORNEY LEPORE: Okay.

19 ATTORNEY SALAPA: Do you want me to call my
20 witness in, Your Honor?

21 JUDGE: Yes. This is an informal type
22 proceeding. Just pull up a chair in the middle and
23 the other witnesses can testify from where you are
24 sitting.

25 ATTORNEY SALAPA: Are we ready?

JUDGE: Yes.

WILLIAM J. KNERR, CALLED TO TESTIFY

DIRECT EXAMINATION

BY ATTORNEY SALAPA:

Q Could you please state your name for the record?

A William J. Knerr, K-N-E-R-R.

Q And Mr. Knerr, by whom are you employed?

A The Pennsylvania Public Utility Commission,
Bureau of Transportation and Safety.

Q And in what capacity?

A Senior civil engineer.

Q And how long have you been employed in that
position?

A Approximately 24 and a half years.

Q And what are your duties as a senior civil
engineer with the Bureau of Transportation and
Safety?

A To be brief, schedule and conduct field
meetings, prepare recommendations for Commission
approval, monitor proceedings to ensure compliance
with Commission orders, and testify at proceedings
on behalf of the Bureau of Transportation and
Safety.

Q And are you authorized to testify at this
proceeding on behalf of the Bureau of

1 Transportation and Safety?

2 A Yes.

3 Q And Mr. Knerr, are you familiar with the
4 crossing that is the subject of this proceeding?
5 It is, I believe, designated as West Broad Street.

6 A Yes.

7 Q And when did you last visit the site of this
8 crossing?

9 A September 3rd of this year, 1999.

10 Q And approximately how long were you there at
11 that site?

12 A At that particular time, about a half an hour.

13 Q And what time of day would that have been?

14 A Somewhere around noontime.

15 Q And when you were there, did you visually
16 inspect the crossing?

17 A Yes.

18 Q And could you describe the crossing for the
19 Judge and for the Court Reporter?

20 A The crossing consists of a stable track. There
21 are flashing light signals cantilevered out over
22 the track there, appeared to be in working order.
23 The crossing surface consists of a Parkco, that's
24 the manufacturer, rubber surface that's full depth
25 rubber. At the crossing, the crossing is four

1 lanes wide. That's traffic lanes of approximately
2 12 foot each. And then approximately 12 foot wide
3 sidewalks on both sides of the roadway as well.

4 Q Could you describe the condition of the crossing
5 there?

6 A The current conditions, and this is primarily in
7 both of the west-bound lanes, in fact, I believe
8 it's almost centered on the two west-bound lanes,
9 there's a depression in the rubber surface there to
10 approximately three to four inches below the rail
11 head.

12 Q Below the rail height. And that would be
13 between the rails?

14 A Yes.

15 Q And could you briefly describe what has led to
16 this condition at the crossing?

17 A Actually, I think it's just a situation where
18 the crossing has outlived its usefulness. I'm
19 understanding that the crossing was installed
20 somewhere in about 1980, 1981 and with the type,
21 amount of traffic the crossing is getting that is
22 about the useful life of a rubber surface.

23 Q And did you observe the traffic that was using
24 the crossing when you were there?

25 A Yes. A fairly heavy volume of traffic, at least

1 during the time I was there. A fairly heavy
2 amount, also, of traffic using the west-bound left
3 turn lane, which, in fact, they actually begin
4 their turn as they're going over the crossing. So
5 you have turning movement on the crossing itself,
6 which also leads or aids the deterioration of the
7 crossing.

8 Q And ---?

9 A Also, at that particular time, there were cars
10 --- I don't know if swerving is a good word, but
11 going out of their way to avoid this deteriorated
12 area, either in both directions, further to the
13 left or further to the right. The ones going
14 further to the right would in essence end up near
15 or up onto the sidewalk area. That particular
16 place, I don't believe the sidewalk is
17 differentiated from the roadway surface by any
18 elevation change, so they're at about the same
19 level.

20 Q And you observed this phenomenon mostly in the
21 west-bound lanes?

22 A Correct.

23 Q And are you aware of any prior Commission
24 proceedings regarding this particular crossing?

25 A Yes. The Commission had a complaint docket.

1 It's complaint docket C79020749.

2 Q Okay. Is that what has been marked as Staff
3 Exhibit One, which has been distributed to the
4 parties and the Court Reporter?

5 A Yes.

6 Q And does that order say anything about the
7 responsibility for constructing or maintaining this
8 particular crossing?

9 A Yes. A number of paragraphs --- I think it's
10 three and five of that specific order, and that
11 order was adopted on April 11th of 1980, and
12 entered on May 2nd of 1980. Numbered paragraph
13 three and also numbered paragraph five deal with
14 the West Broad Street crossing and, in fact, the
15 installation of a high-type rubber surface by the
16 railroad at that particular time. Paragraph five
17 also deals with the installation of that rubber
18 surface. And then paragraph number 25 assigns the
19 maintenance responsibility for that crossing as
20 well as other crossings in complaints that are
21 covered by this same order throughout the borough.
22 Q And are you aware of any Commission orders
23 subsequent to this which would have addressed the
24 construction or reconstruction or maintenance of
25 this crossing?

1 A No, I'm not.

2 Q And does the current condition of the crossing
3 raise any safety concerns in your mind?

4 A Yes, and I think it's the same concern the
5 Borough has. That being for the vehicular traffic
6 from these automobiles swerving or leaving their
7 restricted lanes causing problems for other
8 vehicles as well as these vehicles moving toward
9 and even up on the sidewalk area causing a hazard
10 to the pedestrians who might be walking on the
11 sidewalk.

12 Q And would the vehicles using the crossing
13 potentially create damage to the underside of the
14 vehicle by going through this rutted area?

15 A That's a possibility, yes.

16 Q What, in your opinion, needs to be done at this
17 crossing in order to eliminate this problem with
18 the rutting between the rails?

19 A It would be the staff's recommendation, at this
20 point in time, to completely reconstruct the
21 crossing. We're recommending a concrete crossing
22 surface.

23 Q What exactly would be involved with
24 reconstructing this crossing?

25 A In essence, rebuilding it from the base all the

1 way up.

2 Q So, in other words, you would have to remove the
3 old crossing surface, the rails and ties, and then
4 just start from there and replace everything?

5 A Correct.

6 Q And why, specifically, do you advocate a rubber
7 --- or a concrete crossing surface?

8 A First of all, it's a more rigid material. And
9 we have seen, or at least it's been my experience,
10 that on a crossing where you have turning moves
11 being made over the crossing, and what I noticed
12 particularly were truck moves --- large trucks
13 concrete surface, with its rigidity, seems to
14 handle that better than the rubber because it
15 doesn't give under the load.

16 Q So it would last longer than a rubber crossing?

17 A Correct.

18 Q And presumably, if it lasted longer, it would
19 need to be replaced less frequently?

20 A Correct, and also less maintenance.

21 ATTORNEY SALAPA: Your Honor, that's all I
22 have of Mr. Knerr. He's available for Cross
23 Examination.

24 JUDGE: What I'll do with this witness is
25 I'll permit Cross Examination, and then I'll ask

1 that he be examined strictly as to the condition of
2 the crossing itself, not to some of his
3 observations about the swerving, et cetera. So if
4 Counsel agrees with that, we'll start off with
5 that. Ms. Bernosky?

6 ATTORNEY BERNOSKY: The County has no
7 questions, Your Honor.

8 ATTORNEY LEPORE: If I may, Your Honor, just
9 a brief point of clarification, regarding the
10 Commission's prior order, that required the
11 railroad do the work. That order, paragraph 18, I
12 believe, required that the railroad be reimbursed
13 by PennDOT 100 percent the cost of the work at this
14 crossing.

