

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

ORIGINAL

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Application of PennDot & Susan Wood :
vs. National Railroad Passenger :
Corporation. :
-----x

Application of the Department of :
Transportation of the Commonwealth :
Of Pennsylvania for approval to :
replace the existing overhead bridge :
and request exemptions for horizontal :
clearances where S.R. 0072, Section :
006 (Fruitville Pike) crosses over :
the tracks of National Railroad :
Passenger Corporation (Amtrak) (AAR :
No. 518 172T) in the City of :
Lancaster and Manheim Township, :
Lancaster County; and the allocation :
of costs incident thereto. :
-----x

Docket No.
A-00117798
C-20042702

SECRETARY'S BUREAU

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Initial hearing.

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Hearing Room 3
Keystone Building
Harrisburg, Pennsylvania

Wednesday, December 8, 2004

DOCUMENT

Met, pursuant to notice, at 10:10 a.m.

BEFORE:

Louis G. Cocheres, Administrative Law Judge

APPEARANCES:

Susan Wood, Pro se
(For the Complainant)

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE COCHERES: Let's go
3 on the record.

4 Good morning, Ladies and Gentlemen. As you
5 all know by now, my name is Louis Cocheres and I am the
6 Administrative Law Judge assigned to hear the matters on the
7 Application of the Pennsylvania Department of Transportation,
8 Commission Docket Number A-00117798 and the Complaint of
9 Susan Wood at Docket Number C-20042702.

10 Both of those items, those cases concern some
11 bridges in Lancaster, both on the City boundary with Manheim
12 Township. With that in mind, based on our previous
13 discussion before we opened the record, I'm going to ask Mr.
14 Sharp from PennDot to present his witnesses first.

15 MR. SHARP: Thank you, your Honor. Good
16 morning. I'm Jason Sharp. On behalf of PennDot, I have two
17 witnesses to present today: Mr. Mark Malhenzie and Mr.
18 Harivadan Parikh.

19 Your Honor, do you need an extra copy of the
20 testimony? Do you have one?

21 JUDGE COCHERES: I was served with one. As I
22 recall, you were having a conversation about the testimony,
23 when it was due.

24 MR. SHARP: Thank you, your Honor. I have two
25 copies of everything for the court reporter, both statements

1 and exhibits.

2 Your Honor, at this time, I'd like to call my
3 first witness, Mr. Malhenzie, to the stand.

4 (Pause)

5 Whereupon,

6 MARK MALHENZIE

7 having been first duly sworn, testified as follows:

8 JUDGE COCHERES: Thank you. Please be seated.
9 Good morning, to you. Counsel.

10 DIRECT EXAMINATION

11 BY MR. SHARP:

12 Q. Mr. Malhenzie, could you please state your full name
13 and spell it for the record, please.

14 A. Mark Malhenzie, M-a-l-h-e-n-z-I-e. Mark with a "k".

15 Q. What is your current job title, sir?

16 A. I'm classified as a highway design manager and I'm
17 labeled senior project management.

18 Q. You work for PennDot; is that correct?

19 A. Yes, I do.

20 Q. In front of you, have you taken some documents to the
21 stand? Do you have with you Department Statement Number One?
22 It's a document entitled "Mark Malhenzie Direct Testimony".

23 (Pause)

24 A. Yes, I do.

25 Q. Do you have exhibit attached to that, namely PennDot

1 Exhibits One, Two, Three, Four, Five and Six?

2 (Pause)

3 A. Yes.

4 Q. Mr. Malhenzie, was this direct testimony prepared by
5 you, under your direction and control?

6 A. Yes.

7 Q. If I were to ask you those same questions today here
8 in the courtroom, would your answers be the same?

9 A. Yes.

10 Q. Do you have any modifications, alterations, of
11 supplements to this testimony at this time?

12 A. No.

13 Q. Do you adopt this testimony as your own for this
14 hearing today?

15 A. Yes, I do.

16 MR. SHARP: With that, your Honor, I would
17 move in Department Statement One, the direct testimony of
18 Mark Malhenzie and the related exhibits, subject to cross.

19 Mr. Malhenzie would be open for cross
20 examination.

21 JUDGE COCHERES: They are admitted, subject to
22 cross examination and any timely motions.

23 **(Whereupon, the document was marked**

24 **Department Statement No. 1 and related**

25 **Exhibits for identification and received in**

1 **evidence.)**

2 Are there any questions for Mr. Malhenzie?

3 Mr. Salada.

4 MR. SALADA: Thank you, your Honor.

5 CROSS EXAMINATION

6 BY MR. SALADA:

7 Q. Mr. Malhenzie, could you please state when you last
8 visited the site of the Fruitville Pike crossing? - if you
9 can remember.

10 (Pause)

11 A. I believe last month. I can't provide a specific
12 date. It was more of a passing by. It was to have a meeting
13 at Lancaster Amtrak Station.

14 Q. Okay. Can you tell me, looking at Department Exhibit
15 Number One, the map, does this map - to the best of your
16 knowledge - show the boundaries between the City of Lancaster
17 and Manheim Township?

18 A. To the best of my knowledge, yes.

19 Q. Can you tell me, if you know, how that boundary is
20 depicted on Exhibit Number One?

21 (Pause)

22 A. The line with the two dash lines, you would see it
23 somewhat following the railroad, going down Fruitville Pike,
24 McGovern Avenue, that's the delineation of Township lines and
25 the City lines.

1 The City, I believe, and Manheim Township have
2 piecemeal territories. I believe what falls in the color
3 version, or the darker version would be attributed to
4 Lancaster City territory and that which would be more in
5 white would be Manheim Township territory.

6 Q. So basically your testimony is that the boundary line
7 is delineated by the red, I guess, partially dashed line ...

8 MR. SHARP: Your Honor, may I interrupt for
9 one moment. I think everyone has a cold copy. Would you
10 mind if I provided Him ...

11 MR. SALADA: Thank you.

12 JUDGE COCHERES: We'll take that out of your
13 fee later, Mr. Sharp.

14 (Handing document to witness)

15 BY MR. SALADA:

16 Q. So everything that is depicted as yellow on Exhibit
17 One is Manheim Township, is that correct?

18 A. I believe that's correct.

19 Q. That's to the best of your knowledge. With regard to
20 the Fruitville Pike and the bridge that was reconstructed or
21 replaced, do you know when the Department or its contractors
22 decided - well, first, let me back up. Does the Fruitville
23 Pike bridge have streetlights on it as constructed?

24 A. As constructed, yes.

25 Q. And when did the Department of Transformation or its

1 contractors decide to install streetlights on the Fruitville
2 Pike bridge?

3 A. It would have been subsequent to the final zoning
4 being done after it was bid. It would have been in the
5 construction phase. And it was at the request of the locals.
6 And I believe, for all intents and purposes, the local
7 Beautification Committee. And that consisted of various
8 representatives or their aides, Lancaster County
9 Commissioner, Lancaster county staff, a few other multi-
10 committee organizations, the Lancaster Alliance, Prince
11 Street Coalition, and to my memory, maybe one other entity.

12 Q. Sir, when you say "locals", are you referring just to
13 Lancaster County officials or are you referring to Lancaster
14 County officials, Lancaster City officials, Manheim Township
15 officials, or do you know?

16 A. I do not recall specifically a Lancaster City or a
17 Manheim Township representative at that initial meeting. But
18 I believe they were aware and cognizant of changes posed by
19 that committee that were within the network of
20 communications, specifics of who I am not aware of.

21 Q. Would the Department of Transportation be willing to
22 maintain these streetlights?

23 A. No.

24 Q. Does the Fruitville Pike bridge have sidewalks on it?

25 A. Fruitville?

1 Q. Yes, the new bridge.

2 A. Yes, it does.

3 Q. And were the sidewalks requested by a local entity,
4 if you know?

5 A. The existing bridge, prior to the new bridge, had
6 existing sidewalk on it. And on the same site, it would have
7 been physically on the bridge and the approaches leading up
8 to the physical bridge. And it's our PennDot policy, subject
9 to the local community not wanting a sidewalk, that we will
10 replace a sidewalk, essentially in kind, because it is likely
11 there for pedestrians in the first place.

12 If we physically have to disturb an area and are
13 removing a sidewalk for the physical construction of our
14 roadway, we will put it back, unless the local community
15 objects to that.

16 Q. All right. So the sidewalks on the new Fruitville
17 Pike bridge would not necessarily have been installed at the
18 request of an entity, but rather would have been installed
19 pursuant to existing PennDot policies?

20 A. Correct. And there would have been - there was a
21 public meeting and other stateholder meetings throughout the
22 project development process that would clearly have shown,
23 identified and explained that a sidewalk would be going back,
24 which would be inclusive of all public officials that we
25 always have present prior to official public meetings, open

1 to all the public.

2 Q. Am I correct that your testimony that the Department
3 of Transportation is not willing to agree to remove the snow
4 and ice and debris from the sidewalks on Fruitville Pike
5 bridge?

6 A. That is correct.

7 Q. With regard to the Lititz Pike bridge, the existing
8 structure, there's a reference you made to Table One - I
9 think that's your testimony - there's a Table One in your
10 testimony, at page four.

11 A. Yes.

12 Q. Am I correct that totaling all those numbers up, that
13 the cost for replacing or reconstructing the Lititz Pike
14 bridge is estimated at approximately \$30 million dollars?

15 A. All phases you're referring to?

16 Q. Yes.

17 A. Yes. The preliminary phase and the final design
18 phase are probably - realizing it is an estimate at this
19 point - are probably much more closer to actual costs that
20 would be incurred, based on what we would anticipated an
21 engineering agreement costing.

22 The construction phase ties backwards into the right-
23 of-way phase, is based more on a worse case design or a
24 larger design. One of the very first tasks that we're going
25 to ask the consultant to do is develop various alternatives

1 for that bridge replacement which may - and those
2 alternatives may be simply putting a new bridge back in
3 place; possibly symmetrically moving it one way or the other,
4 or possibly two bridges being placed to take the place of
5 one. And that concept, there is a previous study done for
6 the City, County and Manheim Township that had an alternative
7 that indicated that was a concept worth pursuing. I believe
8 that was in 1998.

9 So as proper, when the Department's consultant gets
10 involved with looking at alternatives, we probably will get
11 that alternative. That's the alternative that two
12 independent bridges, depending on where it's placed, where
13 the construction costs may be very significant and associated
14 with regular costs and utility costs; therefore, the
15 \$22,500,000,00 would basically replicate that cost.

16 However, we fully - the Department has full
17 intentions of not having a high construction cost, high
18 environmental impact alternative ultimately be pursued unless
19 that is the absolute desire of the community. We will try to
20 achieve a low-cost solution and low impact cost solution.

21 Q. Taken from that Table One, the construction, it says
22 "Program Year 2013". Would I be correct in assuming that the
23 Department expects to begin construction of the Lititz Pike
24 bridge, or the replacement for the Lititz Pike bridge in
25 2013?

1 A. That is the year that's currently programed,
2 depending on various situations that may occur. If
3 additional funding becomes allocated, the Department works
4 through the Planning Administration, highway priority
5 projects and priority funds within the context of that
6 particular MPO.

7 And depending on the alternative selected, as I
8 indicated, a much more lower impact alternative is selected,
9 the bridge may be only \$6 million dollars. There may be a
10 way to, in future years, move the construction up to earlier
11 years.

12 So there's a lot of variables that play into that.
13 But right now, as a place holder or an estimate, I believe
14 it's programmed for the Year 2013. So that has a potential
15 to move up, based on solution.

16 Q. So conversely, there's a possibility that the actual
17 construction date could be pushed back to, say, 2015,
18 depending on circumstances?

19 A. Depending on circumstances, that's correct.

20 Q. Am I also correct that the Department will not agree
21 to maintain any portion of the Lititz Pike bridge?

22 A. Any portion? Our typical policy would be to maintain
23 the pavement within the curb-to-curb and any major structural
24 and substructural components within the approaches as the
25 beginning and ending of the roadway system.

1 Ultimately, that will have to be determined at a
2 later time, once the design starts to progress and the
3 decision made on that. Maintainability as far as ice and
4 debris removal, typically, the policy would defer to the
5 municipalities.

6 Q. But the existing Lititz Pike bridge, the Department
7 will not agree to maintain any portions of the substructure,
8 superstructure ...

9 MR. SHARP: I'm going to object, your Honor,
10 only to the extent I think it exceeds the scope of Mr.
11 Malhenzie's testimony. I think that's addressed by Mr.
12 Parikh in his testimony and he might be the more appropriate
13 person to answer that question.

14 MR. SALADA: All right. That's all I have,
15 your Honor.

16 JUDGE COCHERES: Mr. Underhill.

17 MR. UNDERHILL: Your Honor, I have some
18 photocopies of newspaper photograph obtained last night. I
19 would hand these out, if I may approach the witness.

20 JUDGE COCHERES: Certainly.

21 (Handing document to parties and witness)

22 JUDGE COCHERES: Do you want to give an
23 exhibit number to those?

24 MR. UNDERHILL: City/Township Number One.

25 **(Whereupon, the document was marked**

1 **City/Township Exhibit No. 1 for**
2 **identification.)**

3 CROSS EXAMINATION

4 BY MR. UNDERHILL:

5 Q. Mr. Malhenzie, when the public meetings were held
6 regarding the Fruitville Pike bridge, and the lights, if I
7 understood your testimony correctly, you said that it was
8 agreed upon or decided after the final design had been made,
9 and it was at the request of local bodies which you did not
10 recall included the City or the Township; is that correct?

11 A. At the initial meeting, that is correct.

12 Q. To your recollection, did the City or the Township
13 have any input as to whether or not those lights would be
14 installed and, in particular, where they would be installed?

15 A. I believe there were communications back to those
16 bodies, likely through the original group. We also had a
17 construction management firm, Urban Engineers, that were
18 facilitating or assisting the Department in construction
19 services that were meeting and communication with various
20 individuals during that process.

21 I believe Phil Mellott possibly may have been aware
22 of the lighting. I believe one way or another, individuals
23 within those respective organizations knew what was going to
24 happen.

25 Q. That was not exactly my question. The question was

1 Did the Township and City have any input as to what would be
2 installed, rather than being informed of what had been
3 decided?

4 A. I can say that I did not have direct communication
5 with a City engineer or a municipality engineer, me,
6 personally. I do not know if these other organizations or
7 construction management firm or whatever had direct
8 communication with them, sharing the facts, et cetera.

9 Q. Did the original bridge have any lights of any kind?

10 A. I believe there was lights via utility poles, the
11 standard utility poles. There was lights attached to them.
12 I do not believe they were attached to the bridge and/or the
13 approaches, but they would have been offset.

14 Q. Were there any lights contemplated at all in the
15 original design of the bridge?

16 A. No, there was not.

17 Q. Would you look at City/Township Exhibit Number One.
18 As I said, this was taken from last night's newspaper. They
19 depict these lights as being very close to the edge of the
20 sidewalk on the roadway side rather than the parapet side;
21 isn't that correct?

22 A. Yes.

23 Q. In a meeting in which the City or Township
24 representatives were both present, was there any discussion
25 of removal of snow and ice and any debris that might

1 accumulate on the Fruitville Pike bridge sidewalk?

2 A. I was not at all the potential meetings that may have
3 taken place. I believe the City and/or the Township was
4 represented at the PUC field conference when that would
5 likely have been brought up.

6 Q. You say "likely"; you don't know for certain if it
7 was or not?

8 A. I can't recall from memory; I'd have to go back and
9 look at the minutes.

10 Q. Has the Department of Transportation been involved in
11 contemplating the replacement of the Dillerville Pike bridge
12 over the Amtrak Railroad?

13 MR. SHARP: Objection, your Honor. Relevance
14 to the current proceeding regarding these two bridges.

15 MR. UNDERHILL: It has to do with discussions
16 of having ice and snow on sidewalks.

17 JUDGE COCHERES: I'm going to allow it, but
18 don't go too far. All right?

19 MR. UNDERHILL: Just over the bridge.

20 JUDGE COCHERES: Just over the bridge. Fine.

21 BY MR. UNDERHILL:

22 Q. Mr. Malhenzie, - I'm not sure he's the person to ask;
23 that's why I asked him.

24 A. Can you repeat the question, please.

25 Q. Yes. Are you aware of any discussions between the

1 City and the Department of Transportation about replacing the
2 Dillerville Road bridge over the Amtrak tracks?

3 A. Yes.

4 Q. Is it not true that the City has objected to those
5 proceedings, to any obligation to remove ice and snow, and
6 has suggested that a sidewalk be heated to obviate the
7 problem?

8 A. I'm not aware they objected. I received inquiries
9 from Lancaster County Planning Commission staff about
10 potential of the sidewalk in that corridor being replaced.
11 And ideas or concepts in regards to ways to possibly minimize
12 or eliminate, I guess, the snow removal.

13 One of the ideas was that some kind of heated system
14 be within the sidewalk. But it was very preliminary and
15 general. I don't know any extensive details or thoughts of
16 anyone.

17 Q. But you're not aware of any such discussions with
18 respect to the Fruitville Pike bridge; is that correct?

19 A. No.

20 Q. It's not correct, or there weren't any?

21 A. I'm not aware of any.

22 Q. With respect to the Lititz Pike bridge, I had
23 previously handed out photographs earlier. Do you have
24 those?

25 A. I don't have them in my possession; I do recall them.

1 MR. UNDERHILL: Anyone else need...

2 MR. ZIELONIS: Are you putting them in as an
3 exhibit?

4 MR. UNDERHILL: I'm going to, yes.

5 MR. ZIELONIS: I need one.

6 (Handing document to counsel)

7 (Pause)

8 MR. UNDERHILL: Your Honor, did I give you
9 these last time?

10 JUDGE COCHERES: I'll have to look. I can't
11 say that I immediately recognize these. You still need to
12 give two copies of each of these to the court reporter.

13 MR. UNDERHILL: Oh-oh. That will leave me a
14 bit short of these and I don't know why.

15 JUDGE COCHERES: When you say you introduced
16 these at previous hearing, are you talking about our
17 prehearing conference?

18 MR. UNDERHILL: Yes. And I don't mean that I
19 introduced them so much, I just believe that I handed them
20 out to everybody as a discussion point. And that may have
21 occurred after we formally concluded and were just discussing
22 matters.

23 JUDGE COCHERES: Yes, because these don't look
24 familiar to me at all. But given my age and my memory, that
25 alone is not a surprise.

1 (Pause)

2 JUDGE COCHERES: Mr. Underhill, before you sit
3 down, I trust you gave the court reporter two copies of City
4 Exhibit Two?

5 MR. UNDERHILL: I didn't, but I will.

6 (Handing document to court reporter)

7 (Pause)

8 JUDGE COCHERES: This latest group of six
9 photographs, twelve photographs, will be labeled
10 City/Township Exhibit Two.

11 Actually, let me ask Mr. Underhill, would it
12 be clearer on the record if we made these Two and Three?

13 MR. UNDERHILL: Probably would be. Number
14 Two, if I may, is the one that, the second photograph on the
15 right, shows daily and percent off and then...

16 JUDGE COCHERES: I see. All right. Two.

17 MR. UNDERHILL: And then Three will be the
18 one that, again, in the second photograph to the right, shows
19 the automobiles of the used car dealer.

20 JUDGE COCHERES: Fine. That will be Exhibit
21 Three. Please proceed.

22 **(Whereupon, the documents were marked**
23 **City/Township Exhibit Nos. 2 and 3 for**
24 **identification.)**

25 BY MR. UNDERHILL:

1 Q. Mr. Malhenzie, first of all, look at Township Exhibit
2 Number Two -- you know which one that is now?

3 A. Yes.

4 Q. I will represent to you that this is looking at the
5 Lititz Pike bridge from the City side and in the first
6 photograph, we're looking at what would be oncoming traffic
7 coming from the Township, crossing the bridge, turning right
8 on McGovern Avenue. And slightly to the left of the
9 photograph is a lot for an automobile dealer, and beyond
10 that, the Amtrak station.

11 MS. WOOD: Excuse me, your Honor. I don't
12 think any of us got what has now been labeled Exhibit Two the
13 last time. Maybe we each got the one page, so I can't look
14 at the pictures because I don't have them.

15 MR. UNDERHILL: Okay. Maybe that's why I have
16 more of one than the other.

17 (Pause)

18 JUDGE COCHERES: Before you continue, Mr.
19 Underhill, have the parties all figured out which group of
20 photos is which?

21 MR. SHARP: Yes, your Honor.

22 MR. SALADA: Yes.

23 JUDGE COCHERES: Fine. Thank you. Please
24 continue, sir.

25 BY MR. UNDERHILL:

1 Q. Mr. Malhenzie, if you will look at the second
2 photograph at the top of the page, the one that shows the
3 daily and percent off, if we were moving against traffic, we
4 would then be coming around the curve and starting up the
5 bridge. Do you follow that?

6 A. Yes.

7 Q. Then the picture in the middle, on the left,
8 continues that. And now we're looking at the sidewalk and
9 you can see, in the middle of the photo, the parapet of the
10 bridge sticking up. Are you with me there?

11 A. Yes.

12 Q. Okay. Then the next photo is somewhat closer and
13 shows along the edge of the roadway the spalling and damage
14 to the sidewalk. Do you follow me there?

15 A. Which one are you on?

16 Q. Middle right.

17 A. Yes.

18 Q. Then the bottom two simply proceed further along and
19 you can see the condition on the sidewalk and particular, on
20 the bottom right, you can see that it is rather badly
21 damaged. Would you agree with that?

22 Q. There's spalling on the approaches, yes.

23 Q. Would you agree that it is rather badly damaged?

24 A. No.

25 Q. No. All right. Did you read the written testimony

1 of Ms. Wood, one of the Complainants?

2 A. No, I did not.

3 Q. You didn't. I've read your -- is it you or Mr. Parikh
4 who testified to the Lititz Pike bridge?

5 MR. SHARP: Mr. Parikh's testimony was more
6 focused to Lititz Pike.

7 BY MR. UNDERHILL:

8 Q. Okay. Mr. Malhenzie, did you comment in your
9 testimony on the Lititz Pike bridge and the condition of the
10 sidewalk and any necessary repairs?

11 A. I did not.

12 Q. Would you agree with me though, as the PennDot
13 engineer, that the sidewalk needs to be addressed and should
14 not be left in the condition that it's in?

15 A. For that particular picture -- and I don't know how
16 far it goes -- I'm really focusing on what's in the foreground
17 there, near the pole. The cosmetic spalling I would say
18 would appear to need some cosmetic work on it.

19 Q. Look at City/Township Exhibit Three if you would.
20 We're now looking at the bridge from the Township side,
21 opposite the way we were looking before, and starting with
22 the middle picture on the right, we're now looking back down
23 at, in effect, a continuation of the bottom right picture on
24 Exhibit Two.

25 Do you agree with me that this shows considerable

1 damage to the sidewalk?

