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A P P E A R A N C E S:

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I N D E X  
W I T N E S S E S

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<u>For the Township</u>	Direct	Cross
Howard Lewis	9	16 - Mr. Mazor 18 - Mr. Kutz
<u>For ConRail</u>		
Paul Jefferis	21	27 - Mr. O'Connor 30 - Mr. Kutz
<u>For PennDOT</u>		
Kenneth A. Brace	34	37 - Mr. Mazor 39 - Mr. Kutz
<u>For the County</u>		
Jack Masters	41	44 - Mr. O'Connor 46 - Mr. Kutz
<u>For Penelec</u>		
J. Edward Smith	48	49 - Mr. Mazor 50 - Mr. Kutz
<u>For the Commission Staff</u>		
William W. Huff	51	

E X H I B I T S

	Marked For Identification	Admitted In Evidence
✓ ConRail Exhibit No. 1 - Plans . . . .	23	33
✓ PennDOT Exhibit A - Map . . . . .	34	40

1           JUDGE JONES: The Pennsylvania Public Utility  
2 Commission calls for hearing now the matter of the complaint  
3 that was filed by Great Bend Township versus Consolidated  
4 Rail Corporation and others to complaint Docket No. C-79081404,  
5 alleging that the respondents have failed to maintain  
6 properly a bridge over tracks (#H 176.25) as set forth in  
7 the complaint; in particular, one of the wing walls has  
8 a shearing and horizontal crack and there is a spalling of  
9 the wall.

10           I note the following appearance of counsel in  
11 this proceeding:

12           Attorney Francis X. O'Connor, appearing for the  
13 complainant, Great Bend Township.

14           Attorney Joel E. Mazor, appearing for Consolidated  
15 Rail Corporation.

16           Attorney George D. Wenick, appearing for the  
17 Department of Transportation.

18           Attorney James J. Kutz, appearing for the  
19 Commission Staff.

20           Attorney Robert G. Dean, appearing for the  
21 county of Susquehanna.

22           Are there any other attorneys in the hearing room  
23 who would like to make their appearances noted of record?

24           Let the record show there is no response.

25           (No response.)

1 JUDGE JONES: Mr. O'Connor, you have been  
2 notified by the Commission to make certain notices of  
3 publication in various periodicals and newspapers in this  
4 jurisdiction.

5 Have you proofs of such publications?

6 MR. O'CONNOR: We are waiting for the proofs back  
7 from the Montrose Independent. We have copies of the publica-  
8 tions that were placed in the paper. We requested the  
9 Montrose Independent to supply us with the proofs and we  
10 are still waiting for those.

11 JUDGE JONES: You were directed by the Commission  
12 then to give public notice how?

13 MR. O'CONNOR: By the newspapers.

14 JUDGE JONES: Of general circulation.

15 MR. O'CONNOR: Of general circulation.

16 JUDGE JONES: And what newspapers did you place  
17 that notice in?

18 MR. O'CONNOR: We placed it in the Montrose  
19 Independent which is the only paper of general circulation  
20 throughout the county.

21 JUDGE JONES: Do you know as of what dates?

22 MR. O'CONNOR: It was placed in there October 18,  
23 1979, and it was also placed in October 25, 1979, which is  
24 about one week ago today.

25 JUDGE JONES: Have you received your proofs of

1 publication?

2 MR. O'CONNOR: Those we are waiting for still.

3 JUDGE JONES: And as soon as you have received  
4 those, will you forward them on to the Commission?

5 MR. O'CONNOR: Yes, sir.

6 JUDGE JONES: Do you wish to make these exhibits  
7 today or just make reference to the proofs that you will file  
8 at a subsequent date?

9 MR. O'CONNOR: I will make reference to the fact  
10 we will file the proofs.

11 JUDGE JONES: Was there any other notice required  
12 by the Commission?

13 MR. O'CONNOR: No, sir.

14 JUDGE JONES: Are you ready to proceed then?

15 MR. O'CONNOR: Yes.

16 JUDGE JONES: Do you have the list of questions  
17 that are to be developed that were furnished to you by the  
18 Commission?

19 MR. O'CONNOR: Yes, Your Honor.

20 Off the record.

21 (Discussion off the record.)

22 JUDGE JONES: Back on the record; are there any  
23 remarks or comments at this time that counsel of record  
24 would like to make?