15 JUDGE: Probably correct, yes.

16 ATTORNEY LEPORE: Thank you. That's all I
17 have, Your Honor.

18 ATTORNEY SHARP: Your Honor, I have a few
19 questions.

20 CROSS EXAMINATION

21 BY ATTORNEY SHARP:

22 Q Mr. Knerr, talking about the same order, Exhibit
23 Number One, does paragraph 25 not also indicate
24 that the occupying railroad at the time,
25 Consolidated Rail Corporation, maintain the

1 crossing at West Broad Street?

2 A Correct.

3 Q Do you know whether Reading, Blue Mountain and
4 Northern Railroad performed any maintenance at this
5 crossing?

6 A None that I'm aware of.

7 Q How long has this crossing, if you know --- how
8 long has it been standing in this state of
9 deterioration?

10 A The only thing I can allude to was a mention at
11 the field meeting that was held regarding this
12 crossing up at the site. And I think they said it
13 was in its current condition for approximately four
14 or five years.

15 Q So that would take us back somewhere around
16 '94/'95, or '95/'96?

17 A Sounds reasonable.

18 JUDGE: For the record, they said --- who
19 are they?

20 A The persons that attended the field meeting,
21 various representatives. In fact, I think it was
22 State Representative Harkel (phonetic) that
23 mentioned that he had been trying to get something
24 done with regard to the crossing for the past four
25 or five years.

1 BY ATTORNEY SHARP:

2 Q Let me ask you this question for a minute.
3 Would inadequate drainage facilities at the
4 crossing site help contribute to the deterioration
5 of the crossing in question?

6 A Very likely.

7 Q If a proper maintenance schedule had been
8 implemented, say four to five years ago, would that
9 have helped to prolong the life of the crossing
10 somewhat, in particular, this one?

11 A It could have. It depends upon what the problem
12 was.

13 Q Would regular scheduled maintenance normally
14 help prolong the life of the crossing of this type
15 or rubber crossing as opposed to, say, full deck
16 concrete?

17 A Because of the type of crossing here, I'm not
18 sure just what kind of maintenance can be performed
19 on it.

20 ATTORNEY SHARP: That's all I have, Your
21 Honor.

22 JUDGE: Thank you.

23 ATTORNEY BOWE: For the Borough, we have no
24 questions for Mr. Knerr.

25 JUDGE: Mr. Lepore?

1 ATTORNEY LEPORE: Your Honor, I'm just going
2 to go with what we already have.

3 ATTORNEY BOWE: No, I have no Cross
4 Examination.

5 JUDGE: Do all parties stipulate as to the
6 condition of this crossing as described by Mr.
7 Knerr?

8 ATTORNEY LEPORE: As to the condition only,
9 Your Honor, yes.

10 JUDGE: Note for the record there were no
11 objections to the stipulation. Thank you, Mr.
12 Knerr.

13 All right. We'll follow the questions and
14 procedures and present --- I think that the first
15 question has been answered by describing the
16 existing condition of the crossing. The second
17 question the Borough has asked is what should be
18 done to improve the safety of the subject crossing.
19 And Mr. Knerr said, put in a concrete crossing.

20 ATTORNEY BOWE: Which is what we would ---.

21 JUDGE: You agree, as far as the Borough is
22 concerned, that would mediate to me?

23 ATTORNEY BOWE: That's correct.

24 JUDGE: You want to pick it up and put
25 Number Four with the witness? I have the written

1 testimony.

2 ATTORNEY BOWE: You say Number Three?

3 JUDGE: Number Four.

4 ATTORNEY BOWE: Okay. Yes, Your Honor. And
5 we do have some photographs that perhaps we could
6 enter by stipulation that do document the condition
7 of the crossing.

8 JUDGE: Yes.

9 ATTORNEY BOWE: And I have copies for all
10 Counsel.

11 ATTORNEY SALAPA: Your Honor, if I may just
12 interrupt, I forgot to move my exhibit into the
13 record, and I would like to do that ---.

14 ATTORNEY LEPORE: No objection.

15 JUDGE: No objection. PUC Exhibit Number
16 One will be admitted.

17 ATTORNEY SALAPA: Thank you.

18 ATTORNEY BOWE: There are exhibits, numbered
19 C-1 through 5. And I have copies for all Counsel.
20 They're eight and a half by 11.

21 JUDGE: Let's call it Borough exhibits.

22 ATTORNEY BOWE: Okay. I just used that
23 because that's what the Court Reporter put on the
24 evidence tag.

25 JUDGE: All right. What is it, C ---?

1 ATTORNEY BOWE: C-1 through C-5.

2 JUDGE: All right.

3 ATTORNEY BOWE: These are the actual marked
4 exhibits that I'll give to the Court Reporter.
5 Here's copies for the Court.

6 JUDGE: Thank you.

7 ATTORNEY BOWE: We would call Kevin
8 Steigerwalt to the stand. He can sit there; is
9 that my understanding, Your Honor?

10 JUDGE: I forgot to swear in Mr. Knerr.

11 WILLIAM J. KNERR SWORN

12 ATTORNEY BOWE: Do you want to --- has Mr.
13 Steigerwalt been sworn in?

14 JUDGE: No, he has not.

15 KEVIN STEIGERWALT, CALLED AND SWORN TO TESTIFY

16 DIRECT EXAMINATION

17 BY ATTORNEY BOWE:

18 Q What is your name, please?

19 A Kevin Steigerwalt.

20 Q And what is your position with the Borough of
21 Tamaqua?

22 A I'm the Borough secretary.

23 Q And how long have you been the Borough
24 secretary?

25 A Approximately five and a half years.

1 JUDGE: A little louder, please.

2 A Approximately five and a half years.

3 BY ATTORNEY BOWE:

4 Q And Mr. Steigerwalt, as secretary of the Borough
5 of Tamaqua, have you made the proper inquiries and
6 reviewed the proper records to determine whether or
7 not there have been any accidents involved at this
8 particular crossing on West Broad Street in the
9 Borough of Tamaqua during the last five years,
10 involving motor vehicles, pedestrians, railroad
11 vehicles, what have you?

12 A Yes, I have.

13 Q And what have you determined?

14 A We weren't able to find any accidents.

15 Q Now, I'm going to show you what has been marked
16 as Complainant's Exhibit Number Six. Can you tell
17 us what that is, please?

18 A Yes, this is one of the Borough ordinances.

19 Q And what is it this ordinance does?

20 A It's the identification of streets in the
21 Borough of Tamaqua.

22 Q When was that Borough ordinance passed?

23 A November 30th, 1907.

24 Q And what portions of this ordinance address the
25 area of the crossing of West Broad Street in the

1 Borough of Tamaqua?

2 A Number one and two.

3 Q The very first two sections of the ordinance?

4 A Yes.

5 Q And does the ordinance --- can you read what
6 paragraph one and two state?

7 A On that certain street beginning at the western
8 boundary line of the Borough of Tamaqua, and
9 extending east to the Philadelphia and Reading
10 Railway tracks, shall be known as West Broad
11 Street. All that certain street lying east of the
12 said railroad tracks, and extending to the eastern
13 boundary line of the Borough, shall be known as
14 East Broad Street. Broad Street shall be the
15 division line between the northern and southern
16 sections of the Borough, and the Philadelphia and
17 Reading Railway tracks shall be the division line
18 between the eastern and western section of the
19 Borough.