2 A. Yes, I would say that provides a much more larger and
3 probably deeper cosmetic ...

4 Q. But still cosmetic, is that your testimony?

5 A. Yes. But I feel ...

6 Q. I'm sorry, I can't hear you.

7 A. ...I believe a revamp of the bridge would be a better
8 answer to that question, from a structural standpoint, versus
9 a cosmetic.

10 Q. Do you know if, during this past summer, PennDot
11 resurfaced the Lititz Pike bridge, the roadway?

12 MR. SHARP: Your Honor, I'm only going to
13 object to a line that I think this is something that Mr.
14 Parikh is able to identify more closely. I believe we're
15 going beyond the scope of Mr. Malhenzie's testimony, getting
16 into the other witness. Otherwise, the question is fine.

17 MR. UNDERHILL: I'm not sure that's an
18 objection, "otherwise it's fine". I asked him if he knew.

19 JUDGE COCHERES: I'm going to allow him to
20 answer the question, if he knows.

21 THE WITNESS: Would you ask the question one
22 more time, please.

23 BY MR. UNDERHILL:

24 Q. Do you know if PennDot resurfaced the roadway for
25 Lititz Pike bridge this summer?

1 A. Yes, I am aware of that.

2 Q. As part of that, did it do some repair work to the
3 sidewalk?

4 A. It would have done repair work. If you look at
5 Exhibit Two, bottom row on the left, you see approximately
6 three feet of new concrete that was placed for approximately,
7 I'll say maybe 75 foot length. That work would have been
8 done because of the necessity of what was done from a
9 pavement standpoint.

10 I believe they were milling (which means grinding) to
11 a certain depth of roadway and then putting in new pavement
12 to essentially replace it. To do so would have required a
13 tie-in point. Usually there is a defined curb that would
14 allow us to do that because of machinery and design and
15 drainage and things of that nature.

16 In that particular case, the cosmetic spalls probably
17 would have been lower than what we needed to tie in the
18 pavement. So I believe that is the reason why that specific
19 area necessitated a minor work in order to allow that to
20 happen.

21 I don't believe that was necessary anywhere else
22 within that particular area. And again, I would defer any
23 more detailed questions.

24 Q. Nevertheless, it is your testimony that some 75 feet
25 of length and three-foot width of sidewalk was replaced by

1 PennDot this past summer; is that true?

2 A. Out of necessity; correct.

3 MR. UNDERHILL: That's all.

4 JUDGE COCHERES: Mr. Zielonis.

5 MR. ZIELONIS: Thank you, your Honor.

6 CROSS EXAMINATION

7 BY MR. ZIELONIS:

8 Q. If you could turn to page five of your testimony,
9 line 30. Let me know when you have that.

10 (Pause)

11 A. Sidewalks?

12 Q. Yes. When you state that sidewalks primarily benefit
13 local pedestrians, are you referring to the City of
14 Lancaster/Manheim Township residents?

15 A. Specifically for this hearing, I would say Yes. And
16 that's a global answer, I would say. It is for the
17 pedestrians.

18 Q. You indicated earlier on cross examination there was
19 a discussion regarding the lights on Fruitville Pike bridge.

20 A. Yes.

21 Q. You indicated there were certain bodies that were
22 involved in those discussions.

23 A. Yes.

24 Q. You indicated, I believe there was a Prince Street
25 neighborhood group?

1 A. I believe it was the Prince Street Coalition they
2 call themselves. And I believe there's a Lancaster Alliance
3 for New Direction. I'm not quite sure of the exact title of
4 them, but there's two organizations very active in that area.
5 And I believe there's even another one that will be getting
6 involved shortly.

7 Q. This Prince Street entity, is that related to the
8 Prince Street located in both Manheim Township and the City
9 of Lancaster, or do you know?

10 A. To the best of my knowledge, yes.

11 Q. You indicated on several occasions that there were
12 officials or participants from Lancaster County at these
13 meetings?

14 A. Correct.

15 Q. Would they have been officials or people from the
16 Lancaster County Planning Commission?

17 A. One was certainly Lancaster County Commissioner
18 Shaub. One was Christopher Newman from Lancaster County
19 Planning Commission. The County staff. Bud Thompson who was
20 representing Senator Armstrong. Representative Mike Sterla.
21 Jack Howell from the Lancaster Alliance. Tim Peters from the
22 Prince Street Coalition. And I believe there would have been
23 several Department staff, myself being one, and our
24 consultant representatives from Urban Engineers. As I
25 suggested earlier, possibly someone from our actual PennDot

1 construction.

2 Q. You indicated in your testimony, you mentioned an
3 entity called an MPO. Do you recall that in your testimony?

4 A. Yes, that is Metropolitan Planning Organization.

5 Q. What is the role of the MPO in the Commonwealth of
6 Pennsylvania?

7 A. Globally, as I understand it, they are an
8 organizational body that helps to set and program projects
9 and throughout the years, the various phases and priorities
10 within those years in conjunction with PennDot and the
11 Federal Highway Administration. And they also would have the
12 latitude to move monies around on specific projects, again,
13 with the coordination when projects are underfunded or over
14 funded on any of the various phases.

15 So they certainly would have been aware of any cost
16 overruns or underruns associated with this project and any
17 monies that would be going towards any esthetics required.
18 Of course, that would have to be disseminated downward
19 through other bodies, municipalities.

20 Q. Are the members of the Metropolitan Planning
21 Organization, are they the local municipalities for that
22 particular geographic area in the Commonwealth?

23 A. I don't know the answer to that question.

24 Q. Do you know whether the Lancaster County Planning
25 Commission functions as a staff for the MPO that services

1 Lancaster County Area?

2 A. I believe there is a technical committee that acts
3 as, I guess, a recommendation body to the higher Metropolitan
4 Planning Organization. I believe there are Lancaster County
5 staff on that and other members that may include City and/or
6 Township representatives. I believe there's other
7 representatives such as maybe a bicycle person on that, et
8 cetera, et cetera.

9 So there's various bodies leading up to the
10 Metropolitan to provide recommendation.

11 Q. Do you know whether - you mentioned Chris Newman -
12 was at a meeting involving this bridge, if he was there on
13 behalf of the Lancaster MPO?

14 A. I would assume. I can't say that with 100 percent
15 certainty, but that is typically - the counties that do have
16 coordination and are somewhat represented in the MPO.

17 MR. ZIELONIS: Your Honor, that's all the
18 questions I have.

19 JUDGE COCHERES: Are there any other
20 questions?

21 MR. UNDERHILL: If no one else - just
22 something Mr. Zielonis brought up.

23 FURTHER CROSS EXAMINATION

24 BY MR. UNDERHILL:

25 Q. Mr. Malhenzie, how many pedestrians from the City and

1 Township use the Lititz Pike bridge?

2 A. I don't know the answer to that.

3 Q. Would you agree with me, if the residents of the City
4 and the Township are also residents of Lancaster County?

5 A. Can you repeat that?

6 Q. Certainly. If people are residents of the City and
7 the Township, aren't they also residents of Lancaster County?

8 A. Yes.

9 Q. Would the same be true for the Fruitville Pike
10 bridge? You don't know how many pedestrians use that?

11 A. No.

12 Q. And City and Township residents would be Lancaster
13 County residents as well?

14 A. Yes.

15 MR. UNDERHILL: Thank you.

16 JUDGE COCHERES: Mr. Malhenzie, I have one or
17 two questions, maybe more, for you as well. Let's look at
18 City/Township Exhibit Number One, a photograph from the
19 newspaper. Did I understand you to tell me that the light
20 poles that I see were installed by the Department?

21 THE WITNESS: In conjunction with this
22 Beautification Committee, they requested a host of esthetics,
23 including form liners on the parapets, there's the lights,
24 and other things. The lights were requested, some kind of
25 lighting was requested by that group. And we worked through

1 various ideas of how to accommodate that. In fact, they even
2 submitted to us - the Beautification Committee - designs or
3 details of the acorn-type, historic-looking lighting to give
4 us ideas.

5 So we were trying to fulfill that concept, but we did
6 look at various alternatives of how to accommodate lighting
7 across that structure. I hope that answers your question,
8 Judge.

9 JUDGE COCHERES: I simply asked you Did your
10 Department install the lights?

11 THE WITNESS: I'm sorry. We did not install
12 the lights. That would have been installed by PP&L who, I
13 understand, would install and maintain and, I would say,
14 provide the electricity to the clients that would ultimately
15 pay for that, which would be the municipality and the city.

16 What we did from PennDot perspective, is we provided
17 the conduit that would be, the pipes that the conduit would
18 run underneath the sidewalk, across the bridge, and through
19 the sidewalk, and may have also been involved with providing
20 the bolts that would have come up through the sidewalk.

21 The actual installation of the lighting as you see it
22 would have been primarily done by PP&L.

23 JUDGE COCHERES: Who gets the bill for
24 energizing the lights?

25 THE WITNESS: It's my understanding that since

1 the bridge is somewhat split into Manheim Township and the
2 City side, that the existing agreements that PP&L would have
3 had with these municipalities would have been supplemented to
4 be inclusive to be billed.

5 Now I do not know the specifics behind that
6 arrangement. That is my understanding.

7 JUDGE COCHERES: Does the Department get the
8 bill for energizing the lights?

9 THE WITNESS: Not to my knowledge.

10 JUDGE COCHERES: Does the Department get the
11 bill if one of the light standards or one of the light bulbs
12 needs to be replaced?

13 THE WITNESS: Not to my knowledge.

14 JUDGE COCHERES: Mr. Malhenzie, in cases like
15 this, I have to tell you that I've been around State
16 Government a long time. In fact, slightly over a 100 years
17 ago I had Mr. Sharp's job. From time to time, I get to have
18 these cases in my hearing room.

19 It leads me to questions like Does PennDot
20 still have a design manual that it applies to situations like
21 this?

22 THE WITNESS: We have a design manual that's
23 more geared towards a high-mast lighting that you would see
24 on interchanges and expressways, the very large, overhanging
25 type. So specifically, this, I would say no.

1 JUDGE COCHERES: Does the design manual
2 specify any safe distance from the curblines to the location
3 of the light standards?

4 THE WITNESS: Yes, it does.

5 JUDGE COCHERES: What is the standard?

6 THE WITNESS: The standard is typically 18
7 inches from the front face of the curb. Based on not having
8 any unusual circumstances, that would be the desirable
9 criteria.

10 JUDGE COCHERES: Does the installation of
11 these light standards meet that criteria?

12 THE WITNESS: Yes. If I can elaborate on
13 that. There were two things that we were trying to accomplish
14 and probably more primary in that we were trying to
15 accomplish for all intents and purposes retrofitting these
16 lights into the existing design. Our primary purpose was to
17 accommodate ADA, American Disability Act, which requires a
18 minimum of 36-inch clearance for them. That's the criteria.

19 So our primary focus was achieving that from
20 the bottom of the lighting to the parapet, achieving 36
21 inches. That was the primary focus.

22 Then what we had to do was also see what
23 sidewalk remained and see how we were going to accommodate
24 our other secondary criteria of setback. And the criteria,
25 to the best of my knowledge, the setback is for different

1 things, such as maybe a bumper of a car, maybe the mirror of
2 vehicle not clipping, whether it's a light or it could easily
3 have been a sign, any fixed object, as you have mentioned.

4 And because of the fluted nature of the
5 bottom of the light and the area where if you approximate
6 where a normal bumper height would be or mirror height and
7 stuff, it was exceeding. It worked out so that we could
8 account for that 18 inches.

9 We didn't have th latitude to go back and add
10 an extra foot to the sidewalk because then you would have
11 been encroaching into the bike lanes which have a very
12 specific design width. Contrary, we couldn't redesign the
13 bridge, to bump the bridge out another foot, because we had
14 already gone through the design process, the right-of-way
15 process, and that would have a significant repercussion.

16 So using sound practices and logic, we made
17 what we believed would be the most logical design.

18 JUDGE COCHERES: Is that your way of telling
19 me that the base of each of these light standards is larger
20 than the pole or stem of the light standard?

21 THE WITNESS: In an elaborated way, yes.

22 JUDGE COCHERES: Is that also your way of
23 telling me if I got my tape measure out and started curb
24 lining to the base, it might not be 18 inches?

25 THE WITNESS: Practically.

1 JUDGE COCHERES: Now does that standard, 18-
2 inch standard, vary at all in the speed limit on the road?

3 THE WITNESS: To the best of my knowledge, no.

4 JUDGE COCHERES: What is the speed limit on
5 the roadway of the Fruitville Pike?

6 THE WITNESS: I believe it's posted at 40.
7 I'm hearing contrary. I don't know the exact answer to that,
8 Judge.

9 JUDGE COCHERES: Okay.

10 THE WITNESS: Actually - thank you for the
11 picture - the picture shows it. 35 miles per hour.

12 JUDGE COCHERES: Your bifocals are a lot
13 better than mine. Okay. I got a little confused when you
14 were telling me about snow removal and the possibility of
15 heated sidewalk. Is that true of Fruitville Pike as well?

16 THE WITNESS: No. I also manage the
17 Dillerville Road bridge project, which is in final design
18 phase right now. I'm guessing that the whole part of the
19 reason why the County may have even requested or shared with
20 me some information or concepts is possibly stemming from
21 what has resulted, as far as this hearing is concerned, the
22 Fruitville Pike. I believe they're somewhat trying to plant
23 seed of thought for this upcoming project.

24 JUDGE COCHERES: Stop there. I really didn't
25 want to go there. To the best of your knowledge, does

1 PennDot have the responsibility for snow removal or debris
2 removal of the sidewalks of any bridges that you're aware of?

3 THE WITNESS: There may be various, unique
4 areas where we may actually have that. However, the vast,
5 vast majority, I would say No, we do not maintain the
6 sidewalk for ice and snow removal, et cetera.

7 JUDGE COCHERES: So you're saying, Yes, a
8 little.

9 THE WITNESS: Yes, but I'm not aware of the
10 specific details.

11 JUDGE COCHERES: Is there any continued cross
12 examination, based on the questions that I have asked?

13 (No response)

14 JUDGE COCHERES: Mr. Sharp, do you have any
15 redirect?

16 MR. SHARP: Yes, I do, your Honor. Just a
17 little bit, if I may. If I may have a moment.

18 (Pause)

19 REDIRECT EXAMINATION

20 BY MR. SHARP:

21 Q. Mr. Malhenzie, I want to talk about the sidewalk on
22 Fruitville Pike bridge for a second. The sidewalk design, is
23 that part of the final plan package for the Fruitville Pike
24 bridge? Is that part of the final design plans?

25 A. The width of the sidewalk which was five foot eight,

1 yes, that was part of the design. No lighting was part of
2 that package.

3 Q. So the sidewalks were included in those plans?

4 A. Correct.

5 Q. Were those final plans submitted to the Commission
6 for approval, the Public Utility Commission, for approval?

7 A. Yes, they would have those.

8 Q. Can I direct you in your testimony just to Exhibit
9 Number Five for a second, please. It's the letter to the
10 Commission dated May 12, 2003.

11 (Pause)

12 Q. I want you to take a look at that exhibit and answer
13 this question: Is that exhibit referring to the Department's
14 final design plans for Fruitville Pike?

15 (Pause)

16 A. Can you please repeat that?

17 Q. Having looked at that exhibit, is what's being
18 referred to in there, are they the plans for Fruitville Pike
19 bridge?

20 A. Would be the final design plans, yes.

21 Q. Can you, just for the record, read the last line of
22 the second full paragraph.

23 (Pause)

24 A. The plans are identified - second full paragraph?

25 Q. Second full paragraph, last sentence.

1 (Pause)

2 A. The plans are identified...

3 Q. I'm sorry. Are you looking at Department Exhibit
4 Number Five?

5 A. Yes. Paragraph number three is the first paragraph.

6 Q. Yes, the second...

7 A. The final construction plan?

8 Q. Yes.

9 A. You're looking for the last sentence in that second
10 paragraph?

11 Q. Yes.

12 A. Which begins "the plans are identified as
13 drawings..." Am I missing something?

14 Q. Does it read "no objection to the plan has been
15 received"?

16 (Pause)

17 A. I'm sorry. Yes. I'm not - "No objection to the plan
18 has been received".

19 JUDGE COCHERES: Maybe you ought to have my
20 bifocals.

21 THE WITNESS: Please.

22 BY MR. SHARP:

23 Q. Another question. You had mentioned a gentleman's
24 name but didn't identify him, Phil Mellott, during your cross
25 examination. Who is that person?

1 A. I believe he's the Manheim Township - I'm not sure if
2 he might be the Public Works Director, engineer.

3 Q. He's not a Department employee?

4 A. No, he's not.

5 Q. Just the question about this issue of Dillerville
6 Road came up. Even if, conceptually, - strike that. The
7 Judge asked you questions about the design manual and it's
8 specifications. Is it - can the Department obtain design
9 exceptions? Are they married to the design manual or how can
10 they move away from certain standards if the case calls for
11 it?

12 A. Yes. Yes, to answer that, there are exceptions. And
13 there's various bodies within the District that our central
14 office may have to get exceptions for. In this particular
15 case, every project goes through a safety review committee
16 and I brought these changes specifically to the - the
17 lighting placements and the offsets to that body within the
18 District for review and received approval.

19 Q. Just a specific question about the lights. What are
20 some of the reasons why they weren't installed, say on the
21 outside edge of the bridge or hanging off a bridge, as
22 opposed to where they're installed now? What were the
23 reasons that they were put where they are, versus hanging off
24 the back of the bridge?

25 When I say "back of the bridge", on the outside of

1 the sidewalk, over the rail.

2 A. That answer in more detail would best be answered by
3 Harivadan Parikh. But I do know we looked at various
4 solutions and by placing them on the parapet, one situation
5 you have is you have grounding plates for Amtrak and you
6 cannot, to the best of my knowledge, be putting lines on
7 those.

8 You could have done other designs that put lighting
9 at maybe the four corners of the bridge, but then to
10 accommodate the more intense lighting to cover a zone area,
11 you probably would have been talking about large lighting,
12 which probably would have required significant structural
13 design changes.

14 And again, we were already in the construction phase
15 and we couldn't go backwards. It was not conducive or
16 complimentary to the types of designs that the Beautification
17 Committee was looking for.

18 Again, I refer to more high mast lighting similar to
19 interchanges. You can see it's more a low-level, historic
20 look that we're going after. So we did look at various
21 options and, given all the design circumstances and the
22 solutions to try to accommodate them as best we can, this was
23 ultimately the design that came up. An dit was concurred on
24 by that committee.

25 MR. SHARP: That's all I have, your Honor.

1 JUDGE COCHERES: Any recross for the witness?

2 MR. SALADA: No, your Honor.

3 JUDGE COCHERES: The witness is excused.

4 Thank you for coming.

5 (Witness excused)

6 MR. SHARP: Thank you, your Honor. I'd like
7 to call Mr. Harivadan Parikh, please.

8 JUDGE COCHERES: Thank you. Please be seated.
9 Good morning to you.

10 THE WITNESS: Good morning.

11 Whereupon,

12 HARIVADAN R. PARIKH

13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SHARP:

16 Q. Good morning, Mr. Parikh. Can you please state your
17 full name and spell it for the record.

18 A. Harivadan R. Parikh. H-a-r-I-v-a-d-a-n Middle
19 initial "R". Last name Parikh, "P" like Paul - a-r-I-k-h.

20 Q. Thank you. By whom are you employed and in what
21 capacity?

22 A. PennDot. I'm the District Bridge Engineer.

23 Q. Do you have with a copy of Department Statement Two,
24 Harivadan R. Parikh, Direct Testimony?

25 A. Yes.

1 Q. Do you have the related PennDot Exhibit Number Seven?

2 A. Yes.

3 Q. Do you recognize these documents?

4 A. Yes.

5 Q. Was the Department Statement Two, your direct
6 testimony, was that prepared by you or under your direction
7 and control?

8 A. Yes.

9 Q. If I were to ask you those same questions contained
10 in that statement today, would your answers be the same?

11 A. Yes.

12 Q. Do you have any modifications, alterations or changes
13 to your testimony today?

14 A. No.

15 Q. Do you adopt Department Statement Number Two as your
16 testimony in this case?

17 A. (No response)

18 Q. Do you adopt as your direct testimony your written
19 statement in this case?

20 A. Yes.

21 MR. SHARP: Your Honor, I offer up Mr. Parikh
22 for cross and move Department Statement Number Two and
23 Exhibit Seven.

24 JUDGE COCHERES: They are admitted, subject to
25 those conditions.

1 (Whereupon, the document was marked
2 Department Statement Number Two and
3 Exhibit No. 7 for identification and
4 received in evidence.)

5 MR. SHARP: I have one questions, your Honor.
6 Something that came up with Mr. Malhenzie. A question for
7 Mr. Parikh that probably fits the form of rebuttal. I don't
8 know how you want to address it. It was three questions that
9 Mr. Underhill asked, the work we did on the sidewalk of the
10 Lititz Pike bridge. I don't know how you want that handled.

11 JUDGE COCHERES: Why don't you put it in now.
12 That way we'll open the door and Mr. Underhill can ventilate
13 if needs to.

14 MR. SHARP: Thank you, your Honor.

15 BY MR. SHARP:

16 Q. Mr. Parikh, I just have a few quick questions. Were
17 you in the room for Mr. Malhenzie's testimony?

18 A. Yes.

19 Q. Did you hear him discuss the concrete paving work the
20 Department completed on the Lititz Pike bridge this summer?

21 A. Paving work, not concrete.

22 Q. Just very quickly, what work did the Department do on
23 the Lititz Pike bridge this summer?

24 A. We overlay existing roadway surface.

1 Q. What work did you do on the curb line, specifically
2 on the Lititz Pike bridge?

3 A. We provided means to retain all the material and did
4 the repair on the approach, which is called the expansion
5 dam, to make it proper and make it somewhat waterproof.

6 Q. What work did you don the actual sidewalk area? What
7 material did the Department place there?

8 A. We used some fast-setting concrete in order to make
9 the new expansion dam material.

10 MR. SHARP: Thank you, your Honor. That's all
11 I have on rebuttal.

12 JUDGE COCHERES: All right. Who has
13 questions? Mr. Salada.

14 MR. SALADA: Thank you, your Honor.

15 CROSS EXAMINATION

16 BY MR. SALADA:

17 Q. Mr. Parikh, have you visited the site of the Lititz
18 Pike bridge?

19 A. Yes.

20 Q. When was that?

21 A. I don't know exactly, in my mind.

22 Q. The exhibit that you have, Department Exhibit Number
23 Seven, the 1930, I believe, Public Service Commission Order?

24 A. Yes.

25 Q. Can you tell from that Order whether the bridge that

1 was ordered constructed then is the Lititz Pike bridge that
2 currently exists?

3 A. I don't have the plans in front of me for what
4 ordered in this PUC.

5 Q. Yes.

6 A. I don't have the plans for the existing one, so I
7 can't answer your question.

8 Q. Do you know, would the Department have copies of
9 plans of that bridge if the Department had designed or
10 constructed the bridge?

11 A. We may have a copy of the plan when the PUC Order was
12 issued. Best of my recollection, I don't have it in my file
13 right now.