25 MR. KUTZ: Your Honor, my name is James Kutz. I am

1 am attorney with the Commission Staff and would like to make  
2 an opening statement.

3 JUDGE JONES: Mr. Kutz, you may.

4 MR. KUTZ: Thank you, sir.

5 Although the formal complaint which Your Honor  
6 referred to earlier in this proceeding was filed August 21,  
7 1979, the matter came before the Commission pursuant to an  
8 informal complaint filed with the Commission dated May of  
9 1979. Following that, a field conference was held on June 12,  
10 1979. Thereafter, on August 21, 1979, the formal complaint  
11 was filed by the complainant in this case, Great Bend  
12 Township, alleging that which you have already referred to.

13 On September 14, 1979, a field conference was  
14 thereafter held by a representative of Commission Staff.  
15 PennDOT and Consolidated Rail Corporation have filed answers  
16 to this complaint; ConRail's was on September 24, 1979, and  
17 I believe PennDOT's was on or about September 26, 1979. No  
18 other parties have filed a response to the complaint.

19 Notice of the present hearing was given by  
20 secretarial letter dated October 9, 1979. And the following  
21 parties were so notified:

22 Great Bend Township, the Pennsylvania Department of  
23 Transportation, Consolidated Rail Corporation, the County of  
24 Susquehanna, Pennsylvania Electric Company and the Commonwealth  
25 Telephone Company. Along with the notice of hearing, 26

1 Questions and Procedure was attached to that notice, request-  
2 ing that this hearing of today proceed along with the  
3 Questions and Procedures listed therein.

4 Since this is a municipality-initiated complaint,  
5 the Commission Staff suggests that the proceeding now begin  
6 with testimony and evidence from the complainant in this  
7 case, Great Bend Township.

8 Thank you.

9 JUDGE JONES: Thank you, Mr. Kutz.

10 MR. WENICK: Your Honor, if I may, I believe the  
11 record will indicate that the Department filed their answer  
12 on September 14, 1979.

13 JUDGE JONES: Thank you.

14 MR. KUTZ: I have no objection with that, as to the  
15 date.

16 JUDGE JONES: For the record, are there any  
17 representatives of any utilities here that would like to make  
18 their presence known at this time?

19 MR. SMITH: I would, sir.

20 JUDGE JONES: Would you state your name and the  
21 utility you represent?

22 MR. SMITH: J. Edward Smith, I am district manager  
23 for the Pennsylvania Electric Company in the Montrose district.

24 The bridge in question falls within my authority.

25 JUDGE JONES: Does the utility have service lines

1 on that bridge or near that bridge?

2 MR. SMITH: They have service lines over that  
3 public crossing of the railroad.

4 JUDGE JONES: Would you describe for the record,  
5 briefly, the service line that you have?

6 MR. SMITH: We have a primary line, 20,000 volts  
7 aerial crossing between two poles, one on either side of the  
8 railroad there. Both poles in question are within the  
9 limits of the highway right-of-way.

10 JUDGE JONES: Does the utility intend to offer any  
11 testimony in this proceeding?

12 MR. SMITH: Just to state that we will, if the  
13 highway is relocated due to any bridge changes there, we are  
14 required by law to move our facilities at our cost.

15 JUDGE JONES: All right, Mr. Smith; thank you very  
16 much.

17 Off the record.

18 (Discussion off the record.)

19 JUDGE JONES: All right, we will proceed then.  
20 Call your first witness.

21 MR. O'CONNOR: The township calls Howard Lewis.

22 HOWARD LEWIS, called as a witness, being duly  
23 sworn, testified as follows:

24 JUDGE JONES: State your name, your address and  
25 your affiliation.

1           A     Howard Lewis, Steam Hollow Road, Hallstead,  
2     Pennsylvania; chairman of the township supervisors.

3                                 DIRECT EXAMINATION

4     BY MR. O'CONNOR:

5           Q     Mr. Lewis, that is the Great Bend Township  
6     supervisors you are the chairman of?

7           A     That's right.

8           Q     Mr. Lewis, in your capacity as chairman of the  
9     Great Bend Township supervisors, are you familiar with the  
10    layout of the Great Bend Township, and in particular, with  
11    the roadway system in Great Bend Township?

12          A     Yes.

13          Q     And in particular, are you familiar with the  
14    road, no. 821, which we are here considering today?