20 Q So the Borough has not ordained that portion of
21 the street, which is used as the railroad crossing?

22 A Correct.

23 Q And does the Borough do any maintenance to the
24 crossing or to the approach to the crossing?

25 A No.

1 Q There has been some discussion, earlier, brought
2 up in Mr. Knerr's testimony regarding when the
3 first complaint was made to the railroad concerning
4 maintenance of the crossing. Being the custodian
5 of the Borough records and the Borough
6 correspondence, do you know when the first date of
7 correspondence was, when the Borough addressed the
8 concerns and maintenance to the railroad or to any
9 other entity for that matter?

10 A It was first brought about, I believe, April
11 '95.

12 Q That was the first written request that
13 something be done?

14 A Yes.

15 ATTORNEY BOWE: I have no further questions.

16 JUDGE: Is there nothing on Cross?

17 ATTORNEY BERNOSKY: Just one question, Your
18 Honor.

19 CROSS EXAMINATION

20 BY ATTORNEY BERNOSKY:

21 Q West Broad Street, is this a state highway?

22 A Yes.

23 Q And the people that travel upon this highway are
24 not only residents of Tamaqua County but also
25 surrounding counties?

1 A Correct.

2 ATTORNEY BERNOSKY: That's all I have.

3 ATTORNEY LEPORE: Nothing, Your Honor.

4 ATTORNEY SHARP: Nothing, Your Honor.

5 ATTORNEY SALAPA: No, thank you, Your Honor.

6 ATTORNEY BOWE: We have nothing further,
7 Your Honor. I believe all the areas that we were
8 to submit testimony on are now supplied.

9 JUDGE: There's been testimony on that?

10 ATTORNEY BOWE: Yes. So we would request
11 the admission of evidence Exhibits C-1 through C-6.

12 JUDGE: Thank you. Admitted.

13 ATTORNEY SHARP: Your Honor, I'd like to
14 call Kenneth McClain to the stand, please.

15 KENNETH MCCLAIN, CALLED AND SWORN TO TESTIFY

16 DIRECT EXAMINATION

17 BY ATTORNEY SHARP:

18 Q Mr. McClain, please state your full name, spell
19 it, and give your business address for the record.

20 A My name is Kenneth M. McClain, M-C-C-L-A-I-N.
21 My address is 1713 Lehigh Street, Allentown,
22 Pennsylvania 18103.

23 Q Mr. McClain, by whom are you employed and in
24 what capacity?

25 A I'm employed by the Pennsylvania Department of

1 Transportation, Engineering District 5, and I am
2 the district grade crossing engineer.

3 Q In your capacity as district grade crossing
4 engineer, could you just please briefly describe
5 your duties for the Court?

6 A Yes, I'm responsible for administering the
7 federal rail safety program. I act as liaison
8 between different railroads in our district and the
9 Public Utility Commission. And I am responsible
10 for investigating complaints for different at-grade
11 and grade-separated railroad crossings within my
12 district.

13 Q Mr. McClain, have you visited the subject
14 crossing site?

15 A Yes, I have.

16 Q Have you conducted research and prepared an
17 answer in response to the questions and procedures
18 as submitted by the Commission?

19 A Yes, I have.

20 Q Are you authorized to testify on behalf of the
21 Commonwealth of Pennsylvania, Department of
22 Transportation today?

23 A Yes, I am.

24 Q Let's turn to the questions and procedures as
25 submitted by the Commission. Questions and

1 procedure five, the Department of Transportation,
2 submit testimony describing any details, the
3 highway approaches to the subject crossing,
4 including the lanes, grade, roadway width, speed
5 limit, sidewalks and the general physical condition
6 of the approach roadways.

7 A State Route 209, which is also known as West
8 Broad Street, east-bound, consists of one 12-foot
9 left turn lane and one 12-foot through, slash,
10 right turn lane. West-bound 209 consists of one
11 12-foot left turn lane and one 12-foot through
12 lane. Both east-bound and west-bound consist of a
13 curved section and have a posted speed limit of 25
14 miles per hour. The approaches are constructed of
15 bituminous pavement and are presently in good
16 condition. Sidewalks are present on both the north
17 and south sides of the highway. The approach
18 grades are relatively flat and the railroad
19 crossing traverses the highway at 90 degrees.

20 ATTORNEY SHARP: Your Honor, may I approach
21 the witness?

22 JUDGE: Yes.

23 BY ATTORNEY SHARP:

24 Q Do you have copies of all the exhibits?

25 A Yes.

1 Q Okay.

2 ATTORNEY SHARP: Your Honor, I have copies
3 of Department Exhibits One through Four, which we
4 intend to present. I'm giving two copies to the
5 Court Reporter. Does anyone else require a copy of
6 those exhibits? Do you need those?

7 ATTORNEY BOWE: No, you gave it to me.

8 ATTORNEY SHARP: Okay.

9 BY ATTORNEY SHARP:

10 Q Mr. McClain, could you describe and identify
11 Department Exhibit Number One?

12 A Yes. Department Exhibit One consists of two
13 pictures of the rubber high-type surface, the
14 subject of this proceeding. You can see in both
15 pictures, the existing condition of the rubber
16 panels themselves. They are wavy, certain
17 depressed areas which result in different
18 elevations between the height of the rail and the
19 concrete panel themselves. And you can see some
20 different elevations in the approach roadway with
21 respect to the elevation of the rail and rubber
22 crossing itself, as well. You will also notice the
23 highway approaching in both pictures are in fairly
24 good condition.

25 Q Okay. Let's look at question procedure number

1 six, Pennsylvania Department of Transportation
2 submit testimony as to the approximate class and
3 volume of vehicular traffic traversing the crossing
4 daily. I need your response to this answer. Would
5 you also identify and describe Department Exhibit
6 Number Two?

7 A Yes. State Route 209 is classified as an urban
8 or other principal arterial. Traffic counts were
9 performed for 12-hour periods from 6:00 a.m. to
10 12:00 p.m. on August 13th, 1999 and from 12:00 p.m.
11 to 6:00 p.m. on August 12th, 1999. The 12-hour
12 study consisted of 3,817 vehicles travelling
13 west-bound, with addition, 241 trucks. And 3,943
14 vehicles travelling northbound with 199 trucks.
15 The total percent of trucks from both directions is
16 5.7 percent. For the same study period there were
17 also 317 pedestrians utilizing the north sidewalk
18 and 467 pedestrians utilizing the south sidewalk.

19 If you look at Department Exhibit Number Two,
20 you can see on the first page, you can see a
21 description of when and where the traffic count was
22 taken. The second page goes through and outlines
23 exactly what the pedestrian counts were. When we
24 looked at from the north, that just means the
25 northern sidewalk. When you look at from south,

1 that means the southern sidewalk. You'll see some
2 handwritten numbers in there. They were numbers
3 taken from the third page carried up forward for
4 the next six-hour count to yield the grand total.

5 Q One question I had, the time period in the two
6 days, this 12-hour time period, what is that
7 considered, the time period when the traffic was
8 going through there?

9 A We took the traffic counts from 6:00 a.m. to
10 6:00 p.m., which includes both peak flows of
11 traffic. We have an a.m. peak flow, which is
12 mostly from people who are travelling to and from
13 work. And you have a p.m. peak time which is the
14 same thing, when people are travelling home from
15 work.

16 Q Thank you. Let's look at question and procedure
17 number seven. The Department, submit testimony as
18 to whether any accidents involving trains, motor
19 vehicles or motor vehicles and other motor vehicles
20 have occurred at the subject crossing within the
21 past five years. If so, submit testimony as to the
22 approximate number of such accidents and the nature
23 and cause thereof. I would direct you to describe
24 and identify Department Exhibit Three.