14 Q. Am I correct that the Department will not agree to
15 maintain either the substructure or the superstructure of the
16 Lititz Pike bridge?

17 MR. SHARP: Objection, your Honor, only to
18 scope. I think Ms. Wood's complaint focuses on the sidewalk.
19 To the extent this hearing is expanding it to the overall
20 maintenance of the bridge, it might be more appropriate for
21 an "I" or an "M" docket. I think it exceeds the scope of the
22 hearing.

23 JUDGE COCHERES: Mr. Salada.

24 MR. SALADA: Your Honor, it may well exceed
25 the scope of the Complaint, but at some point, the Commission

1 is going to have to address it either in this proceeding or
2 in a subsequent one.

3 JUDGE COCHERES: Do the rest of the parties
4 have notice of your desire to expand the scope of Ms. Wood's
5 Complaint?

6 MR. SALADA: I don't know your Honor. I doubt
7 that.

8 JUDGE COCHERES: I do, too. The objection is
9 sustained.

10 MR. SALADA: Thank you, your Honor.

11 BY MR. SALADA:

12 Q. Do you know, has the Department of Transportation
13 been conducting regular inspections of the Lititz Pike
14 bridge?

15 A. Yes.

16 Q. Do you know how often that is?

17 A. Every two years.

18 Q. To the best of your knowledge, have those inspections
19 revealed any components of the bridge that require immediate
20 repair?

21 A. None of them require repair work, to the best of my
22 knowledge, of the past inspection report, nothing that
23 requires immediate attention.

24 Q. Am I correct that the Department will not agree to
25 maintain the sidewalks or to remove the snow or ice from

1 them?

2 A. That's correct. The Department is willing to
3 maintain what was ordered in the previous PUC Orders.

4 MR. SALADA: Thank you. That's all that I
5 have.

6 JUDGE COCHERES: Are there any other questions
7 for this witness? Mr. Underhill.

8 CROSS EXAMINATION

9 BY MR. UNDERHILL:

10 Q. Mr. Parikh, do you have those photographs up there
11 that I introduced with Mr. Malhenzie, Township Exhibits Two
12 and Three? Are they up there in front of you?

13 A. No.

14 Q. Mr. Parikh, could you look at City/Township Exhibit
15 Two and look at the bottom two pictures. The one on the left
16 shows the additional concrete that PennDot put in this
17 summer, that you just testified to; is that correct?

18 A. That's right.

19 Q. Mr. Malhenzie said he thought it was about 75 feet
20 long and about three feet wide; is that correct? Or would
21 you have some different numbers?

22 A. I don't have the measurement in front of me so I
23 can't -

24 Q. You're the person who visited this bridge, this was
25 under your supervision when the work was done, wasn't it?

1 A. No, the physical work was done under the supervision
2 of someone else. The project documents are prepared for the
3 bridge part under my supervision and I don't have the exact
4 dimensions which you mention in front of me, so I can't
5 verify that.

6 Q. You don't disagree with Mr. Malhenzie?

7 A. I can't go either way because I don't have
8 information.

9 Q. You don't think he's reliable in estimating
10 distances?

11 A. Based on picture, I can't estimate the distances.

12 Q. Would you look at the lower photograph on the right.
13 Would you agree with me that this shows deterioration of the
14 sidewalk on the Lititz Pike bridge?

15 A. Yes.

16 Q. Would you consider this significant damage, or
17 cosmetic?

18 A. On the bridge itself, it's cosmetic.

19 Q. What do you mean "on the bridge itself"?

20 A. The sidewalk on the bridge itself.

21 Q. So what you see in this photograph, you consider it
22 cosmetic?

23 A. On the bridge itself is cosmetic. If you are talking
24 about the approaches, then it's not cosmetic.

25 Q. I'm going to get to that, I think, on the next

1 photographs. City/Township Exhibit Number Three, when you
2 say it's not cosmetic, are you talking to the middle right
3 photograph?

4 A. Yes.

5 Q. Is that something that is significantly deteriorated?

6 A. That is deteriorated, I don't know whether I would
7 call it significant or not.

8 Q. It's more than cosmetic, isn't that right?

9 A. It's more than cosmetic.

10 Q. Mr. Malhenzie testified that he believes there are
11 some bridges on which the Department of Transportation was
12 responsible for removal of ice and snow. Would you disagree
13 with his testimony?

14 A. No.

15 MR. UNDERHILL: That's all.

16 JUDGE COCHERES: Mr. Zielonis.

17 MR. ZIELONIS: Yes, your Honor.

18 CROSS EXAMINATION

19 BY MR. ZIELONIS:

20 Q. If you could turn to City/Township Exhibit Number
21 Two. I'm looking at the middle row of pictures, the right-
22 hand side. Is the area on that picture, the top part of that
23 picture, top, right-hand part, do you see those two orange
24 lines on the vertical surface?

25 A. It's a different color, it's not orange on mine.

1 Q. Do you see two lines on the surface?

2 A. Yes.

3 Q. Is that the general area of the expansion dam that
4 you discussed in your direct testimony?

5 A. Yes.

6 Q. Where would the, I'll call it the southerly portion
7 heading into the Township, where would the expansion dam be
8 in the bottom two pictures of Exhibit Number Two, if you can
9 tell us?

10 A. I can't, based on pictures.

11 Q. I'm sorry?

12 A. I can't tell, based on the pictures, where the
13 expansion dam is on the lower pictures.

14 MR. ZIELONIS: That's all the questions I
15 have, your Honor.

16 JUDGE COCHERES: Is there any additional cross
17 examination for this witness?

18 (No response)

19 JUDGE COCHERES: Is there any redirect?

20 MR. SHARP: No, your Honor.

21 JUDGE COCHERES: The witness is excused, and
22 thank you for coming, sir.

23 (Witness excused)

24 JUDGE COCHERES: All right. Mr. Sharp, do you
25 have anything else on behalf of the Department?

1 MR. SHARP: No, your Honor. Those are our
2 only two witnesses. I would only request again that the
3 statements and exhibits be admitted into the record.

4 JUDGE COCHERES: I think I already did that.

5 But you still have to stand cross
6 examination. You'll have to come up here to the witness
7 stand.

8 Whereupon,

9 SUSAN WOOD
10 having been first duly sworn, testified as follows:

11 Thank you. Please be seated. Good morning
12 to you. To identify you for the record, would you tell me
13 your name and your address, please.

14 THE WITNESS: Susan Wood, 1980 Sterling Place,
15 Lancaster, Pennsylvania 17601.

16 JUDGE COCHERES: Ms. Wood, are my direction,
17 did you prepare certain written direct testimony?

18 THE WITNESS: Yes.

19 JUDGE COCHERES: Do you have it with you?

20 THE WITNESS: Yes.

21 JUDGE COCHERES: Do you have any changes you
22 would like to make?

23 THE WITNESS: No.

24 JUDGE COCHERES: Fine. We'll call it Wood
25 Statement Number One.

1 (Whereupon, the document was marked Wood
2 Statement No. 1 for identification.)

3 JUDGE COCHERES: Did you previously distribute
4 this to all the parties in this proceeding?

5 THE WITNESS: No, sir.

6 JUDGE COCHERES: Did you give two copies to
7 the court reporter?

8 THE WITNESS: I did not.

9 JUDGE COCHERES: All right. Will you have two
10 copies for her?

11 THE WITNESS: I don't know if I have two
12 copies with me today. I'm sorry. I can ...

13 JUDGE COCHERES: See me during the break.
14 Maybe we can make that happen.

15 THE WITNESS: Okay.

16 JUDGE COCHERES: All right. Now do you wish
17 to offer any testimony today?

18 THE WITNESS: No.

19 JUDGE COCHERES: Does anyone wish to examine?

20 MR. SHARP: Yes, your Honor.

21 DIRECT EXAMINATION

22 BY MR. SHARP:

23 Q. You stated your address, but where do live in
24 relation to the Fruitville and Lititz Pike bridges, distances
25 and general locations?

- 1 A. I live about two miles north of the Lititz Pike
2 bridge.
- 3 Q. Do you live in Manheim Township or Lancaster City?
- 4 A. Manheim Township.
- 5 Q. Do you use the sidewalks on the Lititz Pike and
6 Fruitville Pike bridges?
- 7 A. I use the sidewalk on the Lititz Pike bridge
8 regularly.
- 9 Q. Why do you use the bridge? Why do you walk across
10 the bridge?
- 11 A. I walk across the bridge to go to the Amtrak Train
12 Station.
- 13 Q. Do you take the train for commuting purposes or other
14 general purposes?
- 15 A. Commuting purposes.
- 16 Q. Do you walk across either bridge for any other
17 reason? ...shopping? ...exercise?
- 18 A. Occasionally.
- 19 Q. Have you ever walked across the Fruitville Pike
20 bridge?
- 21 A. Yes.
- 22 Q. On the new Fruitville Pike bridge, or the old one, or
23 both?
- 24 A. At least the new one. I don't remember if I ever
25 walked across the old one.

1 Q. On any of your trips over the bridges, have you ever
2 witnessed anyone performing any sidewalk maintenance? And I
3 mean snow or ice removal or debris removal?

4 A. Which bridge are you talking about?

5 A. Either? No.

6 Q. During your trips over the bridge either in a vehicle
7 or as a pedestrian, do you ever see other pedestrians using
8 the bridge?

9 A. I've seen pedestrians use Lititz Pike bridge.

10 MR. SHARP: That's all I have, your Honor.

11 JUDGE COCHERES: Mr. Salada.

12 CROSS EXAMINATION

13 BY MR. SALADA:

14 Q. Ms. Wood, are you an engineer?

15 A. No.

16 MR. SALADA: Thank you.

17 JUDGE COCHERES: Any other questions for this
18 witness?

19 MR. UNDERHILL: Let me ask, if I may, just one
20 or two.

21 CROSS EXAMINATION

22 BY MR. UNDERHILL:

23 Q. Ms. Wood, you live in the Township, you're also a
24 resident of Lancaster County?

25 A. Yes.

1 Q. Do you walk from your home across the Lititz Pike
2 bridge to get to Amtrak?

3 A. Occasionally.

4 Q. If you use it almost every day to get to Harrisburg,
5 you drive somewhere and then park and then walk over the
6 bridge?

7 A. That's correct.

8 Q. Have you performed any study and examination to
9 determine how many pedestrians use the Lititz Pike bridge on
10 any given day? ...month? ...year?

11 A. No.

12 Q. On the occasion that you have seen pedestrians at any
13 given time, how many have you seen using the bridge?

14 A. To preface that, in the morning, I'm there around
15 6:30 in the morning and I see maybe one or two pedestrians
16 besides myself.

17 In the evening, about 5:30, the same. Some days, I
18 don't see anyone. Some days, I see maybe one or two using
19 the bridge at the same time I am.

20 (Pause)

21 Q. Look at the photographs if you would, Township
22 Exhibits Two and Three.

23 A. Excuse me, I'm going to have to go get my glasses.

24 (Pause)

25 (Handing document to witness)

1 Q. In your written testimony, you describe the condition
2 of the sidewalk as deteriorating, broken, crumbling, cracked
3 and uneven. Are they depicted, is that condition depicted in
4 City and Township Exhibits Two and Three? And if so, would
5 you identify which photos?

6 (Pause)

7 A. Looking at Exhibit Two, I guess the bottom two
8 photos, especially the bottom right photo shows that
9 condition. And the bottom left also shows that condition.

10 It's hard to see on the upper right. It's there, but
11 it's hard to see in the picture.

12 And then in Exhibit Three, the top left picture,
13 photograph, it's difficult to see from the photograph, but I
14 know from experience that sidewalk slants down to the left so
15 when you're walking, you're sort of walking on a slant. It's
16 difficult to see from that picture, but the surface is
17 deteriorating in that segment that's photographed.

18 And also, on the top right, now that part goes sort
19 of beyond the bridge and that's deteriorated, the portions to
20 the south of that.

21 The middle left photo - I'm getting disoriented -
22 that's looking from the Township - oh, that's looking north -
23 is that looking north?

24 Q. Yes.

25 A. Okay. That's not deteriorating, I think the

1 sidewalk, again, slants down to the right.

2 The middle right photograph obviously shows the
3 deterioration of the sidewalk.

4 And then the bottom photos don't clearly show the
5 deterioration.

6 Q. It's your testimony the deterioration, at least in
7 the middle right in Exhibit Three, the bottom right in
8 Exhibit Two and to some extent, the bottom left of Exhibit
9 Two is so substantial that it makes using the walkway
10 difficult and hazardous throughout the year; is that correct?

11 A. Yes.

12 MR. UNDERHILL: That's all. Thank you.

13 JUDGE COCHERES: Additional questions for the
14 witness? Mr. Zielonis.

15 CROSS EXAMINATION

16 BY MR. ZIELONIS:

17 Q. You indicated that you saw one to two pedestrians at
18 the Lititz Pike bridge when you were also using it. Have you
19 ever seen pedestrians on Fruitville Pike bridge when you have
20 been using it?

21 A. No, because I rarely use that bridge.

22 Q. Do you know whether any of your neighbors use the
23 Lititz Pike bridge?

24 A. My neighbors?

25 Q. Yes.

1 A. I don't know.

2 Q. Could you tell me to the extent that you know? I'll
3 show you what has been admitted into the record - your Honor,
4 may I approach the witness?

5 JUDGE COCHERES: Yes.

6 BY MR. ZIELONIS:

7 Q. ...PennDot Exhibit Number One. I have some questions
8 regarding that.

9 (Handing document to witness)

10 Q. Is the area to the north of Keller Avenue, is that a
11 residential area?

12 A. To the north of Keller Avenue. Yes.

13 Q. How about to the north and east of Marshall Avenue?

14 A. North and east. Well, to the far east, yes; not the
15 immediate east.

16 Q. The immediate east would be going north along Lititz
17 Pike would be commercial development?

18 A. Yes.

19 Q. Am I not correct, further to the east and north is an
20 area that includes the Lancaster Catholic High School?

21 A. Yes.

22 Q. Is that a residential area?

23 A. Yes, it's a major residential area.

24 Q. Do you see the Stockyard Inn on this map?

25 A. Yes.

1 Q. Is that area to the south and east of Marshall
2 Avenue, is that a residential area?

3 A. Not in the immediate vicinity, but farther east,
4 there are some residences.

5 Q. Is that a commercial area?

6 A. Yes.

7 Q. How about, to the extent that you know, south of the
8 bridge in the area that would, I believe, east of 222 and the
9 bottom portion of Liberty Street, are those residential
10 areas?

11 A. Yes.

12 Q. How about the Brubaker Chrysler-Jeep, is that a
13 residential or commercial area?

14 A. That block is commercial.

15 Q. How about ...

16 A. Excuse me. I'm sorry. Let me amend that a little
17 bit. That block where the side of the - Brubaker is a
18 commercial area, but across Lititz Pike or across Duke Street
19 from that is residential. Duke Street.

20 Q. You mean across from 222?

21 A. I'm sorry. I guess I should ask you to repeat your
22 question.

23 Q. I'm asking, we first discussed to the east of 222 and
24 bounded by Liberty Street, is that area to the east and
25 south, to the east of Duke Street and north of Liberty Street

- 1 - I'm sorry, 222 and Liberty Street, is that residential?
- 2 A. Yes.
- 3 Q. Is the area where we labeled Brubaker Chrysler-Jeep,
4 is that block area commercial?
- 5 A. Yes.
- 6 Q. The area bounded by Queen, Liberty, Duke and McGovern
7 Avenue, is that residential?
- 8 A. Mostly residential.
- 9 Q.
10 And there's some commercial in there, too; am I correct?
- 11 A. Yes.
- 12 Q. If I look at the area bounded by Prince Street,
13 McGovern Avenue, Queen Street and again, I believe, Liberty
14 Street, is that block a combination of
15 residential/commercial?
- 16 A. Yes.
- 17 Q. How about the areas around Jackson Avenue, Lincoln
18 Avenue and Manheim Avenue, Stephens Avenue, is that
19 residential?
- 20 A. Mostly residential, I believe.
- 21 Q. I presume - you indicated upon cross that you're a
22 resident of Lancaster County. I presume you're also a
23 resident and citizen of the Commonwealth of Pennsylvania.
- 24 A. Yes, I am.
- 25 Q. And the United State of America.

1 A. Correct.

2 MR. ZIELONIS: Your Honor, that's all the
3 questions I have.

4 JUDGE COCHERES: We have a flag; do you want
5 to salute it?

6 Are there any other questions for Ms. Wood?

7 (No response)

8 JUDGE COCHERES: Ms. Wood, since you have the
9 distinct pleasure of representing yourself, is there some
10 rebuttal testimony that you think is required? You certainly
11 have the opportunity to present it now.

12 THE WITNESS: None. Thank you.

13 JUDGE COCHERES: All right. Then you're
14 excused and Wood Statement Number One will be admitted.

15 **(Whereupon, Wood Statement No. 1 was received**
16 **in evidence.)**

17 (Witness excused)

18 JUDGE COCHERES: Let's go off the record for a
19 moment.

20 (Discussion off the record.)

21 (Brief recess)

22 JUDGE COCHERES: Let's go back on the record.

23 I have a stack here. The next group I have
24 are the Norfolk Southern people. That's just the way they
25 turned up and the way my filing system put them. Mr.

1 Beneventano, are you prepared now?

2 MR. BENEVENTANO: Your Honor, I have just one
3 witness, Mr. Sawyer, to call.

4 (Pause)

5 Whereupon,

6 MARK W. SAWYER

7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY BENEVENTANO:

10 Q. State your full name for the record.

11 A. Mark W. Sawyer, S-a-w-y-e-r.

12 Q. What do you do for a living, Mr. Sawyer?

13 A. I'm a civil engineer engaged in the unique field of
14 railroad engineering for Norfolk Southern.

15 Q. How long have you worked for Norfolk Southern?

16 A. I've worked for Norfolk Southern for five years.
17 Prior to that, predecessor railroads an additional 25; so I'm
18 up to 30 years on the railroad line.

19 Q. What is your business address?

20 A. 4600 Deer Path Road, Harrisburg, PA 17110.

21 MR. BENEVENTANO: Your Honor, do you want me
22 to go into his qualifications at all, or are they self-
23 explanatory?

24 JUDGE COCHERES: If you wrote them down as
25 testimony, I don't need to hear them on the record.

1 BY MR. BENEVENTANO:

2 Q. Mr. Sawyer, do you have with you today a document
3 we've identified for the record as Norfolk Southern Statement
4 Number One? Do you have that in front of you?

5 A. Yes, I do.

6 (Whereupon, the document was marked Norfolk
7 Southern Statement No. 1 for
8 identification.)

9 Q. Would you read the title of that document?

10 A. Document Number One is written "Direct Testimony of
11 Mark W. Sawyer, Professional Engineer for Norfolk Southern".

12 Q. Did you provide the answers that are contained in
13 that document?

14 A. Yes, I did.

15 Q. Approximately when did you provide those answers?

16 A. When they were due back in October, I believe,
17 sometime in October.

18 Q. Would I answer those same questions today, would
19 those answers be the same?

20 A. No, I would modify about a sheet of updated
21 information. I would modify on page three, question number
22 20 and my answer is on line 22 where I advised these two
23 local freight trains that operate five days out of the week.
24 And I have updated information in that now. I would
25 speculate that what we have here is up to four trains and

1 they go back and forth. So you would get for several train
2 movements perhaps for each train. So we would have in the
3 neighborhood of ten to 14 train movements underneath the
4 crossing per day.

5 Q. Mr. Sawyer, does that mean with respect to line 22 on
6 page three, you're changing your answer from two to four
7 local freight trains; is that correct?

8 A. Yes.

9 Q. On line 28 of page three, are you changing your
10 answer from four train movements per day to between ten to 14
11 movement per day?

12 A. And to seven days per week.

13 JUDGE COCHERES: Is that for both line 22 and
14 line 28?

15 THE WITNESS: Yes, that is correct.

16 BY MR. BENEVENTANO:

17 Q. Are there any other changes or additions to your
18 written testimony, Mr. Sawyer?

19 A. No, it's essentially okay.

20 Q. With your written testimony, there are two exhibits.
21 Do you have those exhibits in front of you?

22 A. Yes, I have Exhibit One and I have Exhibit Two.

23 Q. Would you identify Exhibit One, please.

24 A. Exhibit One is the Second Amended Northeast Corridor
25 Freight Agreement dated October 1st, 1986 between Amtrak and

1 Conrail.

2 Q. Would you identify Exhibit Two, please.

3 A. Exhibit Number Two is an agreement entitled
4 "Principles of Cooperation Concerning the Northeast
5 Corridor", dated May 1st, 1998.

6 Q. Mr. Sawyer, have you examined those documents?

7 A. Yes.

8 MR. BENEVENTANO: Your Honor, I was prepared
9 at this time to move for the admission of the direct
10 testimony and the exhibits, but I have been discussing the
11 matter with Mr. Moore, Amtrak's counsel. I would request
12 that he join this discussion at this point because I believe
13 we would like to offer a stipulation, if that would be
14 appropriate.

15 MR. MOORE: Your Honor, Dennis Moore from
16 Amtrak. If I may be heard on that issue at this time.

17 JUDGE COCHERES: Certainly.

18 MR. MOORE: It has come to my attention that
19 Norfolk Southern and Amtrak have very recently begun
20 negotiating a new or modified operating agreement that may
21 change some of the terms of the agreements that are referred
22 to in Mr. Sawyer's testimony. Rather than to obviate the
23 need to strike or amend, I am suggesting that, and I believe
24 that Mr. Beneventano will stipulate to mark several of the
25 lines of the current testimony for illustrative purposes

1 rather than for the truth of the facts of the particular
2 amounts and terms expressed therein.

3 The upshot of this is the conclusions that
4 Mr. Sawyer's testimony reaches are correct and Amtrak has no
5 objection to them. However, some of the particular terms of
6 these agreements may have been modified after Mr. Sawyer
7 brought out his testimony. So I am suggesting that starting
8 on page five, line eight through page six and through the top
9 of page seven, line eight, all of which material represents a
10 discussion and particular terms of agreements being used by
11 the Commission for illustrative purposes only; not for the
12 truth of the facts of the amounts and provisions as ...

13 JUDGE COCHERES: Are you telling me that the
14 dollar amounts referred to in that approximately two pages
15 are currently incorrect?

16 MR. MOORE: They may well have changed,
17 pursuant to the new agreement which, unfortunately, neither
18 Mr. Sawyer nor I have with us, your Honor. But we're both
19 aware that our companies have executed a new agreement.

20 Similarly, on page seven, lines 13 to the end
21 and on page eight, lines one through 16, all of which have
22 reference about particular aspects of the exhibits.

23 And those certainly were agreements that were
24 in effect and may to a certain extent be in effect at this
25 time, but I wanted to express caution at this point about the

1 exact nature of the provisions referred to in Mr. Sawyer's
2 testimony.

3 MR. BENEVENTANO: Your Honor, I would add that
4 I have not seen the agreements and had no knowledge of this
5 until commencement of the hearing this morning. I would ask
6 Mr. Sawyer to indicate on the record what his understanding
7 is of the change and terms of the payment.