15          A     Yes.

16          Q     And Mr. Lewis, in your familiarity with that  
17    roadway, have you made on-site inspections of that?

18          A     Yes.

19                   MR. O'CONNOR: Off the record.

20                   (Discussion off the record.)

21     BY MR. O'CONNOR:

22           Q     Mr. Lewis, can you describe for us the general  
23    location of the existing railroad highway crossing, above  
24    grade, that is involved in this proceeding?

25           A     It's approximately two miles south of the Hallstead-

1 Great Bend Township border on township route 821.

2 Q Is this route also known by another name?

3 A It's old U.S. 11.

4 Q Mr. Lewis, can you give us any indication of when  
5 this road became a public highway and when the township took  
6 over this roadway, if at all?

7 A I believe it was determined that the road was taken  
8 over by the township in the late '30's.

9 Q Can you indicate why it was taken over?

10 A The state built a new U.S. Route 11 parallel to it.

11 Q And the road was abandoned to the township?

12 A It was turned over to the township for maintenance.

13 Q Can you describe in whatever detail you have  
14 the width of the pavement, the alignment, the general  
15 physical condition of the highway as it approaches the  
16 existing crossing, above grade?

17 A The road is approximately 26 to 30 feet wide;  
18 approaching from the north to the south there is a right-  
19 hand corner and over the bridge there is a left-hand corner.

20 Q The road surface is what type of surface?

21 A It's macadam.

22 Q Is there any shoulders?

23 A Four-foot gravel shoulders.

24 Q Can you describe the general type of the bridge,  
25 including the number of spans, its principal dimensions and

1 roadway width, and if you know, the date and purpose of its  
2 construction?

3 A The bridge is steel, the bridge abutments are con-  
4 crete.

5 Q Approximately how wide is the bridge of the roadway  
6 surface?

7 A The full surface of the roadway, 26 to 30.

8 Q How many spans are there?

9 A One.

10 Q Do you know about when the bridge was constructed?

11 A 1915.

12 Q Do you have this from your own knowledge or is this  
13 what you have been informed?

14 A I have been informed by the county commissioners  
15 that it was around 1915.

16 Q Do you know the purpose of the construction of this  
17 bridge?

18 A I believe it was to do away with an on-grade crossing.

19 Q Can you describe for us in detail the conditions  
20 presently existing at the crossing and involved in this  
21 proceeding which led the township to file this complaint?

22 A The south left-hand side of the wing wall that  
23 supports the south end of the bridge has a crack about half-  
24 way up in it. And the top of the wing wall is pulled away  
25 from the embankment approximately a foot to 18 inches. The

1 township's concern is that if the wing wall falls off, our  
2 road will follow it down and we will be without a road.

3 Q Does there appear to be a deterioration of this  
4 concrete wing wall?

5 A I would say that is what caused the deterioration,  
6 caused the crack.

7 Q Will you state in your opinion what the cause of  
8 this deterioration is?

9 A Age and deterioration.

10 Q Is the age of the bridge, you're saying is the  
11 cause of the problem?

12 A I would say the age and deterioration of the bridge.

13 Q To your knowledge, has any repair work ever been  
14 done on the bridge?

15 A Other than the township resurfaced the pavement on  
16 top of the bridge approximately two years ago.

17 Q Can you submit any testimony describing the general  
18 nature, scope and the estimated cost of which in your opinion  
19 will be necessary in order to provide an adequate, safe and  
20 convenient crossing at this location?

21 A The township has not expended any money to make any  
22 engineering studies except for having our engineer come over  
23 and look at it. That was the purpose of the conference with  
24 the PUC and the county commissioners, DLT, to find out who  
25 would be responsible if something did happen to the bridge

1 and our roadway gave way. So, we have not expended any  
2 monies.

3 Q Has the township performed any indepth inspection  
4 of the bridge or prepared any engineering studies, other than  
5 having the township engineer go out and look at the location?

6 A No.

7 Q Is the bridge posted for any weight restriction?

8 A No, it's normal weight, this bridge.

9 Q Do you know what the normal weight restriction is?

10 A Could you say, Paul? I thought maybe ConRail or  
11 somebody; I don't know what the weight is.

12 JUDGE JONES: It's not posted, though?

13 A It's not posted.

14 Q Do you know the approximate daily volume of  
15 vehicular and pedestrian traffic using this road?

16 A Approximately a hundred cars a day, all or 90  
17 percent local traffic. There is probably 30 schoolbuses,  
18 both ways, during the course of the day and there is local  
19 business people that have stone quarries and logging enter-  
20 prises that use the bridge.