25 A Yes. Department Exhibit Three is a computer

1 printout of a database that we use at PennDOT. And
2 that lists all of the accidents that would have
3 happened at that crossing over the last five years.
4 And you can see that there were no accidents
5 between --- collisions between trains or vehicles,
6 and also, no accidents at the existing crossing
7 between vehicles and other vehicles.

8 Q Okay. I believe the question has been answered
9 by the stipulation, but let me ask you this in
10 place of that. Does the Department agree with the
11 recommendation of the Bureau of Transportation and
12 Safety that a full deck concrete crossing would be
13 the appropriate crossing to place at this site?

14 A Yes, the full deck concrete crossing is the
15 preferred way of solving the problem at that
16 crossing.

17 Q Let's turn to question and procedure nine. The
18 Department of Transportation, submit testimony as
19 to whether federal or state funding would be
20 available for any improvement at the subject
21 crossing.

22 A The subject crossing is not currently programmed
23 under the federal rail safety program or under any
24 PennDOT state programs at the moment.

25 Q What is the likelihood of any funding being

1 available, either now or in the future?

2 A Right now, our current program is full with
3 other candidate projects that our program approves.
4 The next round of projects that we're going to do,
5 the four-year cycle, starts in the year 2001
6 through 2004. So this possibly could get put on
7 that program starting in 2001.

8 Q Mr. McClain, is the Department aware or in
9 possession of any copies of any past orders or
10 actions of the Commission or its predecessor which
11 may have dealt with the construction, operation,
12 reconstruction or maintenance of the crossing
13 involved?

14 A Yes, I am.

15 Q Could you describe what Department Exhibit Four
16 is?

17 A Yes. Department Exhibit Four consists of PUC
18 docket number C79020749.

19 Q And for the record, let me ask you this, is this
20 the same exhibit that was introduced as Bureau of
21 Transportation Exhibit Number One?

22 A Yes, it is.

23 Q Mr. McClain, let me ask you this question.
24 Could you please look at paragraph 23 in Exhibit
25 Four.

1 A Yes.

2 Q Could you read that for the Court?

3 A Yes. Order in paragraph number 23 states, that
4 upon completion of the improvement and its opening
5 to public use, Pennsylvania Department of
6 Transportation, at its sole cost and expense,
7 furnish all material and do all the work necessary
8 thereafter to maintain the highway approaches to
9 the crossings at West Broad Street, East Broad
10 Street and Center Street to within two feet of the
11 outermost rails at each crossing.

12 Q So to the best of your knowledge, has the
13 Department complied with paragraph 23?

14 A Yes, it has.

15 Q Would you look at paragraph 25, please? Could
16 you read that for the Court?

17 A Yes. Order in paragraph number 25 states, that
18 Consolidated Rail Corporation, at its sole cost and
19 expense, do all the work and provide all materials
20 to maintain the crossings at West Broad, Rose,
21 Vine, Elm, East Broad, Spruce, Greenwood and Center
22 Streets, including the paved portion of the
23 crossing to a distance of two feet beyond the
24 outermost tracks.

25 Q To the best of the Department's knowledge, has

1 either the Consolidated Rail Corporation or the
2 Reading, Blue Mountain and Northern Railroad
3 performed any maintenance at the subject crossing?

4 A We have no record of any maintenance being
5 performed at the subject crossing.

6 Q And just to clarify, the subject crossing, what
7 is that called in paragraphs 23 and 25?

8 A West Broad Street.

9 Q Mr. McClain, is the Department willing to assume
10 any of the costs to make any repairs at the
11 existing crossing?

12 A No.

13 Q Could you explain your answer further.

14 A Yes. Originally when this order was adopted
15 back in 1980, PennDOT did put it on federal rail
16 safety program, utilized 90 percent federal money
17 and ten percent state money as a local match for
18 the completion and construction of this project.
19 From there you have a legal binding agreement.
20 Department Exhibit Four, which is the PUC order, it
21 states that the railroad is responsible for
22 maintaining that crossing into the future. And in
23 our opinion, there hasn't been adequate maintenance
24 done to the crossing, and PennDOT has lived up to
25 its end of the deal in maintaining highway

1 approaches, signs, pavement markings, in reference
2 to the construction project. So we think that it
3 is a maintenance issue which the PUC has already
4 allocated the maintenance responsibilities toward
5 the railroad.

6 Q So to follow up to that question, if repairs to
7 the existing crossing, or in this case I think
8 we're all talking about replacing it now, which
9 party, in the Department's opinion, should be
10 required to perform the work and assume the cost
11 thereof?

12 A The Reading, Blue Mountain and Northern
13 Railroad.

14 Q And would your reasoning for that be the same as
15 to the previous answer?

16 A Yes.

17 Q To the best of the Department's knowledge, would
18 the proposed reconstruction of this crossing affect
19 any other public utilities?

20 A It doesn't look like it.

21 Q Mr. McClain, just briefly describe what types of
22 maintenance the Department has done at the subject
23 crossing pursuant to its obligation under the
24 Commission order and what it will agree to do in
25 the future.

1 A In the past, since the order of 1980, PennDOT
2 has probably gone through and resurfaced the
3 highway, keep the highway approaches up to standard
4 without any potholes or anything else, as you can
5 see in some of the pictures that you looked at
6 earlier, that the approaches are in fairly good
7 condition. When the pavement markings are in a
8 state of deterioration, we'll go out and repaint
9 them so they're visible for the traffic and public.
10 That was one of our maintenance issues. And also,
11 advance signing, we were responsible for notifying
12 pedestrians or vehicular traffic that there is a
13 railroad crossing coming up. And we replace those
14 if they are poor. I believe your second question
15 was, would we be willing to agree to do that in the
16 future, and the answer is, yes, we'd maintain all
17 of those things I've described.

18 Q Mr. McClain, thank you.

19 ATTORNEY SHARP: Your Honor, at this time, I
20 have no more questions for Mr. McClain. I would
21 only move my exhibits and his testimony is subject
22 to Cross Examination.

23 JUDGE: There being no objections, we'll
24 mark Exhibits One through Four. They're admitted.
25 Ms. Bernosky?

1 ATTORNEY BERNOSKY: I just have one
2 question.

3 CROSS EXAMINATION

4 BY ATTORNEY BERNOSKY:

5 Q To clarify Department Exhibit Number Three, are
6 those accident reports of the State Police or does
7 that include any possible accidents that could have
8 been reported to the local police?

9 A I believe all these jurisdictions would be
10 responsible for reporting accidents to PennDOT.

11 ATTORNEY BERNOSKY: Thank you. That's all I
12 have.

13 JUDGE: Mr. Lepore?

14 ATTORNEY LEPORE: Thank you.

15 CROSS EXAMINATION

16 BY ATTORNEY LEPORE:

17 Q Mr. McClain, are you aware of what the expected
18 useful life is of a Parkco railroad crossing?

19 A It depends. Anywhere, I would say, in
20 estimation, 15 to 20 years.

21 Q So if this crossing was installed in 1980, it
22 deteriorated and reached the end of its useful
23 life?

24 A It could have.

25 Q Now, are you aware of the manner in which the

1 rubber crossing is constructed?