8 THE WITNESS: My understanding is the
9 agreements I referenced are valid up to the point they're
10 amended or replaced. I know the two railroads are
11 negotiating and have been negotiating with a replacement
12 agreement. I'm not aware that agreement has been executed as
13 of this date.

14 MR. MOORE: I am aware there has been an
15 agreement executed. As I say, I regret that I didn't bring
16 it. It's an informal term sheet that covers the operating
17 regs. So I don't think it needs to be stricken, your Honor;
18 however, I think the testimony should be used, given the
19 uncertainty of this, simply as an illustration of the points
20 that Mr. Sawyer is making in his testimony.

21 JUDGE COCHERES: What you're basically trying
22 to tell me is that money changes hands, Norfolk Southern
23 gives it to your company, but the amounts that Mr. Sawyer has
24 cited are likely to have changed.

25 MR. MOORE: May well have changed, yes.

1 JUDGE COCHERES: Okay. Does Amtrak ever give
2 money back to anyone?

3 MR. MOORE: Yes, we give it to Norfolk
4 Southern when we run over their regs.

5 JUDGE COCHERES: Sounds like a reasonable quid
6 pro quo to me. Thank you. I appreciate your cooperation.

7 MR. BENEVENTANO: With that, your Honor, I
8 would move for the admission of Statement Number One, and
9 Norfolk Southern Exhibits One and Two, subject of course, to
10 Motion to Strike on cross.

11 JUDGE COCHERES: All right. They're admitted
12 subject to those conditions. And I appreciate your
13 highlighting the record and indicating the provisions of
14 these documents.

15 **(Whereupon, Norfolk Southern Statement No. 1**
16 **was received in evidence.)**

17 **(Whereupon, the documents were marked Norfolk**
18 **Southern Exhibit Nos. 1 and 2 for**
19 **identification and received in evidence.)**

20 JUDGE COCHERES: That being said, Mr. Sharp,
21 do you have any cross examination for the witness?

22 MR. SHARP: Just in one limited area, your
23 Honor.

24 JUDGE COCHERES: Fine.

CROSS EXAMINATION

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BY MR. SHARP:

Q. Mr. Sawyer, on page 10, lines 27 and 28 on the following page, you state the following: "Based on the information in Norfolk Southern's position, I am not certain that the Lititz Pike bridge is the same bridge constructed as a result of the findings and determinations in the Public Service Commission's 1930 report"; is that correct?

A. Yes, I'm not certain exactly what was in the 1930 and what is there today are the same bridge.

Q. You've reviewed PUC Staff Exhibit Number One, the 1930 Order?

A. Briefly. Yes.

Q. What specific information do you have that leads you to question whether or not the bridge, as required by the 1930 Order, isn't the bridge that's on Lititz Pike today?

A. I'm responding to a question that was asked me about this matter. And basically, I would say if one would want to certify or confirm what the bridge is in relation to the old Order, that some type of title search and investigation would need to be undertaken to see what records may show what.

I didn't do any investigation. I have very limited information. So I can't really speak whether that bridge is the same one in the Order or not.

Q. I guess my question then: So you included that

1 statement, you don't know for a fact whether or not the
2 bridge ordered for 1930 is the bridge there today or not?

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

4 Q. And you're not basing that opinion on anything you
5 have in the file or anything you specifically have in your
6 possession in red?

7 A. I'm not basing it on anything. I personally didn't
8 do any investigation.

9 MR. SHARP: That's all I have, your Honor.

10 JUDGE COCHERES: Any additional cross
11 examination of the witness? Mr. Underhill.

12 CROSS EXAMINATION

13 BY MR. UNDERHILL:

14 Q. Mr. Sawyer, both the Fruitville Pike bridge and the
15 Lititz Pike bridge go over the tracks used by Norfolk
16 Southern; is that correct?

17 A. That is correct.

18 Q. If they were at grade level, both automobiles and
19 pedestrians would have to cross the tracks; is that right?

20 A. If they were constructed at grade, well, if the PUC
21 would allow the pedestrian crossings at grade crossing, I
22 suppose that would be true, yes.

23 Q. If that happens, does that affect the speed at which
24 those trains would go through those intersections, the amount
25 of lights, warnings, barriers and what have you that would be

1 needed?

2 A. It is rare. We don't - in general, the railroads
3 don't assess a value of track speeds based on
4 vehicular/pedestrian crossings. Other areas such as the
5 design of the road and the devices would incorporate those
6 matters.

7 Q. It's a benefit to the railroad that there's a bridge
8 there with pedestrian sidewalks, is it not, so you don't have
9 to deal with cars and pedestrians that would have you
10 crossing the lines?

11 A. A bridge is a benefit to everybody. And I guess in
12 an extreme, the railroad in general benefits from the fact
13 that the interface between traveling public and trains is
14 minimized by a bridge.

15 MR. UNDERHILL: Thank you. That's all.

16 MR. ZIELONIS: No questions, your Honor.

17 JUDGE COCHERES: Any redirect, Mr.

18 Beneventano?

19 MR. BENEVENTANO: No, your Honor.

20 JUDGE COCHERES: The witness is excused.

21 Thank you for coming.

22 (Witness excused)

23 JUDGE COCHERES: Mr. Moore.

24 MR. MOORE: Thank you, your Honor. I'd like
25 to call Mr. John Youngdahl.

1 JUDGE COCHERES: Mr. Youngdahl, raise your
2 right hand.
3 Whereupon,

4 JOHN E. YOUNGDAHL
5 having been first duly sworn, testified as follows:

6 JUDGE COCHERES: Thank you . Please be seated.
7 Good afternoon to you.

8 DIRECT EXAMINATION

9 BY MR. MOORE:

10 Q. My name is Dennis Moore, representing Amtrak. Mr.
11 Youngdahl, would you give your full name and spell it please,
12 for the record.

13 A. John E. Youngdahl, Y-o-u-n-g-d-a-h-l.

14 Q. Would you tell us briefly by whom you're employed and
15 your title?

16 A. Amtrak, National Passenger Railroad Corporation,
17 project developer.

18 Q. Mr. Youngdahl, you previously prepared some verified
19 written testimony which has been submitted to the
20 Administrative Law Judge and to all parties. Are there any
21 alterations or amendments that you would like to make in the
22 testimony that you submitted previously?

23 A. No.

24 MR. MOORE: Your Honor, I'd like to move the
25 testimony with the attached exhibits into evidence, subject

1 to cross examination.

2 JUDGE COCHERES: They're admitted, subject to
3 cross examination and any timely motion.

4 Mr. Youngdahl, just sort of a housekeeping
5 thing here. Just look at the exhibits that
6 are attached to your testimony.

7 (Pause)

8 JUDGE COCHERES: Am I correct that the first
9 exhibit is the Commission Order of September 26th, 2001?

10 THE WITNESS: Correct.

11 JUDGE COCHERES: You will call that Amtrak
12 Exhibit Number One. And then behind that Order appears to be
13 very small, I was about to say miniaturized drawings of - is
14 that the Lititz Pike bridge?

15 THE WITNESS: I believe that's the Fruitville,
16 previous Fruitville Pike bridge.

17 JUDGE COCHERES: All right. Can we
18 collectively call those four pages Amtrak Exhibit Number Two?

19 THE WITNESS: Yes.

20 JUDGE COCHERES: Finally, I will refer to your
21 statement as Amtrak Statement Number One. All right.

22 **(Whereupon, the document was marked Amtrak**
23 **Statement No. 1 for identification and**
24 **received in evidence.)**

1 (Whereupon, the documents were marked Amtrak
2 Exhibit Nos. 1 and 2 for identification and
3 received in evidence.)

4 JUDGE COCHERES: Are there any questions for
5 Mr. Youngdahl?

6 MR. SHARP: I have a follow-up question.

7 CROSS EXAMINATION

8 BY MR. SHARP:

9 Q. Mr. Youngdahl, referring to the Fruitville Pike
10 bridge, can you please look at your testimony on page three,
11 the last answer (fourth line down). Let me know.

12 (Pause)

13 A. Yes.

14 Q. When it says "Amtrak drawings dated 1928 relating to
15 the old bridge at this location", are you referring to the
16 plans in Amtrak Exhibit Two, Old Fruitville Pike bridge?

17 A. Yes.

18 MR. SHARP: Thank you, your Honor. That's all
19 I have.

20 JUDGE COCHERES: Mr. Salada, I see your hand
21 up.

22 MR. SALADA: Yes. Thank you, your Honor.

23 CROSS EXAMINATION

24 BY MR. SALADA:

25 Q. As a follow-up to Mr. Sharp, Mr. Youngdahl, in

1 preparation for this hearing, did you research Amtrak records
2 for both the Fruitville and Lititz Pike bridges?

3 A. No, I did not. I looked at the caption on the
4 Fruitville Pike bridge and didn't realize the other bridge
5 was involved.

6 Q. So you don't know whether Amtrak has any plans
7 similar to the ones that are in Exhibit Two for the Lititz
8 Pike bridge?

9 A. Correct.

10 MR. SALADA: Thank you.

11 JUDGE COCHERES: Mr. Beneventano.

12 CROSS EXAMINATION

13 BY MR. BENEVENTANO:

14 Q. Mr. Youngdahl, in your direct testimony, let me
15 address the issue of maintenance, Amtrak responsibility to
16 maintain existing bridges. That's on page three.

17 You indicated that in your opinion, there is no
18 responsibility to maintain existing bridges. Amtrak does
19 have a duty to maintain its facilities, such as track lines,
20 does it not?

21 A. Yes.

22 Q. That's been consistently its duties; isn't that
23 correct?

24 A. Yes.

25 MR. BENEVENTANO: No further questions.

1 JUDGE COCHERES: Anyone else have any
2 questions? Any redirect?

3 MR. MOORE: Your Honor, there's no redirect,
4 but if anyone would like us to look for the Lititz in our
5 Lititz file, should one exist, for old copies of Pennsylvania
6 Railroad plans, we'd be happy to do that and to circulate
7 them as late-filed testimony.

8 JUDGE COCHERES: We were doing good until you
9 got to the late-filed testimony part.

10 MR. MOORE: Supplemental exhibits? How about
11 that?

12 JUDGE COCHERES: Yes, I think that would be
13 very kind, very professional and very proper. Thank you.

14 Is my sense of that, particularly in view of
15 Mr. Salada's question previously, Do you want those put into
16 the record, Mr. Salada?

17 MR. SALADA: Yes, your Honor, simply because
18 there's some ambiguity about the witnesses as to whether the
19 bridge that is actually in existence there is actually the
20 bridge that was ordered placed there by the 1930 Order.

21 MR. MOORE: Your Honor, perhaps what I could
22 offer to do to try to solve this is to get a consent motion
23 or a stipulation after I circulate the copies, if we can find
24 any. With our permission, I will try to follow that
25 procedure, unless I hear some objection.

1 JUDGE COCHERES: I think that is an excellent
2 idea. That is exactly what I was thinking as well. What is
3 a reasonable amount of time for you to do that?

4 MR. MOORE: I would have to ask two to three
5 weeks, probably two weeks to find them, another week to
6 circulate them and try to get a Consent Motion together, or a
7 Stipulation.

8 JUDGE COCHERES: All right then, I'll give you
9 four week, out of abundance of caution, from today.

10 MR. MOORE: With the holiday, yes.

11 JUDGE COCHERES: Four weeks works for
12 everyone. I will hold the record open for a late-filed
13 exhibit either by stipulation or Mr. Salada or Mr. Moore can
14 put it in. And if there is some problem that arises, first
15 of all, I can assume that if there are no drawings, there
16 will not be a problem. And I think I still need a letter to
17 that effect.

18 MR. MOORE: Certainly, your Honor.

19 JUDGE COCHERES: If there are drawings,
20 whatever stimulation the parties need, fine. If a four-week
21 time period, given the holidays, proves to be a problem,
22 please let me know. I don't have any problem extending that
23 if it's necessary. And if there's a problem with identifying
24 the lines, that people think there might be something else
25 that needs to go in the record, notify me and we'll see what

1 needs to be done. Is that reasonable?

2 MR. MOORE: Yes, your Honor. I'd like also to
3 note, for the record, that for those of you who received
4 these drawings by electronic mail, that they can be expanded
5 by using fancy electronic functions. You can get better
6 pictures than I put on the page. For anyone who doesn't have
7 them, who needs them electronically, I'll be happy to send
8 them.

9 JUDGE COCHERES: At this point, I don't
10 believe that I have a personal need for those documents, but
11 certainly, if the other parties think they do, fine.

12 All right. There being no further questions
13 for the witness, the witness is excused. Thank you for
14 coming.

15 (Witness excused)

16 JUDGE COCHERES: Moving along, I have
17 Lancaster County in front of me next. Mr. Zielonis.

18 MR. ZIELONIS: Your Honor, I call as Lancaster
19 witness, Lauri P. Ahlskog, please.

20 Your Honor, I had previously distributed to
21 the parties Lancaster County Statement Number One which is
22 the direct testimony of Christopher Newman in an e-mail
23 earlier. Late last week, I indicated he would not be
24 available. Ms. Ahlskog is now standing in his place.

25 I now have Lancaster County Statement Number

1 One, changed to conform that she will be the witness. And I
2 have changed page two, lines one through 17 to reflect her
3 employment and her job descriptions, your Honor.

4 (Whereupon, the document was marked Lancaster
5 County Statement No. 1 for identification.)

6 Whereupon,

7 LAURI P. AHLKOG

8 having been first duly sworn, testified as follows:

9 JUDGE COCHERES: Please be seated. Good
10 afternoon to you.

11 MR. ZIELONIS: I have provided copies to all
12 the other parties.

13 (Handing document to parties)

14 (Pause)

15 DIRECT EXAMINATION

16 BY MR. ZIELONIS:

17 Q. Could you please state your full name for the record
18 and spell it for the court reporter.

19 A. Lauri P. Ahlskog, L-a-u-r-I, middle initial "P", A-h-
20 l-s-k-o-g.

21 Q. By whom are you employed and in what capacity?

22 A. The Lancaster County Planning Commission, I'm a
23 transportation planner.

24 Q. Do you have - I'll go right to that now, your Honor.
25 Do you have any changes to what has been marked as Lancaster

1 Statement Number One?

2 A. Yes. My name is misspelled, my last name is
3 misspelled on page one. Also, on line two of page two, and
4 there's a also a correction on line 19, page three. The
5 Commission Order should be from 1930, not 1931.

6 Q. Do you know whether Lancaster County Statement Number
7 One prepared by Mr. Newman was prepared under his supervision
8 and direction?

9 A. Yes.

10 Q. Did you participate in the preparation of that
11 testimony?

12 A. Yes, I did.

13 Q. Have I asked you the same questions that are
14 contained in Lancaster Statement Number One today, would your
15 answers be the same as contained in that statement?

16 A. Yes.

17 Q. Are the answers that you provided correct to the best
18 of your knowledge, information and belief?

19 A. Yes.

20 Q. Attached to Lancaster Statement Number One is
21 Lancaster Exhibit Number One. Do you see that?

22 A. Yes, I do.

23 MR. ZIELONIS: Your Honor, at this point, I
24 would move into the record Lancaster County Statement Number
25 One, the direct testimony of Lauri P. Ahlskog, and Lancaster

1 County Exhibit Number One, subject to any appropriate, timely
2 motion, your Honor.

3 JUDGE COCHERES: Admitted, subject to those
4 conditions.

5 (Whereupon, Lancaster County Statement No. 1
6 was received in evidence.)

7 (Whereupon, the document was marked Lancaster
8 County Exhibit No. 1 for identification and
9 received in evidence.)

10 MR. ZIELONIS: the witness is available for
11 cross examination.

12 JUDGE COCHERES: Mr. Salada.

13 MR. SALADA: Thank you, your Honor.

14 CROSS EXAMINATION

15 BY MR. SALADA:

16 Q. Can you tell me did Lancaster County request the
17 placement of the street lights on the new Fruitville Pike
18 bridge?

19 A. No, we did not.

20 Q. Did Lancaster County request the installation of
21 sidewalks on the Fruitville Pike bridge?

22 A. No, we did not.

23 Q. Has Lancaster County taken any pedestrian counts to

1 determine how many pedestrians use either the Fruitville or
2 Lititz Pike bridges?

3 A. No, we haven't.

4 Q. Have you reviewed the testimony of the City of
5 Lancaster and the Township at all?

6 A. No, I did not receive copies of those.

7 Q. Can you tell me, in your experience, if you know,
8 does the County use or make available County prisoners for
9 work release to perform any kind of cleaning, maintenance
10 work around the County either on behalf of the County or
11 municipalities?

12 A. I don't know anything about that. That's under a
13 different department.

14 Q. With regard to the sidewalks on the Fruitville Pike,
15 do you have with you a copy of what has been marked as
16 Township Exhibit Number One?

17 A. I do not.

18 MR. ZIELONIS: May I approach the witness,
19 your Honor?

20 JUDGE COCHERES: Yes.

21 BY MR. ZIELONIS:

22 Q. If you know or if you could determine, would the
23 County be able to remove snow and ice from the sidewalks if
24 it were inclined to do so, using any kind of machinery, given
25 that configuration of the sidewalks?

1 A. I can't say because I don't know the specifics of the
2 equipment the County uses.

3 Q. So there may be some places where the County removes
4 snow f rom sidewalks where it does use some kind of equipment
5 like snowblowers?

6 A. Possibly. But again, I'm not sure. I would only
7 know it would be in front of the courthouse where I work and
8 any other county facility. I don't know what equipment they
9 have.

10 MR. SALADA: Thank you. That's all that I
11 have, your Honor.

12 JUDGE COCHERES: Mr. Underhill.

13 CROSS EXAMINATION

14 BY MR. UNDERHILL:

15 Q. I'm sorry. Would you spell and restate your name for
16 me? It's misspelled in here; I wasn't quick enough to get it
17 corrected.

18 A. Lauri Ahlskog, L-a-u-r-I, last name is
19 A-h-l-s-k-o-g.

20 Q. That's pronounced Ahlskog (pronouncing)?

21 A. Ahlskog (pronouncing), yes.

22 Q. My apologies. You must run into this a lot.

23 A. Yes, I do.

24 Q. How long have you worked for the County Planning
25 Commission?

- 1 A. Seven years.
- 2 Q. You got out of Penn State in 1995; that was nine
3 years ago. The other two years, what did you do?
- 4 A. I did medical insurance billing.
- 5 Q. This has got to be much better.
- 6 A. Yes.
- 7 Q. What personal involvement did you have with respect
8 to the planning design discussions of the Fruitville Pike
9 bridge?
- 10 A. I attended PUC field view, I believe in 2001, the
11 initial one. Various parties got together to discuss what
12 the project was going to be.
- 13 Q. You were asked if the County had asked for placement
14 of the lights on the bridge and your answer was No. Were you
15 here for the testimony of Mr. Malhenzie from PennDot?
- 16 A. Yes.
- 17 Q. Do you know whose idea it was to put the lights on
18 the sidewalk of the bridge?
- 19 A. My understanding is Lancaster City was the main
20 entity that wanted the lights. Fruitville Pike was to be
21 designated as the gateway to Lancaster City, although the
22 road signs on the highway leading into it will tell you to
23 get into Lancaster City, you should come down Fruitville
24 Pike. And as such, they will have these special enhancements
25 to that bridge.

1 Q. Were you personally present when anyone from the City
2 made such a request?

3 A. No, I was not.

4 Q. You say "it was your understanding", this is what you
5 say on your part?

6 A. The Metropolitan Planning Organization, this was
7 discussed there and the extra enhancements were also
8 discussed.

9 Q. I'm sorry, I didn't get the last part of what you
10 said.

11 A. The extra enhancements to the bridge were also
12 discussed at meetings there, which I was in attendance.

13 Q. You attended.

14 A. Yes.

15 Q. Was there a City representative at such a meeting who
16 made any request that the lights be installed?

17 A. I only ever heard that as a package, that the
18 enhancements, the specifics of it, I don't know what they
19 were going to be when they were constructed. I did not
20 personally hear specifically "lights". They're just
21 designated as a whole package of enhancements.

22 Q. The Lancaster lights, were they part of the MPO
23 meetings?

24 A. I can't say for sure. The person who would know
25 would be Jack Howell. I'm not sure if he was at every

1 meeting. I know he attended some. I can't say.

2 Q. The Prince Street group or improvement group, are you
3 familiar with that?

4 A. I know them by name, but I don't know any of the
5 members of that group.

6 Q. So you don't know if they're the ones that asked for
7 lights to be installed and placed where they are, is that
8 correct?

9 A. Correct.

10 (Pause)

11 Q. How is it that you know that nobody from the County
12 ever suggested the lights that were eventually installed?

13 A. I guess I can't say for certainty that every employee
14 of the County, somebody did say that. I know to my
15 knowledge, and I know that somebody from the County has not
16 said that at the MPO meetings.

17 Q. You didn't attend every single meeting at which the
18 final states were discussed, isn't that what you told me?

19 A. Correct. I only have knowledge of what was discussed
20 at the MPO meetings.

21 Q. Once the subject of these lights came up, did the
22 County have any comment on the placement of those lights,
23 whether they were good, bad, helpful, not helpful?

24 A. I don't know if any comments were made by the County.

25 Q. Are you the person who would make them, or somebody

1 else?

2 A. No, the supervisor, Christopher Newman, would most
3 likely have made them at those meetings.

4 Q. You don't have any report from him, any note,
5 memorandum, that sort of thing, of meetings you did not
6 attend that disclose the subject matter that came up and who
7 said what about the lights on the sidewalk; is that correct?

8 A. No, I do not.

9 Q. Were you present at any meetings at which the subject
10 of removal of ice and snow or debris from the Fruitville Pike
11 bridge was brought up?

12 A. Yes. Again, at the initial PUC field view meeting,
13 it was discussed.

14 Q. PUC field view was when?

15 A. May or July of 2001. I don't remember the exact
16 date.

17 Q. At that point, what was the point of the field view
18 meeting?

19 A. I don't understand the question.

20 Q. Why was that meeting held in May or July?

21 A. The PUC holds those meetings with all the entities
22 that are involved in the railroad crossing to discuss the
23 project that is coming about and make sure all the entities
24 involved know what's going on and what kind of work they are
25 doing.

1 Q. Do you know who, if anybody, from the City, was
2 present at that meeting?

3 A. I believe no one from the City attended that field
4 view.

5 Q. I'm sorry. What?

6 A. No one from the City attended the field view.

7 Q. And how about from Manheim Township?

8 A. I believe Mr. Mellott was there.

9 Q. Other than that meeting, are you aware of any other
10 meetings where either a representative from the City or from
11 the Township were both present when the removal of ice and
12 snow and the removal of debris was discussed?

13 A. I don't know that.

14 (Pause)

15 Q. Are you aware of the pre-existing lighting facilities
16 on the Fruitville Pike?

17 A. I don't recall what they were on the old bridge.

18 Q. Are you aware of any discussion of lighting for the
19 Fruitville Pike bridge other than the lights that ended up
20 there that are shown in the exhibit?