2 A Yes.

3 Q Can any portion of this crossing be lifted
4 individually?

5 A Possibly, not entirely, but enough to get ahold
6 underneath to see what's going on.

7 Q Has PennDOT done that?

8 A It's not our crossing, we're not responsible for
9 doing that.

10 Q But you conducted no investigation below the
11 rubber surface to determine what the conditions are
12 there.

13 A It's not our facility, we don't ---.

14 Q You're not aware of any investigation done by
15 any other party?

16 A Not to my knowledge.

17 ATTORNEY LEPORE: Thank you. That's all I
18 have.

19 JUDGE: Mr. Salapa?

20 ATTORNEY SALAPA: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY ATTORNEY SALAPA:

23 Q Mr. McClain, you spoke earlier about the
24 Department doing maintenance by installing pavement
25 markings and advance signs and that sort of thing?

1 A Yes.

2 Q When was the last time you were at this
3 crossing?

4 A At our field conference.

5 Q That would have been earlier this year?

6 A Yes, it was approximately two months ago.

7 Q Were there any pavement markings at the
8 crossing?

9 A Yes, there were. I'll check. I know there's
10 lane markings from what I could see in the
11 pictures. I'm not sure if there were any advance
12 pavement markings on the railroad crossing.

13 Q And if those are not currently present, would
14 the Department agree to make sure that they are
15 painted or installed?

16 A Yes.

17 Q And similarly, are you aware of any advance
18 warning signs at the approaches to this crossing?

19 A Yes.

20 Q They are installed at the appropriate places?

21 A Yes.

22 Q And are you aware of whether stop bars are
23 installed as well?

24 A I'm not sure.

25 Q And briefly, what are stop bars?

1 A Stop bars are just, I guess, a six-inch wide
2 white striping on pavement that --- I don't
3 remember exactly --- where a car should stop at the
4 outside of the collision zone of a train.

5 Q So if those are not present, the Department
6 would be willing to install those as well?

7 A Yes, sir.

8 Q With regard to the crossing, is it not correct
9 that this crossing is reasonably close to an
10 intersection of State Route 309?

11 A That is correct.

12 Q Within 200 feet?

13 A Two hundred (200) feet is approximate, yes.

14 Q And is there not a stop light there at the
15 intersection of 209 and 309?

16 A Yes, there is.

17 Q And is there a mechanism wired into the flashing
18 lights for the crossing which control the stop
19 lights?

20 A Yes, railroad pre-emption is present.

21 Q And what does that mean by railroad pre-emption?

22 A Railroad pre-emption means that both the
23 railroad warning devices and the highway traffic
24 signal are interconnected. And what that does is,
25 when there is a train coming on the highway

1 approach or on the railroad, it gives a green
2 signal that the approach might be stacked with cars
3 on the railroad crossing, and that enables the cars
4 to get off safely before the train will come.

5 Q Thank you.

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

8 CROSS EXAMINATION

9 BY ATTORNEY BOWE:

10 Q Mr. McClain, the intersection that was just
11 referred to by Counsel, are you aware that that
12 intersection of 209 and 309 have any type of
13 special designation with regard to the flow of
14 pedestrian traffic when the pedestrians push the
15 button to cross?

16 A I'm not sure what you're getting at.

17 Q That all lanes of travel, north, south, east and
18 west stop when pedestrians cross that particular
19 intersection.

20 A At the highway intersection or the ---?

21 Q Yes, the highway intersection. At the highway
22 intersection of 309 and 209.

23 A It is our standard practice to put pedestrian
24 push buttons in at signal light intersections.

25 Q And they would stop all lanes of pedestrian

1 travel?

2 A Not all lanes. Just the primary movements that
3 would conflict with the pedestrians. It would
4 enable any vehicular movements that are moving
5 parallel to the pedestrians to still make their
6 move.

7 Q Does intersections get specially designated for
8 all lanes of travel to stop when pedestrians are
9 permitted to cross?

10 A Not necessarily all lanes. Like I said, if you
11 have a parallel lane in which the pedestrians are
12 walking, they usually let vehicular traffic flow
13 through that way as well. It's only lanes that run
14 perpendicular to pedestrians that they would stop.

15 Q Is that how the timing is on this intersection?

16 A I'm not sure. That's our standard practice. It
17 could be this way that you're saying.

18 Q And if that were the case, that would be a
19 special designation that PennDOT would have done
20 because of the significant pedestrian traffic at
21 the intersection?

22 A It would, yes.

23 Q And this intersection, and also this crossing,
24 is located in the middle of downtown Tamaqua; isn't
25 it?

1 A That's correct.

2 Q There's commercial buildings, retail buildings,
3 banks, gas stations on either side of this
4 crossing?

5 A Yes.

6 ATTORNEY BOWE: I have no further questions.

7 JUDGE: Any Redirect?

8 ATTORNEY SHARP: No, Your Honor.

9 JUDGE: Thank you, Mr. McClain.

10 MR. MCCLAIN: You're welcome.

11 JUDGE: Mr. Bowe?

12 ATTORNEY BOWE: Nothing further.

13 JUDGE: How about the questions and answers?

14 Oh, I'm sorry, I'm sorry. Mr. Lepore?

15 ATTORNEY LEPORE: Mr. Waters for the
16 railroad.

17 JOHN WATERS, CALLED AND SWORN TO TESTIFY

18 DIRECT EXAMINATION

19 BY ATTORNEY LEPORE:

20 Q Mr. Waters, for the record, could you give us
21 your full name and your title?

22 A My name is John Waters. I am vice president for
23 government affairs for the Reading, Blue Mountain
24 and Northern Railroad Company.

25 Q And that is the correct corporate name of the

1 railroad?

2 A Yes.

3 Q Mr. Waters, do you have general experience with
4 this type of rubberized crossing?

5 A Yes, we have several of them in our system and
6 have installed several.

7 Q Do you know what the manufacturer advertises the
8 useful life of this particular crossing?

9 A The manufacturer of this particular crossing, I
10 believe, is out of business. Omni (phonetic) was
11 the manufacturer of the current panels --- I think
12 approximately 20 years.

13 Q What in your experience is the useful life of
14 this type of crossing?

15 A The crossings usually last between 15 and 20
16 years depending on the traffic level, but
17 especially the truck levels.

18 Q Is there anything that could be done currently
19 to rehabilitate the condition of this crossing?

20 A There was some discussion about the general
21 maintenance. I'm not sure what maintenance you
22 could do on there. The panels that are failing, it
23 appears to be depressing. It is very difficult to
24 get underneath the panels to see what has happened
25 there. We have done some drainage programs to try

1 to alleviate the flooding there in '93, '94. But
2 you'd have to take and remove the rubber panels to
3 get down to the ground to see what the problem is.
4 It appears that the rubber panels simply have
5 depressed and failed.

6 Q Do you remove these rubber panels individually
7 or do they come up as a unit?

8 A The rubber panels and Parkco crossings,
9 unfortunately, are attached by a wire, that they're
10 all --- the way they stay together is by tension.
11 I'm not a railroader, I'm not an engineer. But my
12 understanding is, you have to loosen the wire to
13 take them all apart to get down to where you want
14 to see what's underneath.

15 Q Is that a difficult process?

16 A It's most difficult in the sense --- especially
17 in that location where you have to have detours and
18 you have to have traffic rerouted and --- it's very
19 difficult.

20 Q How long would it take you to do?

21 A Probably at least a day.

22 Q You indicated the railroad had done some
23 drainage work in the area in '93, '94. Do you have
24 personal knowledge of what that consisted of?

25 A We installed --- there was a ponding of the

1 water on either side of West Broad Street, and we
2 installed some drainage, I believe, on either side
3 of the street to try to catch the water so it
4 didn't lay there. I think it's been pretty
5 successful. I think it --- simply because the
6 Borough of Tamaqua hasn't asked us to address the
7 issue anymore, I don't think, but there was a
8 problem there when we first took ahold of the
9 railroad, and did address it, I believe in '93,
10 '94.