21 A. In the PUC field view, lighting was discussed just as
22 saying that there will be lighting on the bridge and somebody
23 will be paying for the electricity. But the specifics of
24 design or anything, no.

25 Q. At that time, you know it was contemplated that the

1 light fixtures would be in the sidewalk itself, rather than
2 over, at, or near the parapet?

3 A. I don't recall that that was discussed. Again, just
4 that there would be some type of lighting on the bridge.

5 Q. It says in your written testimony your employee is a
6 bicycle and pedestrian planner. What, if any bridge
7 experience, do you have, other than what you attended on the
8 Fruitville Pike bridge?

9 A. I've attended several PUC field views. That's sort
10 of my job task. But I have no bridge engineering or design
11 background like that.

12 Q. So you don't have, you couldn't tell us whether it's
13 customary in locating lights over bridges, whether they go in
14 the sidewalk near the curb, on the parapet or elsewhere; is
15 that correct?

16 A. No, I have no knowledge of that.

17 (Pause)

18 MR. UNDERHILL: Thank you. That's all.

19 JUDGE COCHERES: Any other questions? Mr.
20 Sharp.

21 MR. SHARP: Thank you, your Honor.

22 CROSS EXAMINATION

23 BY MR. SHARP:

24 Q. Good afternoon. I think you mentioned Christopher
25 Newman. Is that your supervisor?

1 A. Newman. Yes.

2 Q. In preparing for this, you said you worked on the
3 testimony that testimony that was submitted with him; is that
4 correct?

5 A. Yes.

6 Q. Did you intend, yourself, or are you aware of any of
7 your staff attending meetings with members of Lancaster Group
8 and these other groups, the Alliance and the Prince Street
9 group specifically, regarding the enhancements to be put on
10 the bridge?

11 A. I am not aware of any meetings, but that does not
12 mean they did not take place.

13 Q. So you don't know if Mr. Newman had attended specific
14 meetings with those people?

15 A. Correct. I don't know every meeting that he
16 attended.

17 Q. Who is Peter Straub?

18 A. Pete Shaub?

19 Q. I'm sorry. Yes.

20 A. He is Lancaster County Commissioner.

21 Q. At the initial PUC field conference you attended back
22 in May of 2001, what generally was discussed at that meeting?

23 A. Just what the project would entail. That it would be
24 a bridge. I don't know if the proper term was replacement or
25 rehabilitation. I don't know just what would happen. Some

1 utilities may have to move their lines or things. Just about
2 what the project was.

3 Q. At that time, were you the County's only
4 representative there?

5 A. Yes, I was.

6 Q. Did you object to the replacement in kind of the
7 subject sidewalk?

8 A. No, I did not.

9 Q. To your recollection, did anyone there voice an
10 objection?

11 A. No.

12 Q. Now you mentioned before, in answer to Mr. Salada's
13 question, you said that you believe work-release prisoners
14 doing maintenance work for the County is done by another
15 department. But do you, in fact, have knowledge of the fact
16 that work-release prisoners do, in fact, do some type of
17 maintenance work?

18 MR. ZIELONIS: Your Honor, I'm going to
19 object. Her testimony was she had no knowledge at all
20 regarding anything done by prisoners.

21 MR. SHARP: I apologize, your Honor. I thought
22 her statement was she stated it's handled by another
23 department. I just wanted to clarify.

24 JUDGE COCHERES: Yes, I heard what Mr. Sharp -
25 I'll allow you to ask the question again to clarify.

1 BY MR. SHARP:

2 Q. Would you like me to repeat that?

3 A. Yes, please.

4 Q. In your testimony, I believe you stated that Mr.
5 Salada had asked you about work-release prisoners doing
6 certain maintenance work for the County. You said that was
7 another department that handles that.

8 However, do you know for a fact that work-release
9 prisoners do, in fact, on occasion, complete maintenance work
10 for the County?

11 A. I'm not aware of that. The prison is a completely
12 different department and if prisoners were to be used for
13 work-release or anything like that, it would be under their
14 direction. I have no knowledge of what their programs are.

15 Q. I want to also back-track on something Mr. Salada
16 said. I just want to clarify, you stated there are County
17 forces that do some type of snow and ice removal from county
18 buildings like the courthouse where you work?

19 A. Yes.

20 Q. Just for the record, where is the courthouse located?

21 A. 50 North Duke Street in Lancaster City.

22 Q. Just a few general questions. Does the County at
23 this point want to see the sidewalk on both the Fruitville
24 Pike and Lititz Pike bridge remain open?

25 A. Yes.

1 Q. The County would agree there's no reason to close
2 these sidewalks?

3 A. No.

4 Q. Would you agree with me these sidewalks are generally
5 a benefit to pedestrians so they can cross back and forth
6 above the Amtrak railroad tracks?

7 A. Yes.

8 Q. There was some question about your experience with
9 bridge projects. How many bridge projects have you been
10 involved with now in your current position?

11 A. Again, as I said, I've only attended field view, PUC
12 field views for the bridges. That's part of my job duty.
13 There's another person on my staff who my director, Mr.
14 Newman, who would be involved in more detailed meetings with
15 the departments or other municipal officials dealing with
16 project specifics.

17 Q. In your experience in your job as the bicycle and
18 pedestrian advisor, you're coordinating for Lancaster County
19 Bicycle and Pedestrian Advisory Council. In your experience
20 working there in that position, is it unusual for a
21 pedestrian or bicycle project to have safety and esthetic
22 enhancements such as the lights that were ultimately included
23 as part of this project?

24 A. Would you repeat the question?

25 Q. Let me try and make it simpler for you. Do you

1 understand that the projects that you work on where
2 pedestrians are going to be involved, is it unusual that
3 safety and esthetic things like lights are requested or added
4 to those projects?

5 A. Those are always considerations for projects,
6 especially safety in relation to if there's safety for
7 bicycle and pedestrians, that's something we're working
8 towards to better accommodate bicycles and pedestrians when
9 projects come about.

10 My understanding was that lighting was also to help
11 with motor vehicles coming across the bridge.

12 Q. So in your position, you would agree with me that the
13 lighting serves not just the esthetic reasons, but it also
14 has safety value for pedestrians, motor vehicles, bicycles?

15 A. Yes.

16 MR. SHARP: That's all I have, your Honor.

17 JUDGE COCHERES: Anyone else?

18 MR. UNDERHILL: Yes, your Honor. I would like
19 to ask one question.

20 FURTHER CROSS EXAMINATION

21 BY MR. UNDERHILL:

22 Q. You said that there's no reason to close the
23 sidewalks that benefit pedestrians. Have you ever crossed
24 over either of these bridges yourself, walked over them?

25 A. I know I've walked over Fruitville bridge, I don't

1 believe I've walked over Lititz bridge.

2 Q. Which one?

3 A. I'm sorry. I have not walked over the Lititz bridge.
4 I have walked over the Fruitville Pike bridge.

5 Q. How many times?

6 A. I don't know. Less than a dozen I would say.

7 Q. Have you performed or has the County performed any
8 studies - I think you said no to that before - on the number
9 of pedestrians; is that right?

10 A. Any type of pedestrian county on the bridges?

11 Q. Right.

12 A. No, we have not.

13 Q. Other than Ms. Wood, do you know of any other
14 pedestrians that use the Lititz Pike bridge?

15 A. Not by name, but I've seen people using the bridge,
16 yes.

17 Q. Driving by because you don't walk over it yourself?

18 A. Correct.

19 Q. How often do you cross the Lititz Pike bridge when
20 you drive over it?

21 A. Once or twice a month.

22 Q. Sidewalks been crowded with pedestrians or -

23 A. Just an occasional person.

24 MR. UNDERHILL: Thank you. That's all.

25 (Pause)

1 JUDGE COCHERES: No other questions? Any
2 redirect?

3 MR. ZIELONIS: No, your Honor.

4 JUDGE COCHERES: The witness is excused.
5 Thank you for coming.

6 (Witness excused)

7 JUDGE COCHERES: Let's go off the record for a
8 moment.

9 (Discussion off the record.)

10 JUDGE COCHERES: Mr. Underhill, it's your
11 turn.

12 MR. UNDERHILL: I call Charlotte Katzenmoyer.
13 Whereupon,

14 CHARLOTTE KATZENMOYER
15 having been first duly sworn, testified as follows:

16 JUDGE COCHERES: Please be seated. Good
17 afternoon to you.

18 MR. UNDERHILL: Your Honor, I'm going to have
19 to begin with an apology. I do not have two copies of the
20 written testimony for the court reporter. I have two copies
21 for me, but I will provide them promptly when we're finished.

22 JUDGE COCHERES: Well if you don't do anything
23 directly by the end of the day, I might be able to provide
24 them for you.

25 MR. UNDERHILL: All right. Thank you.

DIRECT EXAMINATION

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BY MR. UNDERHILL:

Q. Please state your name and spell it for the record.

A. Charlotte Katzenmoyer, C-h-a-r-l-o-t-t-e K-a-t-z-e-n-m-o-y-e-r.

Q. Ms. Katzenmoyer, will you keep your voice up, please, so that all these lovely people back here can hear you.

JUDGE COCHERES: If they have any difficulty, we'll give them new batteries for their hearing aids.

BY MR. UNDERHILL:

Q. By whom are you employed?

A. City of Lancaster.

Q. In what capacity?

A. I'm the Director of Public Works.

Q. How long have you held that position?

A. A little over three-and-a-half years.

Q. Before that, by whom were you employed?

A. The City of Reading.

Q. What position did you hold there?

A. I was services division manager and a short stint as acting director of public works.

Q. Acting director of public works. And roughly for how long were you with the City of Reading?

A. Approximately three years.

Q. Do you have any professional degrees?

1 A. Degrees? I am degreed civil engineer, bachelor and
2 masters. And civil environmental engineer.

3 Court reporter: Please keep your voice up.

4 BY MR. UNDERHILL:

5 A. Let us talk first about the Fruitville Pike bridge.
6 To your knowledge, has the City ever removed ice and snow or
7 debris from the sidewalk of the Fruitville Pike bridge?

8 A. No.

9 Q. Have you checked with others at the City of Lancaster
10 who have been there longer than you to see if your statement
11 is true?

12 A. Yes. I checked with our Streets Department and the
13 assayer. Also the City Engineer. All of whom have been
14 there 20 to 30 years. And they have never performed any snow
15 or debris removal on the bridge.

16 Q. Has the City ever been asked?

17 MR. ZIELONIS: Your Honor, I'm going to object
18 at this point in time. We had, the parties had agreed to a
19 procedure with prepared, written testimony so there would not
20 be any additional - any need for direct examination. I don't
21 know if this is additional, something that should have been
22 on additional direct, your Honor.

23 MR. UNDERHILL: I think that's well-taken.
24 Let me talk about the written testimony. There is going to
25 be some supplemental testimony that has come up, in part,

1 because of the testimony we've heard today and, in part,
2 because of conversations that I've had with Ms. Katzenmoyer
3 in the last day or so in preparing for this hearing, in light
4 of written testimony that we received.

5 (Pause)

6 JUDGE COCHERES: Mr. Underhill, you're new
7 around here. And because you're new, I'm going to give you
8 the benefit of the doubt. I'm going to allow you to
9 supplement your testimony because so far, the witness has
10 testified in her written testimony about these subjects.

11 However, I think it would be more than
12 appropriate, if you should have this problem in the future,
13 you contact the parties in advance of the hearing and
14 explain. Because you obviously knew before you walked into
15 this hearing room that there would be some supplemental
16 testimony. I think that's a professional courtesy.

17 I'll let you slide this time, but I want you
18 to continue.

19 MR. UNDERHILL: Thank you, your Honor. I do
20 apologize for not giving prior notice.

21 BY MR. UNDERHILL:

22 Q. Ms. Katzenmoyer, let's go back a minute. The written
23 testimony that was submitted on behalf of the City by you, is
24 that written testimony your testimony as submitted at that
25 time?

1 Speak loudly so everybody hears.

2 A. Yes.

3 Q. Do you have some additional or supplemental testimony
4 to add to what the written testimony consists of?

5 A. Yes.

6 Q. Back to the Fruitville Pike bridge, you heard
7 testimony this morning about the lights that have been placed
8 on the Fruitville Pike bridge. City/Township Exhibit Number
9 One is a photograph taken by the newspapers yesterday showing
10 those lights, where they have them placed.

11 JUDGE COCHERES: Go ahead. I'm just going to
12 move to the back of the room so she talks to me. Go ahead.

13 BY MR. UNDERHILL:

14 Q. Was there any input from the City, to your knowledge,
15 with respect to the enhancements that have been testified to,
16 including the lights?

17 A. I'm sorry. Can you repeat that?

18 Q. Sure. Was there any input from the City with respect
19 to the enhancements which included these lights on the
20 Fruitville Pike bridge?

21 A. Not to my knowledge.

22 Q. Was any member of the City's administration part of
23 the Beautification Committee which we've had testimony about?

24 A. Not to my knowledge.

25 Q. With respect to the removal of ice and snow, were you

1 or any member of your staff ever at any meeting with the
2 Department of Transportation and anyone else with regard to
3 whether or not the City would have any obligation to remove
4 ice and snow and debris from the Fruitville Pike bridge?

5 A. No, I was not on the staff.

6 Q. Your testimony earlier from this - actually, there
7 was a site view early in the procedure at which this was
8 mentioned. Did you or anybody from your staff attend that
9 meeting?

10 A. No, we did not.

11 Q. When is the first time that you learned that the
12 request was that the City do removal of the ice and snow and
13 debris from the Fruitville Pike bridge?

14 A. When we received notice of the Complaint regarding
15 the bridge.

16 JUDGE COCHERES: Excuse me, counsel. Did you
17 just ask when she received notice of any obligation on behalf
18 of the City to remove snow and debris from the Fruitville
19 Pike bridge?

20 MR. UNDERHILL: Yes, your Honor.

21 JUDGE COCHERES: Thank you.

22 BY MR. UNDERHILL:

23 Q. With respect to the removing ice and snow, you've
24 already testified that the City has never done that. What is
25 the position of the City with the request now that it assume

1 at least part of that burden with the Township to remove ice
2 and snow?

3 A. It is our position that we do now own the bridge. We
4 do not have, it is not located on a City street that we would
5 have responsibility for maintenance. It only borders the
6 City to the extent that the City annexed a property, the
7 Union Stockyards, in 1952, subsequent to the earlier PUC
8 Order. So that's the only reason it abuts the City Line.

9 Q. For Lititz?

10 A. Both.

11 Q. Limit it specifically to the Fruitville Pike if you
12 will. Were there other reasons? I didn't mean to cut you
13 off.

14 A. And also in terms of the ability to remove ice and
15 snow. The design and current construction of the bridge
16 would make it extremely difficult and unsafe to remove ice
17 and snow.

18 Q. What, specifically, about the design would make it
19 more difficult?

20 A. Particularly the lights, the light fixtures, how
21 they're located. That's not a typical installation of a
22 light standard on a bridge. Also, the location of the bridge
23 over the Amtrak lines, you cannot just blow the snow off the
24 side like you could on other bridges.

25 Q. With regard to the placement of the lights and the

1 width between the lights and the parapet, is that what you're
2 referring to about the difficulty of getting equipment in
3 there to deal with the ice and snow?

4 A. Right.

5 Q. I believe there was testimony from Mr. Malhenzie
6 about those distances. Is there some significance to a
7 minimum of three feet that you are aware of, why that would
8 be required?

9 A. For ADA compliance.

10 Q. For ADA compliance. And do you know if this bridge
11 is, in fact, ADA compliant?

12 A. We have still received complaints, a very vocal ADA
13 action group within the City, that even though PennDot has
14 made additional adjustments to a light that they're
15 complaining was still not ADA compliant.

16 Q. What do you do when you get those complaints?

17 A. We have a group to contact PennDot, since we're not
18 responsible.

19 Q. Refer them to PennDot?

20 A. Right.

21 Q. With regard to the maintenance of these lights, it
22 seems to have assumed importance today. Do you know if there
23 are agreements between the City and PP&L and the Township and
24 PP&L with respect to those lights?

25 A. Yes.

1 Q. What's the City's arrangement with PP&L?

2 A. There is an agreement between the City and PP&L that
3 we will pay for, basically, an energy cost and maintenance
4 cost on those fixtures. We've agreed that PennDot split them
5 between the City and the Township so that it's almost an
6 equal share of paying for the electrification of those
7 lights.

8 Q. Is this part of a larger agreement with PP&L with
9 respect to all the lights in the City?

10 A. Yes, it was added to our entire agreement for all of
11 our streetlights.

12 Q. If the City had been aware that PennDot was going to
13 be seeking to have the City be responsible, at least in part,
14 to remove ice and snow from the Fruitville Pike bridge,
15 before this Complaint was filed, that is to say, let's say,
16 during a meeting of some sort, What position would the City
17 have taken at that time?

18 A. We would have objected to being a party to that. We
19 would not feel that we would be responsible. Plus we would
20 have objected to the placement of lights and how it would
21 affect our ability to remove ice and snow.

22 Q. You've anticipated my second question. If you had
23 been aware of that expected responsibility, you would also
24 object to the light placement, too; is that what you just
25 said?

1 A. Correct.

2 Q. Are you aware of any studies on the number of
3 pedestrians using the Fruitville Pike bridge?

4 A. No.

5 Q. What is the City's position on who, if anybody,
6 should be responsible for the removal of ice and snow and
7 debris, and if necessary, in due course, for physical
8 maintenance and repair of the Fruitville Pike bridge?

9 A. Well, our first position would be, it would be a
10 PennDot responsibility, since it is a State highway.

11 Secondly, it would be some other entity that might
12 have other responsibilities to the bridge itself.

13 Q. The written testimony refers to the County being
14 involved as well.

15 MR. ZIELONIS: Your Honor, I'm going to
16 object. I was going to make and am going to make now, your
17 Honor, a Motion to Strike portions of this testimony. I had
18 thought we would follow the regular procedure of entering,
19 going through corrections, et cetera, and entering the
20 testimony in the record. That would be my motion at that
21 point.

22 But I would request now the opportunity to
23 make a Motion to Strike.

24 JUDGE COCHERES: Mr. Underhill, do you have
25 any intention of submitting this written testimony into the

1 record?

2 MR. UNDERHILL: Yes, your Honor. I thought I
3 was supplementing it and then admitting it and any other
4 testimony that Ms. Katzenmoyer and Mr. Mellott offered.

5 JUDGE COCHERES: Mr. Zielonis, I'm not going
6 to tell you how to handle your case. If you wish to make a
7 motion, the record is open for you to make it.

8 MR. ZIELONIS: I will make it.

9 JUDGE COCHERES: But there has been nothing
10 offered at this point.

11 MR. ZIELONIS: Your Honor, I will do that.
12 And if I have any need for any objections, I will make it at
13 that point.

14 JUDGE COCHERES: Thank you.

15 BY MR. UNDERHILL:

16 Q. Why is it that the City feels that Lancaster County
17 should be involved in any ice and snow and debris removal
18 from the Fruitville Pike bridge?

19 A. Because the residents that use the bridge are county
20 residents as well as municipal residents of the City or
21 Township, and that the County is just as capable of ice and
22 snow removal as the municipalities are.

23 Q. Do you know if the County representatives and the
24 Beautification Committee that made these recommendations that
25 made the changes to the bridges after the final design?

1 A. I don't know that there's an official committee, but
2 I do know that Commissioner Shaub was involved in the
3 discussions involving the beautification.

4 (Pause)

5 Q. If the Public Utility Commission before Judge
6 Cocheres orders the City to be responsible, in part, for the
7 removal of ice and snow and debris from the Fruitville Pike
8 bridge, in whole or in part, what's the position of the City
9 with regard to the scope of that Order and adjacent land-
10 owners?

11 A. Under the current City Ordinance, we would probably
12 make adjacent property owners responsible up to a point,
13 probably the approaches could be assigned to property owners.
14 But the bridge itself would still have to have snow and ice
15 removal.

16 Q. So would you request that any Order entered against
17 the City allow it to direct the adjacent property owners to
18 at least clear off ice and snow and debris at that portion of
19 the bridge to which they are adjacent?

20 A. Yes.

21 Q. Let's talk about the Lititz Pike bridge. Has the
22 City, to your knowledge, ever removed ice and snow or debris
23 from that bridge?

24 A. No, they have not.

25 Q. Has it ever done any physical repair work or

1 maintenance on the site of that bridge?

2 A. No, we have not.

3 Q. Have you checked beyond your own experience to see if
4 that was true for years past, as you did for the Fruitville
5 Pike bridge?

6 A. Yes, I did.

7 Q. We've heard testimony, I believe, there was repair
8 work this summer while PennDot was repaving the road. And
9 we've looked at the photographs, Township Exhibit Two. The
10 bottom left photograph, does that show repair work performed
11 by PennDot on the sidewalk?

12 A. Yes, it does.

13 Q. To your knowledge, is there any other repair work
14 that PennDot did?

15 Q. There were, I think, some of these other photos show
16 a similar-type of repair work.

17 Q. You have to speak more clearly on that.

18 A. Similar type of concrete that was added along here.
19 And the milling and paving of the street.

20 Q. Would you look at the bottom right photo of
21 City/Township Number Two and the middle right photograph of
22 City/Township Number Three. Tell me, as an engineer, is this
23 something that just requires cosmetic repair, or is this
24 substantial damage that requires more than cosmetic repair?

25 A. No, this would be substantial repairs.

1 Q. What is the City's position on who should make those
2 repairs in order to allow the bridge to be more easily
3 passable by Ms. Wood and anybody else who might care to use
4 it?

5 A. It would be our position that should be a PennDot
6 responsibility.

7 Q. With respect to their removal of ice and snow on the
8 Lititz Pike bridge, what is the City's position?

9 Q. That that responsibility should be whoever has the
10 ultimate responsibility for the bridge, that being PennDot.
11 That PennDot should do it, or another entity such as the
12 County.

13 Q. Now one of the exhibits, I believe, to Mr. Parikh's
14 written testimony is that earlier PUC Decision of 1930. Was
15 the City a party to that Decision at all?

16 A. No, we're not.

17 Q. Other than the light standards that are on the
18 Fruitville Pike bridge and not on the Lititz Pike bridge, do
19 the same problems of dealing with snow on the sidewalk occur
20 at the Lititz Pike bridge as on the Fruitville Pike bridge,
21 including the inability to throw over the parapet onto the
22 tracks, and the things you previously described?

23 A. To a certain extent. The iron wall that you see on
24 the Lititz Pike bridge kind of creates the same obstacle as
25 the lights do. You just can't plow snow like you can on a

1 bridge.

2 Again, on both these bridges, there's not a good
3 place to go with the snow. It requires physical removal of
4 the snow. You just can't plow it somewhere; there's really
5 no place to go with it.

6 Q. Of course, that would be true not only for the City
7 or Manheim Township, it would also be true for PennDot or the
8 County or anybody else. Why should it be their
9 responsibility then?