11 Q Mr. Waters, how many trains utilize this
12 crossing?

13 JUDGE: You're referring to question and
14 answer number 11. I'd like to refer to that for
15 the record.

16 ATTORNEY LEPORE: Yes, if I may, Your Honor,
17 that's question and answer number 11.

18 BY ATTORNEY LEPORE:

19 Q Reading Group put out an order that the company
20 submit testimony, the number of tracks presently
21 located at the subject crossing, the volume and
22 class and approximate speed of all trains.

23 A There's currently one track through there and
24 approximately 28 miles an hour. There's four to
25 six trains a day that go through there.

1 Q When you say four to six, that would be ---?

2 A Two to three up and two to three back.

3 Q Do you have any plans to increase traffic on
4 that line or decrease traffic on that line in the
5 foreseeable future?

6 A Obviously we'd like to increase the traffic. We
7 have not had any shippers on the horizon, nor do we
8 see any shippers going away. I think the traffic
9 will be fairly consistent. Having said that, there
10 is some discussion under way, which may end up
11 bringing some additional traffic down that way.
12 With our line of business, I don't see any big
13 increases or decreases.

14 ATTORNEY LEPORE: Your Honor, I believe
15 questions 12 and 13 have been testified to
16 previously.

17 JUDGE: Yes, 12 certainly has.

18 BY ATTORNEY LEPORE:

19 Q The railroad submitted testimony as to whether
20 the crossing should be altered or reconstructed and
21 whether additional warning facilities are
22 necessary. This crossing's currently signaled?

23 A Yes.

24 Q Do you feel the need for different warning
25 signals? Let's address that first.

1 A We, the railroad, don't see that subject as what
2 the Commission may in its wisdom decide there. The
3 current equipment we think is adequate.

4 Q What, in your opinion, needs to be done to
5 correct the condition of the crossing itself?

6 A The crossing obviously has problems with the
7 rubber panels. They need to be replaced. And I
8 think, if you'd like to go and do that work, you
9 need to dig down to the very ground level to
10 replace the ties and the ballast and start from
11 scratch. Our position, especially if we have to
12 pay for that or if we do it by timber and asphalt,
13 which is the least expensive. And with regard to
14 whether that would last the longest --- but that
15 would be the least expensive if the railroad is
16 going to have to pay 100 percent of the cost.

17 Q Is there any short of totally reconstructing the
18 crossing that could be done to restore its safety
19 to the public?

20 A I mean, I just, again, have to discuss, again,
21 what the PUC says. I'm not sure what maintenance
22 you could do on that crossing or could have done on
23 that crossing to alleviate the problems with the
24 panels. There may be some problems with the ties.
25 You've got to find that out when you're excavating.

1 But if you look at the level of the rail, I don't
2 believe the rail has changed. The panels have gone
3 down, the rail has stayed up, which would tend to
4 make you believe that the ties are on solid ground
5 and the ballast is working. Simply, the panels
6 have depressed and have gone down behind the ---
7 below the level of the rail.

8 Q And, in fact, you were present at the site
9 inspection of this crossing?

10 A Yes, that's right.

11 Q In your opinion, is the rail head itself level
12 with the surrounding roadway, setting aside the
13 rubber crossing was not at the roadway itself, does
14 it appear to be level?

15 A It appears to be level.

16 ATTORNEY LEPORE: That's all I have.

17 JUDGE: How about 15?

18 ATTORNEY LEPORE: Your Honor, I believe that
19 the written testimony --- and I'll cover that.

20 BY ATTORNEY LEPORE:

21 Q Mr. Waters, is the railroad agreeable to
22 performing the actual work in question?

23 A Yes.

24 Q In fact, the railroad would prefer or insisted
25 it perform any work within its right-of-way?

1 A Right.

2 Q Who do you believe should bear ultimate
3 financial responsibility for the reconstruction of
4 the crossing?

5 A I think if you look at the problems at the
6 crossing, they are basically attached to the part
7 of the crossing that the autos and trucks cross. I
8 don't think the railroad part of the rail and the
9 ties are the issue. We have maintained our
10 crossing and had a safe crossing for trains. We
11 really couldn't do much with the panels, especially
12 if you would use the term maintenance. There's not
13 much we can do to maintain those panels. About the
14 only thing you can do is just reconstruct and
15 replace them, which I don't think is maintenance.

16 Q Assuming for a moment that there was future
17 maintenance required to the crossing within the
18 right-of-way of the railroad, are you willing to
19 assume that maintenance assuming there is
20 maintenance to be done?

21 A Okay. As opposed to what Conrail agreed to in
22 1980, we would obviously agree to maintain the
23 crossing assuming it's concrete and level during
24 the useful life of that crossing, not forever.

25 ATTORNEY LEPORE: Thank you. That's all I

1 have.

2 JUDGE: Mr. Waters, I would assume that the
3 railroad, your railroad, is the immediate successor
4 to Conrail; right?

5 A Yes, Your Honor.

6 ATTORNEY LEPORE: Yes, Your Honor.

7 ATTORNEY BERNOSKY: We have no questions,
8 Your Honor.

9 ATTORNEY SHARP: I have some Cross
10 Examination.

11 CROSS EXAMINATION

12 BY ATTORNEY SHARP:

13 Q Good morning, Mr. Waters. Does any other rail
14 carrier operate on this line other than Reading?

15 A No.

16 Q You had indicated before that you may see some
17 traffic from Canadian Pacific. Would that be
18 shipping that Reading would be doing for them or is
19 that actually Canadian Pacific running on Reading's
20 line?

21 A It may be both.

22 Q Might be both. Okay. When did Reading purchase
23 this line from Conrail?

24 A December 1990.

25 Q Does Reading have any records of either

1 Consolidated Rail Corporation or Reading itself
2 performing any maintenance at this crossing
3 whatsoever, other than the drainage you described
4 before?

5 A I have no knowledge of any maintenance other
6 than we do our weekly inspections as required and
7 going through the FRA requirements. There's really
8 not much you can do on a crossing with rubber
9 surface, whether it's the way --- especially the
10 way it is, other than maybe replacing it. So, ---.

11 Q Well, let me ask you this question, Mr. Waters,
12 when the first panels started to fail, you could
13 have gone in and replaced a panel. That is
14 theoretically possible; isn't it?

15 A In this particular case, I don't think it is
16 because I don't think Parkco is in business
17 anymore, and they do not --- again, you can correct
18 me, I do not think you can replace one individual
19 panel.

20 Q When did Parkco go out of business?

21 A I don't know. I have really never --- we have
22 never put a Parkco crossing in and never talked to
23 a Parkco representative.

24 Q To the best of your knowledge, does Omni make
25 replacement parts for Parkco crossings?

1 A I don't know.

2 Q When you talked before about replacing or
3 looking at the crossing, you had said you would
4 have to go in and release the tension. What were
5 you talking about there? I'm not ---.

6 A There is a wire that runs right through the
7 crossing through a hole, all the way, all through
8 the pads, which is they way they keep those
9 together, tight. That's my understanding. They're
10 tightened at either end through tension. That
11 keeps the panels in place. To get to an individual
12 panel you release the tension that --- you remove
13 the wires and, I assume, pick up the panel.

14 Q But Reading's never done that?

15 A No.

16 Q Reading's never looked at the condition of the
17 subbase?

18 A No.

19 Q You don't know from visual inspection the
20 condition of the ties?

21 A No.

22 Q Reading never replaced any of the rubber panels
23 at all, even when they first started to fail?

24 A No.

25 Q Reading's never replaced any wooden ties

1 underneath, if necessary?

2 A No.

3 Q Is it fair to say that Reading has not performed
4 any maintenance to the subject crossing other than
5 what you've described as your weekly FRA
6 inspection?

7 A We perform the extent of maintenance that we've
8 been able to, given the rubber facility that's
9 there.

10 Q And describe such maintenance.

11 A You would go in and inspect it, make sure that
12 it's safe for train service. You would brush off
13 the stones off of the rubber crossing. There's
14 really not much else you can do. I don't know of
15 any maintenance you could do other than that.

16 Q Because you don't consider replacing panels
17 maintenance; do you? If a panel failed, you don't
18 consider that a maintenance item; do you?

19 A On that particular crossing, no.

20 Q You don't know for a fact that you can't replace
21 any panel with a panel?

22 A No.

23 JUDGE: Since these panels, they're all of
24 advanced age, if you replace one, wouldn't it be
25 fair to assume that something else was going to go

1 in the near future?

2 A Especially, Your Honor, I think, if you're
3 looking at it, they've been failing as early as
4 1995. Clearly, the whole thing should be replaced
5 whenever they're replaced. Individual placing is
6 arguable.

7 BY ATTORNEY SHARP:

8 Q What were the drainage improvements that you
9 made? You described them before. Where were those
10 drains approved to be placed?

11 A Right adjacent to the highway, West Broad
12 Street, I believe on either side, we were having
13 ponding of water. It would cross, actually, Broad
14 Street. And we installed drains and worked with
15 the borough of Tomaqua to get water out of that
16 station so that there was --- and out of downtown.
17 I think it's been pretty successful.

18 Q How long, if Reading is ordered to put the new
19 crossing in, which you agreed that you would do,
20 notwithstanding who would pay for it, how long
21 would it take Reading to drop a new concrete, full
22 deck concrete crossing at this site? I should say
23 install.

24 A Probably a week.

25 Q A week? And you stated before, how long would

1 it have taken you to go in and look at these
2 panels, to pull the panels up and look at the
3 subbase and determine whether or not anything
4 needed to be done?

5 A I believe I said a day.

6 Q A day. But Reading never did that at all?

7 A No.

8 Q So you would agree with me that it would be more
9 of an inconvenience to completely replace this
10 crossing, causing a week's worth of delays and
11 detours rather than a day's worth for inspection;
12 would you agree with that statement?

13 A Well, one week is an inconvenience, it's longer
14 than one day, yes.

15 Q Would Reading, Blue Mountain perform this work
16 in-house or would it bid this work out to a
17 contractor?

18 A I'm not sure.

19 Q What is the estimated cost to install this
20 crossing?

21 A Probably, including --- assuming a detour,
22 you're probably talking about \$125,000 to \$150,000.
23 Assuming the concrete and rubber --- I mean, the
24 high-type surface. The timber and asphalt would be
25 significantly cheaper.

1 Q And to install timber and asphalt, what would
2 that cost?

3 A Probably \$50,000 to \$60,000.

4 Q Is Reading willing to maintain timber and
5 asphalt?

6 A We'd be willing to maintain timber and asphalt
7 through the useful life of the timber and asphalt
8 crossing.

9 Q What's the useful life of a timber and asphalt
10 crossing?

11 A Probably five to seven years.

12 Q So what would you do during the five to seven
13 years, would you replace ties if necessary?

14 A We would if it was necessary.

15 Q Would you replace asphalt if necessary?

16 A Yes.

17 Q But once it got to seven years, you wouldn't do
18 any more work or you'd suggest that it be
19 reconstructed?

20 A At some point you would have to go in and
21 reconstruct it, yes.

22 ATTORNEY SHARP: May I just have a moment,
23 Your Honor?

24 JUDGE: Sure.

25 BY ATTORNEY SHARP:

1 Q Mr. Waters, would you agree with me that it
2 would be better to install a concrete crossing at
3 this point rather than timber and asphalt being
4 that the life of a concrete is at least 20 years
5 and the life of timber is seven; wouldn't that make
6 more sense?

7 A It would make more sense depending on who paid
8 for it.

9 Q Why is that, Mr. Waters? Is that because
10 Reading is not willing to pay for it?

11 A No, Reading, Blue Mountain, Northern has
12 assessed the full cost of the crossing. We prefer
13 to pay timber and asphalt cost rather than the
14 high-type surface concrete or rubber.

15 Q And isn't it true that someone would then have
16 to replace that crossing after seven years under
17 your estimation.

18 A Most likely, yes.

19 Q So we'd be back in front of the Commission seven
20 years from now talking about replacing this
21 crossing again?

22 A Most likely.

23 Q And what would you say the useful life of a
24 high-type concrete crossing is?

25 A At that particular location, probably 15 years.

1 I don't think you'd get 20 simply because it's
2 higher traffic. Fifteen (15) years would be a fair
3 estimate.

4 Q Under your time estimation, you would install or
5 we would talk about installing two asphalt and
6 timber crossings in the time frame of one concrete
7 crossing would have its useful life?

8 A Probably.

9 Q So if it was \$50,000 or \$60,000 for each timber
10 and asphalt crossing, we'd be talking about
11 \$100,000 and \$120,000 for two of them or \$120,000
12 for a concrete crossing?

13 A \$125,000 to \$150,000.

14 Q Have you ever seen any bids on concrete
15 crossings that are a little less than that?

16 A Yes, I'm sure there are. We've only ever had
17 one.

18 Q But you would agree with me that we'd be talking
19 in the same ballpark range for two timbers as for
20 one concrete, give or take ---?

21 A Right, probably at that location. Yes.

22 ATTORNEY SHARP: That's all I have, Your
23 Honor.

24 JUDGE: Mr. Salapa?

25 ATTORNEY SALAPA: No questions, Your Honor.

1 ATTORNEY BOWE: Just a few questions.

2 CROSS EXAMINATION .

3 BY ATTORNEY BOWE:

4 Q Mr. Waters, you certainly agree that the
5 condition of this crossing is --- it's deteriorated
6 and it needs to be replaced?

7 A I agree that the rubber portion of the crossing
8 is failing and needs to be replaced, yes.

9 Q And that that's necessary for the safety of the
10 travelling public, be it on motor vehicles or
11 pedestrians?

12 A I'm not a highway --- I'm not sure I'm qualified
13 to --- if you ask me whether I think it's safe to
14 travel or not, I don't think I'm an expert in
15 highways to ---.

16 Q I'm not asking whether you're an expert. I'm
17 asking, do you agree that the replacement of this
18 crossing is necessary for the safety of the public,
19 or doesn't the railroad have a position on that
20 particular issue?

21 A Well, the railroad, the position of the safety
22 of the public, obviously, at that particular
23 crossing is that we do not like to have any
24 accidents, and we have not had any accidents. As
25 far as your asking me whether the travelling public

1 over a rubber crossing is safe, I'm ---.

2 Q I'm asking what the position of the railroad is.
3 Do you agree that with the deteriorated condition
4 of this crossing that vehicles do veer, when
5 travelling west-bound, to the right and sometimes
6 get on the area where pedestrians often walk; do
7 you agree with that?

8 A I would assume that happens, yes.

9 Q Do you agree it's necessary to replace the
10 crossing to avoid vehicles making those types of
11 maneuvers when crossing this railroad crossing; do
12 you agree with that?