10 A. Because they're already maintaining the road. If you
11 have the equipment there and you're removing the snow - not
12 the County, but PennDot - you're' removing ice and snow from
13 the bridge, they would have the equipment there to remove
14 snow because it physically has to be taken away off the
15 bridge. It can't just be plowed onto adjacent property or
16 thrown over the side.

17 Q. You testified earlier about the city annexing some
18 property. PennDot Exhibit Number One, which is this multi-
19 colored map. I don't think you have a copy of that in front
20 of you.

21 (Pause)

22 Q. You've reviewed this. Does it accurately depict City
23 property and Township property so that the Township is in
24 yellow and the City is in beige, or whatever color that is?

25 A. As far as I've studied it, yes.

1 Q. When was it that the City annexed the property on the
2 south side of the tracks?

3 A. In 1952.

4 Q. You heard the testimony of Mr. Parikh that PennDot
5 inspects these bridges every two years. To your knowledge,
6 has the City ever received any inspection reports from
7 PennDot?

8 A. No, we have not.

9 Q. And if the City was expected to do physical
10 maintenance and repair to any deteriorated conditions that
11 occurred on a bridge that had been inspected, if PennDot
12 expected the work to be done by the City, would you expect to
13 get a report?

14 A. It would be outlined in an inspection report, any
15 deficiencies.

16 Q. But no inspection report has ever been received?

17 A. No.

18 Q. With regard to Lititz Pike bridge, is the same thing
19 true about it as you said about the Fruitville Pike bridge
20 and adjacent land-owners if the PUC sees fit to require the
21 City to perform removal of ice and snow and debris? Did it
22 not preclude the City from requiring adjacent land-owners,
23 under its ordinance, to remove ice and snow and debris from
24 the sidewalk that is adjacent to their properties?

25 A. Yes.

1 MR. UNDERHILL: Okay. Cross examine.

2 JUDGE COCHERES: Mr. Sharp.

3 MR. SHARP: Thank you, your Honor.

4 CROSS EXAMINATION

5 BY MR. SHARP:

6 Q. Good afternoon, Ms. Katzenmoyer. In your testimony,
7 I'm going to try to refer to - in your testimony, you state
8 the City does not have the equipment or the personnel to
9 remove snow and ice and debris from the sidewalks; is that
10 correct?

11 A. That would be required for these, yes.

12 Q. I'm sorry?

13 A. That would be required for these bridges, we do not.

14 Q. It's true that you, in fact, have persons and
15 equipment who do snow removal from the sidewalks at City
16 buildings; is that correct?

17 A. They're snow shovels; not equipment.

18 Q. So you, in fact, have snow shovels. I can assume you
19 don't have snow shovels that are three feet wide or more; is
20 that correct?

21 A. Correct.

22 Q. Do City employees remove snow from in front of, say,
23 for example, City Hall?

24 A. Yes.

25 Q. Do they re move snow and ice from the sidewalks and

1 stairs at that location?

2 A. From - I'm sorry?

3 Q. From City Hall. I'm just using that as an example.

4 A. Which? Sidewalk?

5 Q. And stairs. Do they remove snow and ice from
6 sidewalks and stairs outside City Hall?

7 A. Yes, there are some stairs.

8 Q. Do they utilize snow shovels and de-icing agents?

9 A. Yes.

10 Q. Who, specifically, does that? ...the City employees?
11 Or do you contract that out?

12 A. We have City employees.

13 Q. Are they part of your department, Public Works, or
14 another department?

15 A. Public Works.

16 Q. Do you have any snowblowers?

17 A. No, we don't.

18 Q. So when you talk about the lights on Fruitville Pike,
19 it's not that you couldn't get some kind of heavy piece of
20 equipment in there, you're just saying it's difficult to take
21 the snow off the of the bridge because you can't dump it on
22 the street or over onto Amtrak's property?

23 A. You would not - you would need to physically remove
24 it with like a small front-end loader, a skid loader. You
25 could not use a snowblower; there's no place to blow it.

1 Q. You're saying like a Bobcat?

2 A. Right.

3 Q. But you could still use a shovel?

4 A. Yes.

5 Q. So what you're actually saying is you couldn't get a
6 Bobcat - you know what I mean when I say a "Bobcat"?

7 A. Um-um.

8 Q. You would agree with me it's a small device that has
9 a front end that could be used as a jackhammer or a plow or a
10 shovel or a forklift?

11 A. It would have to be fitted with a blade for snow
12 removal.

13 Q. But assuming for a second that you are using the
14 Bobcat, you would agree with me that a snowblower with
15 smaller than 36 inches could fit between the railing and the
16 lights?

17 A. It would fit but where would you go with the snow?

18 Q. Well, that's another question. I'm just asking you
19 Would it be able to fit through there?

20 A. It would fit.

21 Q. Let me get back to this point. Your concern really
22 isn't as much getting a piece of equipment in there as that
23 you've got to periodically move the snow down the bridge,
24 pile it, take it off in some kind of vehicle?

25 A. Correct.

1 (Pause)

2 Q. You spoke briefly about the requirement that abutting
3 land owners in the City remove snow and ice from the
4 sidewalk. Is that from your City Code?

5 A. Yes.

6 Q. So if I understand it correctly, based upon your City
7 Code, it's a crime that if I'm saying, for example, I live
8 along a City street and there's a sidewalk there, it's my
9 responsibility to remove the snow and ice from that sidewalk
10 within a certain period of time after a precipitation event?

11 A. Correct.

12 Q. Just out of curiosity, besides these two bridges,
13 there are State highways in the City of Lancaster; is that
14 correct?

15 A. Correct.

16 Q. Now would you agree with me that along those State
17 highways where home owners and business have sidewalks, it's
18 still their responsibility to remove that snow and ice from
19 the sidewalk; correct?

20 A. Correct.

21 (Pause)

22 Q. I want to skip around to something real quick. In
23 your testimony, you again describe what was talked about
24 before by Mr. Malhenzie in regard to the Department's repair
25 work this summer at the Lititz Pike bridge; is that correct?

- 1 A. Yes.
- 2 Q. Now to your knowledge, that's the only sidewalk
3 repair work that you're aware of being done by PennDot; is
4 that correct?
- 5 A. On those bridges?
- 6 Q. On the Lititz Pike bridge.
- 7 A. Correct.
- 8 Q. Did you hear Mr. Malhenzie's testimony and Mr.
9 Parikh's testimony as to why the Department completed those
10 repairs?
- 11 A. Yes, I did, but I wouldn't fully agree with it.
- 12 Q. So your answer is that you would say the Department
13 didn't necessarily need to build up to a curb?
- 14 A. Right.
- 15 Q. Would you agree that's something you could differ on
16 whether it's an absolute necessity?
- 17 A. PennDot hasn't done that on other State highways in
18 the City.
- 19 Q. Would you agree that's something a reasonable
20 engineer might do as part of the maintenance program?
- 21 A. Not necessarily.
- 22 Q. Are you, just out of curiosity, you have a degree in
23 engineering. Are you a licensed PE in the State of
24 Pennsylvania?
- 25 A. I'm not.

1 Q. I just want to ask one more question as far as Lititz
2 Pike. The only specific maintenance you're aware of PennDot
3 performing is as far as what was done this summer?

4 A. To my knowledge.

5 (Pause)

6 Q. There were some questions about that bridge
7 inspection. To your knowledge, has the City ever requested
8 that the Department ever provide a bridge inspection report
9 for Lititz or Fruitville Pike?

10 A. We have no current responsibility for the bridge, so
11 we wouldn't request it.

12 Q. I understand that. But the question is - and I
13 appreciate that - the question is Have you or anyone on your
14 staff ever asked for it?

15 A. No.

16 Q. Because, in your mind, you have no reason to ask for
17 it?

18 A. Right.

19 Q. Fair enough. You also talked about PennDot in your
20 opinion, PennDot should do the snow, ice and debris removal.
21 Would you agree with that? The State highway, they're using
22 a standard piece of equipment. They're using a large snow
23 plow with a salt-spreading component on the back?

24 A. Correct.

25 Q. In your experience as Director of Public Works, have

1 you ever witnessed PennDot out with snow blowers or shovels
2 on sidewalks on highways abutting State roads?

3 A. Within the City? That would be my knowledge.

4 Q. That's what I'm asking.

5 A. PennDot does not maintain State highways within the
6 City; they contract with us to do it.

7 Q. So we have an agreement with the City?

8 A. Maintenance agreement.

9 Q. So if that's the case, who plows the snow on Lititz
10 and Fruitville Pike bridges?

11 A. That's not within the City.

12 Q. So the Township...

13 A. We don't go that far. PennDot does it in the
14 Township and they come over the bridge. I don't know how far
15 they go, but they ...

16 Q. Then the Township or the City, in your experience,
17 have you any knowledge of the Department using anything but
18 those large snowplows to do snow removal from the highways?

19 A. No.

20 Q. I think Mr. Underhill asked you this question, but I
21 want to go back over it. The snow removal issues that you
22 talk about on Lititz and Fruitville Pike, because of the
23 lights on Fruitville and the metal structure on Lititz, the
24 same problem is going to exist no matter who takes the snow
25 off; correct?

1 A. Correct.

2 Q. That's not a problem that's just unique to the City?

3 A. No.

4 (Pause)

5 Q. Overall, as far as the City is concerned, would you
6 agree that it's generally a benefit to local City residents
7 to have sidewalks on this bridge over the rail line so you
8 can walk back and forth between the City and the Township?

9 A. It's a benefit to all citizens.

10 Q. Okay. At this point, you talked about what you might
11 have objected to up front. Does the City want the sidewalks
12 or the bridges closed or barricaded in any way?

13 A. We would not have a feeling one way or the other.

14 Q. Is your testimony the City doesn't care if the
15 sidewalks are on the bridge or not?

16 A. I really couldn't answer that because I, from a
17 public work standpoint, I really don't have an objection to
18 the sidewalks being there or not being there.

19 Q. Not getting into what the Mayor or Council might say,
20 from a Public Work standpoint, knowing the general location
21 of the area, would you agree that having a sidewalk on this
22 bridge is useful for local pedestrians?

23 A. As I stated before, it benefits the citizenry.

24 Q. Now you said neither you nor anyone from your staff
25 attended the 2001 PUC field conference; is that correct?

1 A. Correct.

2 Q. Do you have any idea why?

3 A. We did not receive Notice. We received subsequent
4 notices about these complaints when the Complaint came
5 around, but we did not receive an earlier notice. The first
6 notice we received was about the Complaint, which I did have
7 a staff person assigned.

8 Q. You're saying you did not receive formal Notice from
9 the Commission there was a 2001 site view on this project?

10 A. My department did not.

11 Q. That's not saying someone else...

12 A. I'm not saying some other City department didn't
13 receive it.

14 Q. At this point, is the City objecting to the lights?
15 Would the City like the lights on Fruitville Pike removed?

16 A. Well, that's a complicated question, because there
17 needs to be lights. But if the original form of lights that
18 were originally designed - no, there needs to be some form of
19 light. Those original design lights were removed and
20 replaced with these.

21 If you're asking which I would prefer, then I would
22 prefer the original design.

23 Q. You'd agree that you would like to have lighting on
24 the bridge in some manner?

25 A. In some manner.

1 Q. To your knowledge, did the City object to the
2 Department's final construction plan submitted to the PUC for
3 approval?

4 A. With the original design lights, no, we did not
5 object.

6 Q. Let me ask you that question again. Let me state
7 that I know for a fact that lights were not part of that.
8 Did the City object to the final design plan submitted to the
9 Public Utility Commission?

10 A. (Nodding)

11 Q. To your knowledge, was anyone from the City present
12 on the final inspection of the Fruitville Pike bridge?

13 A. I believe one of our inspectors was.

14 Q. Do you know who that might have been?

15 A. Randy; he's inspector in our General Office.

16 Q. Okay. You said that the City has received Complaints
17 from handicapped groups or handicapped persons regarding the
18 bridge. You claim that information has been forwarded to
19 PennDot. Who, specifically, was that forwarded to?

20 A. I wouldn't know. That group would have to say who
21 they sent it to.

22 Q. Did you, personally, receive any complaints about the
23 bridge?

24 A. Yes.

25 Q. Who did you forward that information to?

1 A. We did not forward it to PennDot. We asked the group
2 that they would probably have more influence with PennDot
3 than the City would, so we asked them to contact PennDot.

4 Q. Have you or your staff ever gone out and conducted
5 any specific ADA complaints at the bridge?

6 A. Originally, before PennDot shifted them, we did go
7 out when we received the first complaint from the ADA group,
8 but then when PennDot made the adjustment to the lights,
9 subsequent to that, we did not go back out and check to see.
10 We just know that PennDot told us that they were in
11 compliance.

12 Q. You said before that had you known about some of
13 these issues on the front end, you would have objected to say
14 the design of the lights. Would you have objected to
15 inclusion of the sidewalk on the Fruitville Pike bridge?

16 A. I don't believe we would have objected.

17 MR. SHARP: Your Honor, if I may just have a
18 moment.

19 JUDGE COCHERES: Certainly. We'll go off the
20 record. Signal when you're ready.

21 (Discussion off the record.)

22 JUDGE COCHERES: Back on the record.

23 Ms. Katzenmoyer, you told me you're the
24 director of the City's Public Works Department; is that
25 right?

1 THE WITNESS: Yes.

2 JUDGE COCHERES: And you made it pretty clear
3 you don't want to remove the snow from the bridges; correct?

4 THE WITNESS: Correct.

5 Q. You also, I think, told me that you do have crews
6 that use hand shovels on government buildings throughout the
7 City; is that right?

8 A. Correct.

9 JUDGE COCHERES: Do you have assigned to your
10 department or access to a Bobcat?

11 THE WITNESS: Not that we - it's in one
12 building for mulch. It's not transported around the City.

13 JUDGE COCHERES: You do have a Bobcat?

14 THE WITNESS: Yes.

15 JUDGE COCHERES: There you go. Did you also
16 tell me that you have an agreement with PennDot to remove
17 snow from the State highways within the City Limits?

18 THE WITNESS: Correct.

19 JUDGE COCHERES: So does that tell me that you
20 either have assigned it to your Department or access to dump
21 trucks?

22 THE WITNESS: Correct.

23 JUDGE COCHERES: How do you remove the snow
24 off the City streets? Do you use trucks and plows?

25 THE WITNESS: We use plows to push the snow to

1 the side and we use the dump truck for salt.

2 JUDGE COCHERES: So those are two different b
3 vehicles?

4 THE WITNESS: No - well, there are some that
5 only do plowing and some that only do salting, and some that
6 do both.

7 JUDGE COCHERES: The ones that only do
8 plowing, by any change, would those be pickup trucks?

9 THE WITNESS: Yes.

10 JUDGE COCHERES: So let me see if I can put
11 this together in a row. You've got people with snow shovels;
12 right?

13 THE WITNESS: Correct.

14 JUDGE COCHERES: You've got a Bobcat; right?

15 THE WITNESS: Correct.

16 JUDGE COCHERES: You've got pickup trucks;
17 right?

18 THE WITNESS: Right.

19 JUDGE COCHERES: You've got dumptrucks; right?

20 THE WITNESS: Correct.

21 JUDGE COCHERES: So you're telling me that the
22 City, in fact, has the capacity to remove the snow from both
23 the bridge sidewalks; aren't you?

24 THE WITNESS: Correct.

25 JUDGE COCHERES: But you don't want to do it?

1 THE WITNESS: Correct.

2 JUDGE COCHERES: I think I've got the bottom
3 clear now. Is there any other cross examination of this
4 witness?

5 MR. SHARP: No, your Honor.

6 JUDGE COCHERES: Any redirect, Mr. Underhill?

7 MR. UNDERHILL: No, your Honor. I would like
8 to move the admission of the written testimony of Ms.
9 Katzenmoyer and of City/Township Exhibits One, Two and Three,
10 supplemented by her testimony.

11 MR. ZIELONIS: Your Honor, I'm going to
12 object. First, we don't know from the original direct
13 examination of the witness who prepared or who was sponsoring
14 the testimony.

15 But I have a more fundamental objection, your
16 Honor. I would like to strike page two, line - they're not
17 marked on the testimony, your Honor - but line five, which is
18 in the second paragraph, the second sentence in alternative
19 to line 13 which ends that paragraph, your Honor.

20 Your Honor, you have the ability under the
21 Commission's Rules of Practice and Procedure Section 403 to
22 control the admission of testimony. In this case, I'm
23 making a 5.103 Motion to Strike on the basis that the
24 testimony provided by the witnesses was part and parcel of a
25 Request to Compromise and settle this case by Mr. Underhill

1 in a letter dated October 19, 2004.

2 The Commission Section, Rules of Practice,
3 Section 5.321 indicate that unaccepted offers of settlement
4 may not be used as evidence against a part in the proceeding
5 a the time that the testimony was written, which I believe
6 was sometime around October 25th, 26th, 27th, 28th, your Honor,
7 the County had not accepted that offer of settlement.

8 Indeed, in a letter dated October 27th, the
9 same date as which this testimony was made, I had submitted a
10 letter to Mr. Underhill indicating that, in fact, the County
11 had rejected that settlement offer. The Commission's policy
12 is to incur the settlement.

13 The Commission's policy is to ensure that
14 there is some sanctity and protection for the settlement
15 process, your Honor. And the parties may make a request for
16 privilege which is that any evidence not be used against them
17 pursuant to the Commission's Rules of Practice, your Honor.

18 So therefore, since this is really an offer
19 of settlement used against the County, which you rejected, I
20 request that you strike the portions of, I assume it will be
21 either City/Township Statement Number One, page two, lines
22 five through 13, your Honor.

23 JUDGE COCHERES: Mr. Underhill.

24 MR. UNDERHILL: Well, since Mr. Zielonis said
25 we discussed a voluntary agreement to use the prisoners, that

1 is certainly true. But we're asking, since we didn't reach
2 agreement, you order it. And that's why it's included in
3 there.

4 JUDGE COCHERES: Mr. Zielonis, I'm very
5 sympathetic to your position, but I have a little issue here.
6 If you hadn't told me that was part of settlement
7 negotiations, I wouldn't know. That shouldn't be confused
8 with the City and Township's right and response to our
9 questions and procedures as to how they think the
10 responsibility should be divided.

11 As much as I do not like the answer that I'm
12 coming to here, I'm going to deny your motion. As you are
13 well-aware, being a practiced advocate before the Utility
14 Commission, particularly with procedures, the Commission
15 leads the way with promulgation of questions and procedures.
16 And I have to say that the answer provided here and the
17 testimony is within the scope of the question asked.

18 And it is true that the Commission does want
19 to incur settlement and it does want those negotiations to be
20 confidential and privileged, but I don't know that there's
21 anything that prevents the City or the Township from
22 legitimately putting that kind of request in response to the
23 questions and procedures.

24 MR. ZIELONIS: Your Honor, I don't think it
25 goes to the request, your Honor, that the County has

1 prisoners on work release, and that it has the equipment, and
2 that an agreement can be worked out regarding transportation
3 and supervision, because that's precisely what was in Mr.
4 Underhill's request for compromising this case. Almost
5 verbatim, those pieces of testimony that we see in this
6 statement, your Honor, I don't think that the Commission's
7 questions and answers require the specificity that you can
8 provide evidence of settlement discussions. That's where I
9 have a problem, your Honor.

10 You can put facts in the case, you can
11 support your facts. But you cannot say, cannot put into the
12 record an offer of settlement that was not accepted. And
13 this was an offer of settlement that was not accepted.

14 JUDGE COCHERES: Where, Mr. Zielonis, in the
15 record is there support for the City and Township premises
16 that the County has the manpower and equipment necessary to
17 fulfill their offer? The answer is There is none. Because
18 that evidence would have had to come from your client. And
19 your client did not put that in in their direct testimony and
20 no one asked them that question on cross examination.

21 The subject did come up earlier in the
22 hearing, but it was not directed as your client. So my
23 ruling that the evidence stays does you no harm because there
24 are no facts upon which to make a finding.

25 MR. UNDERHILL: May I say just one thing, your

1 Honor.

2 JUDGE COCHERES: Yes.

3 MR. UNDERHILL: I certainly had no intention
4 of improperly disclosing settlement discussions. The
5 sentence about the supervision of transportation came mostly
6 from my own personal experience. I'm on the board of a
7 cemetery in the City of Lancaster and we use prisoners to
8 help maintain the cemetery.

9 And I know for a fact that the parties using
10 the prisoners has to provide transportation and supervision.
11 And I discussed that with Ms. Katzenmoyer and the Township
12 representatives, and included that sentence for that reason,
13 knowing that if this was divided and the County said you
14 could use the prisoners, we have to arrange, when we get
15 them, that we'll take them back.

16 That's all that was behind it. If Mr.
17 Zielonis took this as disclosing settlement discussions, I
18 apologize. I did not mean to do that.

19 JUDGE COCHERES: I accept your apology, sir,
20 on behalf of the Commission. You will have to make your
21 amends with Mr. Zielonis. I appreciate your statement. It
22 provides clarity to me, but no clarity for the record in the
23 sense that it's still not evidence upon which I can issue a
24 ruling.

25 MR. UNDERHILL: I understand.

1 JUDGE COCHERES: I appreciate what your
2 sentiments are and that's fine. I think we've resolved the
3 issue. Is there any redirect examination?

4 MR. UNDERHILL: I recall asking and you said
5 no and I moved admission of the written testimony and the
6 three exhibits as supplemented by Ms. Katzenmoyer so far.

7 JUDGE COCHERES: The words "so far" bother me,
8 too.

9 MR. UNDERHILL: I'm going to have Mr. Mellott
10 testify for the Township and his testimony is very similar.

11 JUDGE COCHERES: I bet it is. And I've
12 already figured out who he is in the audience.

13 I will admit the Statement, deny the Motion,
14 admit the Exhibits without objection.

15 **(Whereupon, City/Township Statement No. 1 and**
16 **City/Township Exhibits 1 through 3 were**
17 **received in evidence.)**

18 JUDGE COCHERES: That being said, Mr.
19 Katzenmoyer, the witness is excused and thank you for coming.

20 (Witness excused)

21 JUDGE COCHERES: Mr. Underhill, do not try and
22 remedy any omission we have just finished discussion of with
23 this witness.

24 Raise your right hand, sir.

25 Whereupon,

1 PHILIP E. MELLOTT

2 having been first duly sworn, testified as follows:

3 JUDGE COCHERES: Good afternoon to you, sir.

4 Please be seated. Counsel.

5 DIRECT EXAMINATION

6 BY MR. UNDERHILL:

7 Q. Please state your name.

8 A. My name is Philip Mellott, middle initial "E", last
9 name "Mellott", M-e-l-l-o-t-t.

10 Q. By whom are you employed?

11 A. The Township of Manheim in Lancaster County.

12 Q. What is your position with Manheim Township?

13 A. I'm an engineer, inspector in the Public Works
14 Department.

15 Q. How long have you worked for the Township?

16 A. It will be 16 years the end of this year.

17 Q. Is there a reason you're here and not Mr. Martin, the
18 Township Manager?

19 A. Mr. Martin is away, attending his daughter's wedding
20 in Florida.

21 JUDGE COCHERES: You fell for that excuse? Go
22 ahead.

23 MR. UNDERHILL: That's the same thing I said.

24 JUDGE COCHERES: Sure.

25 BY MR. UNDERHILL:

1 Q. Do you have personal knowledge of the proceedings
2 involving the Fruitville Pike bridge and do you have general
3 knowledge of the Lititz Pike bridge and its situation?