13 A Yes.

14 Q And I believe your testimony, the tenor of your
15 testimony is that certainly the railroad portion of
16 this crossing is not in bad shape, what has made
17 this crossing so deteriorated is the travelling of
18 motor vehicles, be it trucks or motor vehicles
19 travelling over this crossing; is that right?

20 A Yes.

21 Q That's what you said. But, obviously, we
22 wouldn't need the rubberized crossing if it wasn't
23 for the railroad tracks; is that right?

24 A You wouldn't need the rubberized surface if it
25 didn't have autos going over the railroad.

1 ATTORNEY BOWE: I have no further questions.

2 ATTORNEY LEPORE: Some brief Redirect.

3 REDIRECT EXAMINATION

4 BY ATTORNEY LEPORE:

5 Q Mr. Waters, is any purpose served at this point,
6 either economically or practically, by attempting
7 to replace individual panels at this crossing?

8 A I don't see any, no.

9 Q Why is that?

10 A Well, again, I think if you look at the
11 crossing, the entire rubber surface has essentially
12 failed. Replacing individual panels, you would
13 still have certain panels that are unsafe. So the
14 best thing is, if you're going to do a high-type
15 rubber surface, replacing it with concrete or a
16 high-type rubber surface, replacing the entire
17 thing.

18 ATTORNEY LEPORE: That's all I have.

19 ATTORNEY SHARP: Just one question I'd like
20 to ask.

21 RECROSS EXAMINATION

22 BY ATTORNEY SHARP:

23 Q Just a follow-up to that question, Mr. Waters,
24 not talking about 1999, but 1994, what if the
25 initial deteriorated panels were replaced then and

1 then the crossing was brought back up to a decent
2 condition, would you agree that that would help
3 elongate the life of the crossing?

4 A I'm not sure that it would be any different
5 other than the panels may be slightly less than
6 they are now. But you would probably want to redo
7 the entire crossing, including right down to the
8 ground level with the ties and the ballast. I
9 think the issue is the same that would be then as
10 it is now.

11 Q If you replaced a number of deteriorating panels
12 that are causing, would you agree with the
13 statement, Mr. Waters, if one or two of the panels
14 begin to go bad and they aren't replaced or in any
15 way shored up, that's going to help to lead to an
16 expedited deterioration of the crossing?

17 A The panels failed because of the highway traffic
18 over them. Assuming that highway traffic
19 continued, I think you would have --- some panels
20 would have failed more than others at this
21 crossing.

22 Q That answers my question.

23 JUDGE: Thank you, Mr. Waters.

24 ATTORNEY BERNOSKY: The County calls George
25 Parker.

1 GEORGE W. PARKER, CALLED AND SWORN TO TESTIFY

2 DIRECT EXAMINATION

3 BY ATTORNEY BERNOSKY:

4 Q Mr. Parker, could you state your name and
5 occupation for the record?

6 A My name is George W. Parker. I'm a civil
7 engineer and I'm employed by Schuylkill County.

8 Q And what are your duties with respect to the
9 County?

10 A My duties involving roads and bridges would be
11 to be concerned about the maintenance and
12 rehabilitation of bridges and two roadways within
13 the ownership of Schuylkill County.

14 Q Are you familiar with the crossing that's the
15 subject of this hearing today?

16 A Yes.

17 Q As a result of the Commission's questions to the
18 County, did you, in fact, make a visual inspection
19 of the crossing?

20 A Yes, I did.

21 Q The County has submitted written testimony to
22 this Commission. Are you familiar with that which
23 are the attached four photographs?

24 A Yes.

25 Q And these are photographs that you are taking or

1 were taking of the crossing; is that correct?

2 A Yes, they are.

3 ATTORNEY BERNOSKY: The County has
4 previously marked these Exhibits A through D and
5 would ask that they be admitted into the record.

6 JUDGE: There being no objections, they will
7 be admitted.

8 BY ATTORNEY BERNOSKY:

9 Q With respect to the condition of the crossing,
10 do you have any recommendations about what needs to
11 be replaced or repaired at this crossing?

12 A No, I don't.

13 Q Would you agree that, in fact, the crossing is
14 in disrepair and in need of some sort of repair or
15 replacement?

16 A I do agree with that, yes.

17 Q Does the County have ownership or control of the
18 highway that the vehicles travel?

19 A No, the County does not.

20 Q Does the County have any ownership or control of
21 the sidewalk area?

22 A No, they don't.

23 Q Does the County have any responsibility for the
24 rehabilitation of this crossing?

25 A No, they don't.

1 ATTORNEY BERNOSKY: I have nothing further.

2 JUDGE: Mr. Lepore?

3 ATTORNEY LEPORE: Nothing, Your Honor.

4 ATTORNEY SHARP: Nothing, Your Honor.

5 JUDGE: Mr. Salapa?

6 ATTORNEY SALAPA: One question.

7 CROSS EXAMINATION

8 BY ATTORNEY SALAPA:

9 Q Do County residents, either pedestrians or motor
10 vehicle users, use this crossing?

11 A Yes.

12 ATTORNEY SALAPA: Thank you. That's all I
13 have.

14 ATTORNEY BOWE: I have no questions, Your
15 Honor.

16 JUDGE: Thank you.

17 ATTORNEY BERNOSKY: Actually, Your Honor, I
18 have one follow-up.

19 REDIRECT EXAMINATION

20 BY ATTORNEY BERNOSKY:

21 Q Do non-county residents, Lehigh County, and the
22 surrounding counties utilize pedestrian and
23 vehicular traffic at this crossing?

24 A Yes, they do.

25 ATTORNEY BERNOSKY: Thank you.

1 JUDGE: As to the last question, 17, does
2 anybody have any relevant testimony that you might
3 have forgotten about?

4 A No, Your Honor.

5 JUDGE: Preliminarily I asked the press to
6 appear. I don't if any of you mentioned the
7 off-the-record prehearing telephone discussions
8 that took place, if you were here when that, in
9 fact, did happen. Just recording what happened
10 ---? I would ask Counsel to submit briefs,
11 memorandum of law. But I would like to proposed
12 findings of fact and conclusions of law. You might
13 want to dwell on --- the cost seems to be a
14 controlling issue. Off the record.

15 OFF RECORD DISCUSSION

16 JUDGE: Are there any immediate pressing
17 safety needs that this has to be in on an expedited
18 fashion?

19 ATTORNEY BOWE: We have no evidence of any
20 accidents. We still think it's a serious issue.
21 What may happen in the next week, the next month,
22 we don't know.

23 JUDGE: Okay. Well, there's certainly no
24 objection to the November 10th submission date.

25 ATTORNEY BOWE: We have no objection to

1 that, Your Honor.

2 JUDGE: Thank you, ladies and gentlemen. I
3 appreciate your cooperation.

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COMMONWEALTH OF PENNSYLVANIA:
: SS
COMMISSIONER OF DEEDS

CERTIFICATE

I, Sharon M. Marsh, Commissioner of Deeds in and for the Commonwealth of Pennsylvania, do hereby certify:

That the witness was hereby first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the said deposition was taken in Stenotype by me and reduced to typewriting, and constitutes a true and correct record of the testimony given by the witness.

I further certify that the reading and signing of said deposition were (not) waived by counsel for the respective parties and by the witness.

I further certify that I am not a relative, employee or attorney of any of the parties, nor a relative or employee of counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and stamp this

6TH day of October, 1999.

SHARON M. MARSH
COMMONWEALTH OF PENNSYLVANIA
COMMISSIONER OF DEEDS
My Commission Expires February 20, 2003