4 A. Yes.

5 Q. If you were asked as questions about the subject
6 matter about the written testimony that has been submitted on
7 behalf of the City and the Township, would your testimony to
8 the subject matter in that written testimony be the same as
9 submitted?

10 A. Yes, it would.

11 Q. Because of your personal knowledge, and now the
12 testimony that has already taken place today, do you have
13 some supplemental testimony regarding the subjects that have
14 been already introduced in evidence?

15 A. Yes, sir, I do.

16 MR. UNDERHILL: Your Honor, at the risk of
17 doing this wrong again, I'd like to move admission of the
18 written testimony, and since they've been identified as
19 City/Township Exhibits One, Two and Three, I'm asking
20 permission for Mr. Mellott to supplement some of this
21 testimony.

22 JUDGE COCHERES: Subject to my previous
23 rulings, Exhibits One, Two and Three are admitted without
24 objection and I have obviously overruled the objection to the
25 written statement, which we have yet to name, really, of

1 record. Should we just simply call it City/Township
2 Statement Number One?

3 MR. UNDERHILL: Yes.

4 JUDGE COCHERES: Fine. Thank you. Please
5 continue.

6 BY MR. UNDERHILL:

7 Q. Mr. Mellott, let's talk about the Fruitville Pike
8 bridge. Did you attend a site view meeting early in 2001
9 with a variety of representatives of interested parties,
10 including Ms. Ahlskog?

11 A. I did.

12 Q. At that meeting, was the subject of removal of ice
13 and snow and removal of debris from the Fruitville Pike
14 sidewalk brought up at and discussed?

15 A. I do not believe it was.

16 Q. So you believe Ms. Ahlskog was mistaken; is that
17 correct?

18 A. Yes.

19 Q. When, to your knowledge, was the subject of removal
20 of ice and snow and debris from the Fruitville Pike bridge
21 first brought to your attention?

22 A. At the final PUC inspection meeting.

23 Q. Final PUC inspection. When was that?

24 A. Final inspection PUC meeting.

25 Q. Okay.

1 A. February 2003 or 2004; I'm not sure of the exact
2 date.

3 Q. Was that after the bridge was completed?

4 A. Yes.

5 Q. 2004 then?

6 A. Correct.

7 Q. What was the Township's reaction at that point?

8 A. We informed Mr. Oliver at that meeting that I would
9 have to check with the Township commissioners to see if they
10 would agree to accepting that as a stipulation, which I did.
11 And the Township responded in writing.

12 Q. And told him what?

13 A. That they would not.

14 Q. To your knowledge, has the Township ever been
15 responsible of ice and snow and debris from the Fruitville
16 Pike sidewalk?

17 A. No.

18 (Pause)

19 Q. With respect to the lights that are on that sidewalk,
20 does the Township have an agreement, as the City does, with
21 PP&L, for maintenance and payment for the electricity?

22 A. Yes, we do.

23 Q. Is that part of a larger agreement with PP&L?

24 A. Yes. Our agreement with PP&L was written to include
25 those lights on the bridge, Fruitville bridge.

- 1 Q. Who's responsible for the maintenance of the bridge?
- 2 A. PP&L provides the maintenance.
- 3 Q. The Township just pays its share of the electricity?
- 4 A. We pay a flat fee per pole.
- 5 Q. Does the Township plow either of these bridge when
- 6 there's a snowfall?
- 7 A. No, we do not.
- 8 Q. Does the Township have the kind of equipment that
- 9 would be required in order to remove ice and snow from the
- 10 Fruitville Pike bridge?
- 11 A. The bridge itself?
- 12 Q. I'm sorry. From the sidewalk.
- 13 A. From the sidewalk, we have shovels, snowblowers, we
- 14 do have a skid loader.
- 15 Q. Well, let's take the snowblower. Could the
- 16 snowblower be used on the Fruitville Pike bridge?
- 17 A. It could be used, but very cumbersome.
- 18 Q. Explain that.
- 19 A. You can't blow the snow over the side because you
- 20 have the railroad tracks below. You can't blow it back out
- 21 into the roadway. So you would have to blow it forward into
- 22 a pile, put it on a truck, requiring closure of the bridge,
- 23 and then continue that process throughout the length of the
- 24 sidewalk.
- 25 Q. You say a skid loader. What are you referring to?

1 Ms. Katzenmoyer was asked about a Bobcat. Is that ...

2 A. Same thing.

3 Q. Does it come equipped with a plow blade or a front
4 end loader blade in order to deal with snow?

5 A. Yes, they do.

6 Q. Would it go over the 36 inch wide space between the
7 lamp post and the parapet?

8 A. No.

9 (Pause)

10 Q. You heard me ask Ms. Katzenmoyer about requiring
11 adjacent landowners to clear off that portion of any sidewalk
12 associated with the Fruitville Pike bridge that is adjacent
13 to their land. Does the Township take the same position?

14 A. We take the same position, although we do not have an
15 ordinance that enforces that.

16 Q. But in fact, the Township residents do clean off
17 their sidewalks, do they not?

18 A. Yes, they do.

19 Q. Is anybody from the Township involved in a
20 beautification committee involving persons who wanted to
21 bring the enhancements to the bridge after the final plans
22 had been prepared and submitted and approved?

23 A. Not to my knowledge.

24 Q. Since you are the person dealing primarily with
25 PennDot and PUC in this matter, would it be within your

1 knowledge?

2 A. Not necessarily.

3 (Pause)

4 Q. Let's talk about the Lititz Pike bridge. Has the
5 Township ever taken responsibility for ice and snow and
6 debris removal on the Lititz Pike bridge and the sidewalk?

7 A. No, we have not.

8 Q. Has the Township ever accepted responsibility for
9 physical repair and maintenance of the sidewalk on the Lititz
10 Pike bridge?

11 A. No, we have not.

12 (Pause)

13 Q. Would you take a look at City/Township Exhibits Two
14 and Three. Let me ask you, first of all, Do you have any
15 professional degrees?

16 A. I do. A bachelors in science and civil engineering.

17 Q. Does that include work done on bridges, sidewalks and
18 so forth with your degree, or in your experience with the
19 Township?

20 A. Yes, sir, it does.

21 Q. Look at City/Township Exhibit Two, the bottom, right
22 corner, and tell me whether or not the damage shown there you
23 consider to be cosmetic or significant and requiring greater
24 repair?

25 A. Off of the repaired area that's shown on the right, I

1 would say it's more significant. To the left of the repaired
2 area, maybe more cosmetic.

3 Q. Bottom right, what about the damage shown there?

4 A. That's the picture I was looking at.

5 Q. Okay. You talked about that little bit of white
6 that's showing there on the corner?

7 A. Yes, sir.

8 Q. Then turning to City/Township Exhibit Three, middle
9 right, what about the damage there?

10 A. That's more significant.

11 Q. Are there other bridges in the Township that the
12 Township is responsible for?

13 A. Yes, sir.

14 Q. Are they inspected on a regular basis?

15 A. They're inspected every two years.

16 Q. And by whom are they inspected?

17 A. We cooperate with Lancaster County through PennDot in
18 a program whereby PennDot supplies the inspection team and
19 it's deducted from our money.

20 Q. When those inspections are made, do you get a report
21 on those inspections?

22 A. Yes, we do.

23 Q. From PennDot?

24 A. We actually get it from a consultant who performed
25 the inspection.

1 Q. This is a consultant hired by the County or PennDot
2 or who?

3 A. By PennDot.

4 Q. And do those reports specify when there are
5 deficiencies or damages or some condition that needs to be
6 remedied?

7 A. Yes, they do.

8 Q. Has the Township, to your knowledge, ever received
9 any inspection reports for the Fruitville Pike bridge, or,
10 particularly, the Lititz Pike bridge?

11 A. No, sir, we have not.

12 Q. And if PennDot expected the Township to be
13 responsible for the physical maintenance and repair or at
14 least a portion of that sidewalk, would you expect to get a
15 report?

16 MR. SHARP: Objection, your Honor. I don't
17 think the witness can testify as to PennDot's state of mind
18 regarding its submission or distribution of inspection
19 reports.

20 MR. UNDERHILL: Well, they make reports of
21 bridges they inspect and we've had testimony that they
22 inspect the Lititz Pike bridge and other bridges every two
23 years. And that they note deficiencies in their reports.

24 I would think, at least from the Township's
25 point of view, it would expect a report if it's supposed to

1 do something.

2 MR. SHARP: National bridge inspection reports
3 are done every two years according to Federal mandate on
4 bridges over 20 feet, your Honor. They are, one, we keep
5 them confidential pursuant to 409, Section 23 USC 409.
6 Additionally, they're distributed when necessary.

7 I don't think asking what PennDot does is
8 relevant for this witness .

9 JUDGE COCHERES: Did I correctly understand
10 the witness, Mr. Sharp, tell me when the Department inspects
11 the bridges in the Township, it deducts the money from the
12 fuel tax monies owing to the Township, that they then send a
13 report to the Town?

14 MR. SHARP: They would get it because they're
15 the bridge owner in that case, your Honor. That's why they
16 would receive the report.

17 For all intents and purposes, your Honor, I
18 think the problem in this case - and I don't want to get into
19 testimony - is that we have old orders, for all intents and
20 purposes, we have a bridge Order from 1931, no allocation of
21 sidewalk maintenance and an allegation of some superstructure
22 to a defunct railroad. And we have the Fruitville Pike
23 bridge that we have no previous Order. Therefore, according
24 to our records, no one was on the hook for anything.

25 So if anyone wants to be advised of anything,

1 I think the fact of Order or lack of Orders in this case bear
2 that out.

3 MR. UNDERHILL: Can I just - it just seems to
4 us that if they expect us to take responsibility for
5 maintenance and repair, they ought to tell us, that's all.

6 And I just asked if he would expect to get a
7 report.

8 MR. SHARP: Your Honor, I would simply state
9 to that we didn't file the Complaint in this case on the
10 Lititz Pike bridge, and on the Fruitville Pike bridge we're
11 dealing with a brand new bridge which I believe has just had
12 its first inspection.

13 JUDGE COCHERES: You made this a little easier
14 for me. Mr. Mellott, have you ever received a bridge
15 inspection report from PennDot for either the Fruitville Pike
16 bridge, the old one, the new one, or the Lititz Pike bridge?

17 THE WITNESS: No, sir.

18 JUDGE COCHERES: Thank you. We're done. Move
19 on. I might add, Mr. Sharp's comments on the record are
20 well-taken. This Commission, for whatever reason, when the
21 Lititz Pike bridge was ordered constructed in 1930, I'm
22 assuming we're still looking at the same bridge. And for
23 whatever reason, when the Fruitville Pike bridge that was
24 just replaced was constructed, it did not order any
25 responsibility on any of the local municipalities or, for

1 that matter, as far as a I can tell, order construction. In
2 PennDot's part, that means you're off the hook. Then there's
3 no reason to send you a report.

4 He just told you why you didn't get one.

5 MR. UNDERHILL: That's the first time I've
6 been told we're off the hook on anything.

7 JUDGE COCHERES: Those are his words; not
8 mine.

9 MR. UNDERHILL: I'd appreciate it if you'd
10 write them down, sir.

11 JUDGE COCHERES: That's why I've got a court
12 reporter. Move on.

13 MR. UNDERHILL: That's all. Cross examine.

14 JUDGE COCHERES: Mr. Sharp, cross examination.

15 MR. SHARP: Yes, your Honor. Thank you.

16 CROSS EXAMINATION

17 BY MR. SHARP:

18 Q. Mr. Mellott, I just have some questions for you. Are
19 you a licensed professional engineer in the State of
20 Pennsylvania?

21 A. Yes, I am.

22 Q. Some of the discussions we had before centered upon
23 what I think you called a skid loader. We talked about a
24 Bobcat. Does the Township, in fact, own one?

25 A. Yes, sir, we do.

1 Q. How many do you have?

2 A. One.

3 Q. Does the Township have snowblowers?

4 A. Yes, we do.

5 Q. Do you know what are the sizes and widths of the
6 front ends of your snowblowers?

7 A. I would say in the 24-inch range.

8 Q. Now I want to go back - and this is more related to
9 the written statement - in that statement, it says you don't
10 have the equipment or personnel to remove snow, ice and
11 debris from the sidewalks. That really isn't technically
12 correct; is it?

13 A. That's correct.

14 Q. You have snow shovels and snowblowers, as you just
15 said; is that right?

16 A. Correct.

17 Q. Now in regard to Township buildings, do your Township
18 employees remove snow and ice from sidewalks and stairs in
19 front of your Township buildings?

20 A. Yes, they.

21 Q. Would those be people within your department?

22 A. No, they're in the Parks Department.

23 Q. Parks Department. Okay. So, for example, is your
24 municipal building is located at 1940 Municipal Drive?

25 A. Correct.

1 Q. Do your Parks people remove snow and ice from the
2 sidewalks in front of that building?

3 A. They do.

4 Q. Do you know what equipment they use to complete that
5 work?

6 A. Shovels and snowblowers.

7 Q. This kind of falls to your testimony. You were here
8 for Ms. Katzenmoyer's testimony; correct?

9 A. Right.

10 Q. Would you agree with her that one of the problems for
11 everyone removing snow here is the idea of you can't put it
12 on the highway; you can't put it over on Amtrak?

13 A. That's correct.

14 Q. Assume for a second that the lights were not on the
15 Fruitville Pike bridge, wouldn't you still have a problem of
16 putting the snow not on the highway and not on Amtrak; you'd
17 still have to push it forward and take it off periodically;
18 isn't that true?

19 A. Correct.

20 Q. You mentioned some other Township bridges that you
21 have. Are there any sidewalks on any of those bridges?

22 A. Not to my knowledge.

23 Q. Are there any - strike that. I think the question
24 was asked Are there any other State highways within the
25 Township?

1 A. There are.

2 Q. To your knowledge, do the abutting property owners
3 remove snow and ice from sidewalks along those State
4 highways?

5 A. Yes, they do.

6 Q. You said that Manheim Township, just like the City,
7 has an agreement with PP&L regarding the lights on the
8 Fruitville Pike bridge,; is that correct?

9 A. That's correct.

10 Q. When did the Township add those lights to your
11 contract with PP&L?

12 A. The Township didn't add.

13 Q. Who did?

14 A. PP&L added them.

15 Q. What was the Township's reaction to that?

16 A. Well, when it was approached by both representatives
17 from bridge design group for that project, and PP&L, our
18 response was to basically review and agree with their
19 proposal.

20 Q. When you say bridge design group, are you talking
21 about the Department internal staff or Urban Engineers, or
22 both?

23 A. I believe at least Urban Engineers representatives
24 were there, but I can't remember whether or not PennDot was
25 there.

1 Q. To your knowledge, did the Township ever object to
2 the placement of the lights?

3 A. Not on the bridge itself, but not knowing where they
4 were placed as far as close to the curb, back against the
5 curbing, that we didn't know.

6 Q. To your knowledge, did the Township object to the
7 final design plan submitted to the Commission for approval?

8 A. We did not.

9 Q. Just a follow-up to a discussion that went back and
10 forth before regarding inspection reports: Have you or your
11 office ever requested an inspection report for Lititz or
12 Fruitville Pike from the Department?

13 A. No, sir, we have not.

14 Q. Just to follow up also with that: Are you aware,
15 other than the exhibit submitted by the Department today
16 regarding PUC Orders for the new Fruitville Pike bridge, are
17 you aware of any prior Public Utility Commission or Public
18 Service Commission Order on the old Fruitville Pike bridge?

19 A. No, sir.

20 Q. Other than the 1930 Order that was submitted by a
21 number of parties here today, including the Department's
22 Exhibit Seven, are you aware of any other Public Utility
23 Commission or Public Service Commission Orders on the Lititz
24 Pike bridge?

25 A. No, sir.

1 (Pause)

2 MR. SHARP: Your Honor, may I have one moment?

3 JUDGE COCHERES: Certainly. We'll be off the
4 record for a moment. Signal when you're ready.

5 (Discussion off the record.)

6 JUDGE COCHERES: We'll go back on the record.

7 BY MR. SHARP:

8 Q. I just want to clarify one thing I asked you before.
9 When you said PP&L approached the Township. When you said
10 the Township approved the go-ahead, was that the go-ahead for
11 lights?

12 A. Correct.

13 Q. Are you stating at that time, you didn't know the
14 specifics of the lights?

15 A. Not as far as the location nor the type until that
16 meeting.

17 A. After that meeting, the Township didn't object to the
18 placement of lights at that point, did they?

19 A. No objection was filed, no.

20 Q. Would the Township generally regard that as a benefit
21 to Township residents to have the sidewalk on the bridge so
22 they can walk back and forth between the City and the
23 Township?

24 A. Yes.

25 (Pause)

1 Q. Would you generally agree that it's a benefit to have
2 lighting on the bridge for illumination for both safety and
3 aesthetic reasons?

4 A. Yes.

5 MR. SHARP: That's all I have, your Honor.

6 JUDGE COCHERES: Any other questions of this
7 witness? Mr. Zielonis.

8 MR. ZIELONIS: I just have one.

9 JUDGE COCHERES: I don't believe you.

10 CROSS EXAMINATION

11 BY MR. ZIELONIS:

12 Q. Under your agreement with PP&L, does the Township own
13 any of the poles or light standards?

14 A. No, sir.

15 Q. Those are all owned by PP&L itself?

16 A. Right.

17 Q. Do you have what rate schedule the Township pays?

18 A. I do not.

19 MR. ZIELONIS: That's all I have.

20 JUDGE COCHERES: Do you know at what rate
21 schedule they pay?

22 THE WITNESS: No, sir, I do not.

23 JUDGE COCHERES: Is there any redirect for the
24 witness?

25 MR. UNDERHILL: Yes, sir, just a couple.

1 JUDGE COCHERES: "A couple" is a nice, vague
2 term.

3 MR. UNDERHILL: I'm afraid you're going to
4 hold me to two, and I think it's going to be three.

5 REDIRECT EXAMINATION

6 BY MR. UNDERHILL:

7 Q. When you were asked if you objected to the new
8 lights, at that time, were you aware, was the Township aware
9 that PennDot was going to ask the Township be responsible for
10 removal of snow and ice and debris from the Fruitville Pike
11 bridge?

12 A. No, sir.

13 Q. If you had been aware, what would the Township's
14 response have been?

15 A. To make it easier for the removal would have been to
16 either move the lights back up onto the parapets or behind
17 the parapets.

18 Q. You say the Township didn't object to the final
19 design. The final design, as reviewed and approved, include
20 the new lights in the sidewalk as we have seen them in the
21 photograph.

22 A. The answer to that question would be the final design
23 or the initial submission?

24 Q. That's what I'm referring to, the final design of the
25 initial submission.

1 A. Right. Did not include the lights.

2 Q. What was the original design of lighting, if any,
3 that was submitted and approved?

4 A. The Township originally had three overhead Cobra
5 lights on the east side of the highway, on the old Fruitville
6 configuration. And we had agreements with PP&L to shift
7 those three Cobra lights to the west side onto poles that
8 PP&L would install.

9 Q. Was this before the enhancements and the lights that
10 eventually got placed there?

11 A. Correct.

12 Q. When you say a "Cobra" light, what are you talking
13 about?

14 A. It's a light that hangs outward from a vertical pole,
15 similar to the snake itself, hence the word "Cobra".

16 Q. That was the original configuration on the east and
17 you've already had agreements with PP&L to put them on the
18 west; correct?

19 A. That's correct.

20 Q. Then it was after all this that the new lights came
21 along?

22 A. That is correct.

23 Q. You were asked if the Township ever requested an
24 inspection report for the Lititz Pike and the Fruitville Pike
25 bridge. Why wasn't one requested?

1 A. We don't have responsibility for maintenance on those
2 structures.

3 MR. UNDERHILL: Thank you. That's all.

4 JUDGE COCHERES: Any further questions of the
5 witness?

6 Mr. Mellott, I like to ask, sometimes, very
7 easy questions. I'll set you up quickly. Would you spell
8 your first name.

9 THE WITNESS: Philip, with one "l".

10 JUDGE COCHERES: Thank you. I trust no one
11 has any follow-up questions. The witness is excused. Thank
12 you, sir.

13 (Witness excused)

14 MR. UNDERHILL: That consists of the City and
15 Township evidence.

16 JUDGE COCHERES: Thank you.

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

18 (Discussion off the record.)

19 JUDGE COCHERES: 15 minutes, back in your
20 seats.

21 (Brief recess)

22 JUDGE COCHERES: Mr. Salada, I saved you for
23 last.

24 MR. SALADA: You saved the best for last,
25 your Honor.

1 JUDGE COCHERES: Mr. Oliver, please raise your
2 right hand.

3 Whereupon,

4 DAVID A. OLIVER

5 having been first duly sworn, testified as follows:

6 JUDGE COCHERES: Thank you. Please be seated.
7 Good afternoon to you. I appreciate your patience.

8 DIRECT EXAMINATION

9 BY MR. SALADA:

10 Q. Would you please state your name and spell it for the
11 record.

12 A. David A. Oliver, O-l-I-v-e-r.

13 Q. Mr. Oliver, by whom are you employed and in what
14 capacity?

15 A. Pennsylvania Public Utility Commission, Bureau of
16 Transportation and Safety, as a civil engineer.

17 Q. How long have you held that position?

18 A. Approximately 20 years.

19 Q. Let me direct your attention to a document that has
20 been marked for identification as Statement Number One. Do
21 you have a copy of that with you?

22 A. You mean our statement?

23 Q. Yes.

24 Q. And does that document represent your direct
25 testimony in this matter?

1 A. Yes.

2 Q. Was that prepared by you or under your supervision?

3 A. Yes.

4 Q. Do you have any changes or modifications you would
5 like to make to that testimony at the present time?

6 A. No.

7 Q. With regard to that statement, if I were to ask you
8 the questions that are set forth in that statement, would
9 your answers be the same as are presently contained in that
10 statement?

11 A. Yes.

12 Q. Is the information contained in that statement true
13 and correct, to the best of your knowledge, information and
14 belief?

15 A. Yes.

16 MR. SALADA: With that, your Honor, I would
17 move for admission of Staff Statement Number One and Staff
18 Exhibit Number One, subject to any objections on cross
19 examination.

20 JUDGE COCHERES: It's admitted, subject to
21 those conditions.

22 **(Whereupon, the documents were marked Staff**
23 **Statement Number 1 and Staff Exhibit No.1**
24 **for identification and received in**

1 evidence.)

2 JUDGE COCHERES: Who has questions for the
3 witness? Mr. Sharp.

4 MR. SHARP: I just have a few questions, your
5 Honor.

6 CROSS EXAMINATION

7 BY MR. SHARP:

8 Q. Good afternoon, Mr. Oliver. In your testimony on
9 page four, lines 14 to 17, you talk about the streetlights
10 being installed on the bridge and the May 12, 2003 Order does
11 not address the streetlights on the bridge; is that correct?

12 A. Yes.

13 Q. You then held a conversation with, I believe it's
14 Roger Clark of the Department that would have taken place
15 some time after the Department submitted final design plans
16 to the Commission for review regarding the streetlights.

17 A. Vaguely. I can just respond that I had conversations
18 with them that would have been most likely subsequent to the
19 time of the final inspection when these issues came up.

20 Q. Were the lights on the bridge at the time of the
21 final inspection?

22 A. Yes.

23 Q. When was the final inspection?

24 A. My records indicate they were on, it was -

25 MR. SALADA: Your Honor, I'm going to note the

1 written direct testimony, page three, line 19 says final
2 inspection was conducted February 18, 2004.

3 MR. SHARP: I'm sorry, your Honor. That's
4 fine. I apologize.

5 BY MR. SHARP:

6 Q. Let me cut to the chase. Do you remember having a
7 conversation with Mr. Clark wherein you indicated to him that
8 it was not necessary to file an amendment to the plans
9 regarding the proposed streetlights, but that issue would be
10 handled at the final inspection? Do you remember a
11 conversation to that effect?

12 A. No, I can't specifically recall. I simply can't -
13 it's not to say that I didn't, but I don't specifically
14 recall it.

15 Q. You just can't recall.

16 A. Correct.

17 Q. Just out of curiosity, you've testified in a number
18 of these types of proceedings; is that correct?

19 A. Yes.

20 Q. You also wrote secretarial letters regarding bridges
21 where there aren't hearings; correct?

22 A. If it's gotten to the point where you've had a
23 hearing, then any subsequent Orders that evolve from that
24 hearing where I've given testimony, it either is written by
25 the AOJ or the OSA.

1 Q. But in cases where there's either no objections over
2 the initial site view and no objections after the final site
3 view, you would write a secretarial letter on that; is that
4 correct?

5 A. Correct.

6 Q. All of those times, how often have you written an
7 Order that involved paragraphs regarding maintenance and
8 electric lighting on those bridges?

9 A. It's - you know, it's with the understanding, the
10 people entered into some type of understanding and it's an
11 agreeable type situation.

12 Q. Would you agree with me generally that it's not the
13 normal practice where the Commission has not, in the past,
14 included or in paragraphs that discuss the energizing and
15 maintenance of street lighting on these rail/highway crossing
16 bridges?

17 A. It occurs. It's not a frequent occurrence, but it
18 occurs. If it's an issue, if it's even there and it's
19 something that has to be addressed, then it's included so
20 that all the conditions are set forth and the people know
21 what it is that their responsibilities are.

22 MR. SHARP: That's all I have, your Honor.

23 JUDGE COCHERES: Any other questions for the
24 witness.

25 MR. UNDERHILL: Yes.

1 JUDGE COCHERES: Mr. Underhill.

2 CROSS EXAMINATION

3 BY MR. UNDERHILL:

4 Q. Mr. Oliver, did you participate in any discussions
5 before October 1, 2001 with respect to assigning
6 responsibility for ice and snow and debris removal from the
7 Fruitville Pike sidewalk? The basis for my question is, on
8 page six, lines four through eight of the written testimony.

9 A. According to my records, it looks as though the
10 original field conference was held on June 8, 2001 and it's
11 highly unlikely that I would have engaged in any type
12 conversation regarding those type details prior to that date.

13 Q. Okay. Your written testimony says the October 1,
14 2001 Order is not assigned responsibility for debris, snow
15 and ice removal from the sidewalks. The next sentence says
16 the October 1, 2003 Order does not assign responsibility for
17 the maintenance of electrification of the streetlights. Is
18 it coincident they're both October 1 or are the years in your
19 testimony not correct?

20 A. What are you reading off of?

21 Q. Page six.

22 (Pause)

23 A. That date must be - the 20003 date must be in error
24 because there's only one outstanding Order that I'm aware of
25 and it's the Order adopted September 26, 2001, which would -

1 on my copy, I don't have the adopted date. It's probably ...

2 Q. It's issued October 1st, I believe.

3 A. Okay. That's the adopted date. That 2003 has to be
4 an error.

5 Q. Okay. So the Order issued October 1st, 2001 didn't
6 deal with snow and ice and debris removal or with
7 electrification of the streetlights.

8 A. Correct.

9 Q. At the time, over the streetlights, do you know what
10 the design was? Was that the original design with what Mr.
11 Mellott just described as Cobra lights?

12 A. No, it would have been - see, initially, we didn't
13 have the final design plans. It would have been some time
14 subsequent to that that the actual design plans would have
15 come into the Commission for approval.

16 Q. That's what Mr. Sharp was asking about. Isn't it
17 true that the original design plans which were approved, I
18 believe, in May of 2003, did not include the lights that
19 actually appear on ...

20 A. Okay. If that's what the question was. My search
21 into the Commission records did not reveal any lighting along
22 the walkway.

23 Q. Okay. My question was Were the original design plans
24 for any kind of lights? You heard Mr. Mellott testify there
25 were Cobra lights on the old bridge on the east side and they

1 were going to put different Cobra lights on the west side.

2 A. Okay., You're saying the "original design".

3 Q. The one approved...

4 A. I would define original design as the set of plans
5 that I received as the formal submission for approval. And
6 they did not have, they did not include the lighting along
7 the walkway.

8 Q. When you observed the sidewalk on the Lititz Pike
9 bridge, you state that it should be cleaned and repaired.
10 Would you look at - are the photographs still up there?

11 A. Yes.

12 Q. City/Township Exhibits Two and Three.

13 A. Yes.

14 Q. Look at the lower, right corner of Exhibit Two,
15 middle right of Exhibit Three. Is that the condition of the
16 sidewalk as you remember it when you inspected it?

17 A. Yes.

18 Q. Would you agree with me that particularly the middle
19 right on Exhibit Three is a significant deterioration of the
20 sidewalk?

21 MR. SALADA: Objection. Clarification as to
22 what "significant" means.

23 MR. UNDERHILL: He's an engineer who knows
24 these things.

25 JUDGE COCHERES: Mr. Oliver, I need to resolve

1 this little issue here.

2 MR. SALADA: Your Honor, I don't know what
3 "significant" means. Significant in terms of impacting the
4 structural integrity of the bridge? Significant in terms of
5 being a tripping hazard?

6 MR. UNDERHILL: It never occurred to me it had
7 to do with structural integrity. I'm talking significance in
8 terms of service for walking.

9 JUDGE COCHERES: Using that definition, Mr.
10 Oliver, can you answer his question?

11 THE WITNESS: To the best of my knowledge, the
12 only fundamental problem we have out there is a surface
13 condition and none of it deals with a structural condition.

14 BY MR. UNDERHILL:

15 Q. My only question was Is the surface condition a
16 significant deterioration of the sidewalk surface?

17 A. It's a surface condition. If I understand - it
18 sounds as though we're saying the same thing. I'll agree
19 with you.

20 MR. UNDERHILL: Thank you. That's all.

21 JUDGE COCHERES: Any other questions for the
22 witness?

23 (No response)

24 JUDGE COCHERES: Mr. Oliver, I have a few
25 questions for you. How long did you tell me you worked for

1 this Commission in bridge engineering projects?

2 THE WITNESS: It would be going on 20 years.

3 JUDGE COCHERES: With that many years of
4 experience, have you ever noticed a pattern with respect to
5 the Commission's allocation of maintenance, responsibilities
6 for sidewalks on bridges?

7 THE WITNESS: Yes.

8 JUDGE COCHERES: What was that pattern?

9 THE WITNESS: Normally, the rationale that's
10 used is because it's of a pedestrian nature, it's normally
11 used by individuals that are residents within that
12 municipality and; therefore, they're the primary users and
13 the local municipality should be responsible for the ice and
14 the snow removal from the walkway surface.

15 JUDGE COCHERES: Did you hear the testimony
16 today about what parties are thus far responsible or for
17 energizing the light fixtures in accordance to their
18 agreement to PP&L Electric?

19 THE WITNESS: Yes.

20 JUDGE COCHERES: Do you have any problem,
21 based on your years of experience, with that allocation?

22 THE WITNESS: No. I mean if they came to
23 amicable agreement, then it would just be a matter of
24 memorializing it in an Order.

25 (Pause)

1 JUDGE COCHERES: Let's look at the last page
2 of your testimony, page nine.

3 THE WITNESS: Yes, sir.

4 JUDGE COCHERES: As I understand, the
5 Commission cited, April 22, 1930, the Pennsylvania Railroad,
6 a currently, non-existent entity, and operation crossing, is
7 responsible for maintaining the bridge structure; am I right?

8 THE WITNESS: Yes.

9 JUDGE COCHERES: In instances where the
10 operating railroad is no longer operating at the bridge site,
11 based on your years of experience, have you noticed the
12 pattern about who gets responsibility for maintaining the
13 roadway, paving, superstructure and such structure of the
14 bridge?

15 THE WITNESS: Yes.

16 JUDGE COCHERES: What is that pattern in front
17 of this Commission?

18 THE WITNESS: The successor railroad, or the
19 successor entity. If assignment was to the railroad, then
20 you'd have to put it in terms of the successor railroad.

21 JUDGE COCHERES: Is that a realistic approach
22 in this instance, given that Amtrak is the successor
23 railroad?

24 THE WITNESS: Well, I guess it depends on
25 who's arguing the point.

1 JUDGE COCHERES: Suppose it's being argued in
2 Federal Court?

3 THE WITNESS: Okay. If it's in Federal Court,
4 then it's not realistic. But at the same time, you still
5 have a second railroad entity at this location.

6 JUDGE COCHERES: But that second railroad
7 entity doesn't own any property there at the location; does
8 it?

9 THE WITNESS: Well, ownership never seemed to
10 be an issue because, I mean if you go back, I mean a lot of
11 these lines were leased. From the Commission's point of
12 view, it got down to a point of who was the operator.

13 JUDGE COCHERES: Who is the operator of the
14 line on this bridge?

15 THE WITNESS: You have two operators. You
16 have Norfolk Southern and you have Amtrak.

17 JUDGE COCHERES: Who owns the track?

18 THE WITNESS: Who owns it?

19 JUDGE COCHERES: Let me make it easier for
20 you. Isn't it true that Amtrak owns it?

21 THE WITNESS: Most likely.

22 JUDGE COCHERES: Yes, I like that. Most
23 likely. Any other party have the responsibility for
24 maintaining bridge structures and bridge superstructures and
25 roadway paving in the circumstances that we're talking about?

1 THE WITNESS: Well, of course, generally
2 speaking, in the realm of theoretical possibilities that
3 we're exploring here, the entity that ...

4 JUDGE COCHERES: Can I have a drum roll here?
5 Can we get to an answer?

6 THE WITNESS: In this particular case, it
7 would be PennDot.

8 JUDGE COCHERES: Ah, I thought we might get to
9 that. Okay. Do we have any other questions about things,
10 now that I have raised all these other little issues from
11 other parties? Ah, Mr. Sharp, I thought you might have a
12 question.

13 MR. SHARP: Your Honor, I just - I have one
14 question with regard to the photographs that you just looked
15 at.

16 FURTHER CROSS EXAMINATION

17 BY MR. SHARP:

18 Q. I want to look again at Township Two and Three. You
19 had talked about a deterioration of Township Two and Three.
20 In looking at - I'm sorry, Township Two, the picture bottom
21 left where that Department concrete work was done. Did you
22 witness that in person when you visited the bridge?

23 A. There would have been a subsequent time that I had
24 gone back to revisit the bridge.

25 Q. Let me stop you real quick. When is the last time

1 you were there? Was it after the field conference on the
2 Lititz Pike bridge?

3 A. It would have been some time subsequent to that.

4 Q. When you were there on your last visit, did you, in
5 fact, see that concrete work that was done? If you look at
6 Exhibit Two, bottom line.

7 A. Yes, there was some concrete patchwork performed.

8 Q. Now you heard testimony both of Mr. Parikh, Mr.
9 Malhenzie and Ms. Katzenmoyer of the City; is that correct?

10 A. Yes.

11 Q. Being a professional engineer, in looking at the work
12 the Department did there, would you be inclined to agree that
13 the Department's work there was done for the purposes of
14 having a good tie-in point for the paving and drainage issues
15 as opposed to just doing for purposes of sidewalk
16 maintenance?

17 A. I would assume that ...

18 MR. UNDERHILL: I'm going to object if he's
19 just assuming, your Honor.

20 JUDGE COCHERES: You've been asked to state
21 his professional opinion, sir.

22 MR. UNDERHILL: If he can.

23 THE WITNESS: Okay. From the engineering
24 point of view, you're going to act in a manner that will
25 enhance your own performance. And your fundamental

1 performance was for the purposes of paving the roadway.

2 Fundamentally, your concern wasn't with the walkway. So I'm
3 going to rationalize that what was done there was for the
4 purpose of benefitting the roadway.

5 BY MR. SHARP:

6 Q. Based on what you've heard today in the testimony of
7 Ms. Katzenmoyer versus what the Department said, would you
8 agree with the statement that reasonable engineers would
9 differ as to whether or not you'd want to put that type of
10 pavement curbing in for bituminous binary?

11 A. In this particular case, I'll agree with it as being
12 a feature that was added for the purposes of the type of
13 pavement.

14 MR. SHARP: Thank you, your Honor. Thank you,
15 Mr. Oliver.

16 JUDGE COCHERES: Any other cross examination
17 of the witness?

18 MR. UNDERHILL: Yes, sir.

19 JUDGE COCHERES: Mr. Underhill.

20 FURTHER CROSS EXAMINATION

21 BY MR. UNDERHILL:

22 Q. On that last point, Mr. Oliver, I believe Ms.
23 Katzenmoyer testified that while putting in some concrete to
24 tie into an expansion joint in the roadway was reasonable,
25 that making some 75 feet of concrete work with no sign of

1 that expansion joint in sight was more than was necessary for
2 the tie-in work. That's what Mr. Sharp was asking you about,
3 whether reasonable engineers could agree or disagree.

4 So my question to you is Is 75 feet, approximately,
5 of concrete more than was necessary for tying in with an
6 expansion joint?

7 A. You want the honest answer?

8 Q. Of course, you're under oath.

9 A. I think as a practical matter, he had not intended to
10 tie into his blacktop. While he was out there, he sees some
11 renovation work that could be done and just rather than being
12 asked about it, he expands the work a little bit and tries to
13 help people out.

14 MR. SHARP: I'm going to move to strike, your
15 Honor, only to the extent it goes to the state of mind of the
16 PennDot's maintenance guy.

17 JUDGE COCHERES: Well, you opened the door,
18 Mr. Sharp.

19 MR. SHARP: I did.

20 JUDGE COCHERES: It's still open. Your
21 objection is overruled.

22 BY MR. UNDERHILL:

23 Q. So he went ahead and voluntarily did additional work
24 on the site; is that what you're saying?

25 A. More or less. I think that's the honest answer.

1 Q. Good. That's what we want. One other point. With
2 the pattern of allocation of ice and snow removal on
3 sidewalks that you observe typically goes to the adjacent
4 municipalities, would you agree with me that it's not
5 necessarily the case where the removal of ice and snow has
6 been made more difficult by others who have caused
7 obstructions or deterioration or failed to take action so
8 that the snow and ice removal is a much more difficult task
9 than it would otherwise be?

10 A. Is that in the generic sense, or specific to this
11 case?

12 Q. That's in a generic sense. Your observation has been
13 it's generally gone to adjacent municipalities. I'm asking
14 Is that still true if some other party has created problems?

15 A. I would say if it's in the generic sense, then I
16 would say you have a good opportunity to come up with valid
17 explanations as to why someone else ought to be responsible.

18 MR. UNDERHILL: That's good enough. Thank
19 you.

JUDGE COCHERES: Yes. I think those are
20 called conceptions. Any other questions for this witness?
21 Mr. Salada, redirect?

22 MR. SALADA: Just one, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. SALADA:

25 Q. Mr. Oliver, earlier Mr. Sharp had asked you about you

1 writing secretarial letters. Isn't it correct that you draft
2 these letters as recommendations and then ultimately, the
3 Commission enters them?

4 A. Yes. The Commission is the only one with the
5 authority around here.

6 MR. SALADA: Thank you. That's all I have.

7 JUDGE COCHERES: Are we done? The witness is
8 excused. Thank you for coming, Mr. Oliver.

9 (Witness excused)

10 MR. MOORE: Your Honor.

11 JUDGE COCHERES: Yes, Mr. Moore.

12 MR. MOORE: May I be heard on three little
13 procedural points?

14 JUDGE COCHERES: Okay.

15 MR. MOORE: One is that perhaps it's a non-
16 problem but I wanted to make sure. The original notice
17 beginning of the proceeding, when it was sent out, named two
18 individuals in addition to a variety of parties.

19 I'm now looking at the PUC Notice dated April
20 2, 2004 and PennDot had notably myself and James Richter who
21 was deputy chief engineer for structures were named as though
22 they were parties in this case, rather than Amtrak.

23 No subsequent document has picked that up and
24 I wanted to make sure the record was clear that the
25 individuals are not, in fact, parties.

1 JUDGE COCHERES: Ms. Wood.

2 MR. MOORE: Actually, this wasn't something of
3 Ms. Wood's doing; it was on the Commission Notice. It's
4 simply attached to her Complaint. And her Complaint does not
5 name individuals.

6 I have it, if it would be easier.

7 (Pause)

8 JUDGE COCHERES: I think I need to see what
9 you're referring to.

10 MR. MOORE: May I approach the Bench?

11 JUDGE COCHERES: Certainly. - I found it.

12 MR. MOORE: That's the one. It's just odd in
13 that it names individuals instead of the Company and I just
14 wanted to make sure I don't need to make a motion to dismiss
15 the individuals. As you'll notice the subsequent headings
16 and pleadings all refer correctly to Amtrak rather than the
17 individuals.

18 JUDGE COCHERES: Mr. More, I think the best
19 answer I can give you is, first, I am not authorized to speak
20 on behalf of the secretary of the Bureau which sent out this
21 notice. However, I am authorized to overrule it.

22 MR. MOORE: I move to strike.

23 JUDGE COCHERES: That's truly unnecessary. I
24 think - I don't know why they would have put your name
25 personally there. I do know they make some effort to make

1 sure that all of the interested parties are properly added to
2 this kind of Complaint. I've looked at Ms. Woods' original
3 Complaint. She simply named Amtrak.

4 MR. MOORE: Right.

5 JUDGE COCHERES: So I will go under the theory
6 that you were named simply as agents of the Company and the
7 original pleadings bears that out.

8 MR. MOORE: Good. So I need to make no
9 further, take no further action to remedy that.

10 JUDGE COCHERES: No. Bring your checkbook
11 when you read the Order.

12 MS. WOOD: Your Honor, may I?

13 JUDGE COCHERES: Yes.

14 MS. WOOD: I didn't name Amtrak, just for the
15 record.

16 JUDGE COCHERES: Yes, you did.

17 MS. WOOD: I did.

18 MR. MOORE: Actually, you did.

19 JUDGE COCHERES: I have the original signed
20 Complaint in your handwriting.

21 MS. WOOD: I thought I asked the Commission to
22 assign responsibility to a responsible party.

23 JUDGE COCHERES: If you'll approach the Bench,
24 Ms. Wood.

25 MR. MOORE: She needn't, I can -

1 MS. WOOD: Oh. Okay.

2 JUDGE COCHERES: That's how it operates around
3 here. Okay. Next?

4 MR. MOORE: Next, your Honor, I wanted to
5 remind the Commission that Amtrak is still subject to Judge
6 DuBois's injunction. I have the cite for that if necessary.

7 JUDGE COCHERES: You probably ought to have
8 that cite available only because I have written a Decision in
9 an Amtrak case and so I'm sure you have it at your
10 fingertips.

11 MR. MOORE: I do. The Decision cite, your
12 Honor, is 210 Fed. Supp. 2nd beginning at page 689 and it's a
13 2002 case, Eastern District of Pennsylvania. And there was a
14 subsequent Injunctive Order by Judge DuBois.

15 JUDGE COCHERES: I'm aware of it; I just
16 didn't have the actual cite. Continue.

17 MR. MOORE: Then finally, along that vein,
18 your Honor, because of that injunction, I'm reserving
19 Amtrak's rights on the issue by the Commission's jurisdiction
20 to allocate public highway costs and responsibility to Amtrak
21 under United State vs. England. With that, I have no further
22 -

23 JUDGE COCHERES: I would have been surprised
24 if you didn't raise those last two issues.

25 All right. Are there any other procedural

1 issues I need to go into before we start talking about the
2 need for briefs?

3 (No response)

4 JUDGE COCHERES: Fine. Do parties want to
5 file briefs? Ms. Salada says no. I don't see any strong
6 indication. Fine. I will take the case without briefs.
7 I think the facts are fairly well laid out, positions are
8 fairly well laid out. Certainly the law with respect to
9 Amtrak is well laid out. I believe that's all we need.

10 The only thing I'd like to remind you of is
11 Mr. Moore's offer to make available whatever plans exist on
12 the Lititz Pike bridge. I believe we've already put on the
13 record, and we'll keep the record open for four weeks to
14 allow the parties to, first of all, to allow Amtrak to allow
15 Amtrak to find any existing drawings for that bridge and to
16 circulate them and to produce whatever stipulation is
17 necessary to use them as an exhibit.

18 And I believe I encourage the parties that,
19 should they have some sort of difficulty agreeing on whatever
20 records Amtrak may have, that they should contact me before
21 the end of that four-week period to see what, if anything
22 else, you need to do about it.

23 I'm not suggesting there should be a problem,
24 but I just want you to remember that the pathways of
25 communication are open.

1 Is there anything else we need to discuss?.

2 (No response)

3 JUDGE COCHERES: Thank you all for coming. I
4 thank you all for your cooperation. I wish you all a safe
5 trip.

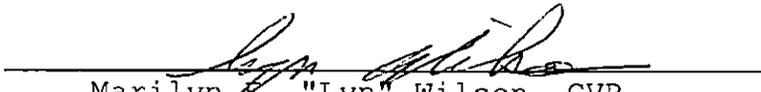
6 (Whereupon, at 4:28 p.m., the hearing was
7 adjourned.)

8 * * *

9 C E R T I F I C A T E

10 I hereby certify, as the stenographic
11 reporter, that the foregoing proceedings were taken
12 stenographically by me, and thereafter reduced to typewriting
13 by me or under my direction; and that this transcript is a
14 true and accurate record to the best of my ability.

15 COMMONWEALTH REPORTING COMPANY, INC.

16 By: 
17 Marilyn F. "Lyn" Wilson, CVR

18 ***

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