21 Q Is there any pedestrian traffic to your knowledge?

22 A Other than the local residents, no.

23 Q This is in a rural area, correct?

24 A Yes.

25 Q Can you state the location of any available alternate

1 routes for this area?

2 A The only alternate route that would be feasible  
3 is the present U.S. 11 that runs parallel.

4 Q And how far away would that be?

5 A Well, if I lived on the south end of the bridge  
6 and I had to go all the way to Summerville and come back up  
7 to my home it would be eight to ten miles out of my way.

8 Q Have there been any accidents at this crossing  
9 within the past five years to your knowledge?

10 A There have been accidents, but it has not been  
11 caused by the deterioration of the bridge which is under  
12 question today.

13 Q Can you describe any of the features of the  
14 structure which would lead to the safety of motor vehicles  
15 and pedestrian users?

16 A I didn't understand that.

17 Q Is there any problem with the bridge which could  
18 cause a safety hazard to either vehicular or pedestrian  
19 traffic?

20 A Not at the surface of the bridge, no.

21 Q On the side of the bridge?

22 A If some pedestrians or somebody was walking down  
23 along the railroad tracks and the wing wall fell down, it  
24 could possibly fall down on them.

25 Q What is the township's present obligation with

1 respect to maintenance of the existing crossing?

2 A As I stated previously, we resurfaced it approximate-  
3 ly two years ago and we plow the snow.

4 JUDGE JONES: How about the highway approaches?

5 A The whole road is ours; we maintain the whole road.

6 Q Can you give us an approximate amount the township  
7 has spent on maintenance and improvement in the past five  
8 years on this bridge?

9 A \$250 to \$300 for the blacktop on the surface of  
10 the bridge. I haven't got anyway to figure out how much it  
11 costs to plow the snow.

12 Q So, you're talking, running a plow back and forth  
13 once each way?

14 A When it snows.

15 Q And the blacktop?

16 A Right, and it's on a sort of an incline coming to  
17 it, so there is cinders and salt involved and there is no way  
18 I can give you an estimate.

19 Q Can you state which party or parties should be  
20 required to perform the actual work or any corrective measures  
21 found necessary and ordered by the Commission and state whether  
22 any portion of this work is agreed to be born by the township?

23 A It was my understanding that this was why this  
24 conference or this hearing was called today, to find out who  
25 was responsible for the bridge. The township cannot afford to

1 maintain anymore than what we maintain now. We would maintain  
2 the surface of the bridge as far as the blacktop of the road.  
3 And that would be the extent that we could afford to do.

4 Q Is this road in your opinion necessary for service,  
5 accomodation, convenience and safety of the traveling public?

6 A Yes.

7 Q Can this road be closed or abolished for traffic?

8 A No.

9 MR. O'CONNOR: Those were the questions that were  
10 submitted.

11 JUDGE JONES: The complainant then, as far as its  
12 presentment of evidence, now rests?

13 MR. O'CONNOR: Yes, Your Honor.

14 JUDGE JONES: ConRail?

15 MR. MAZOR: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. MAZOR:

18 Q Mr. Lewis, I believe you said on direct testimony  
19 that the wing wall which is cracked and spalling supports  
20 the bridge. Do you or do you not know whether that is  
21 actually so or whether the wing wall really supports the high-  
22 way rather than the structure itself?

23 A It's all connected. I am not an engineer but I  
24 would say that the wing wall supports the wall that supports  
25 the bridge plus the fill that was put in back of the road to

1 meet the bridge.

2 Q Now, there are three other wing walls besides  
3 this one, are there not; one on the other side of that and  
4 two on the other side of the bridge?

5 A Yes.

6 Q And none of those have showed the same signs of  
7 cracking or deterioration as this one, is that correct?

8 A That's right.

9 Q How long has that crack been there, sir?

10 A It was brought to my attention this year when we  
11 had first had the conference, according to Mr. Jefferis of  
12 ConRail and I guess, the former Lackawanna Railroad was  
13 informed about it quite a few years ago, but I have no idea  
14 how many years ago this occurred.

15 Q Now, with respect to the traffic using this  
16 structure, the highway, this is mostly residents and  
17 businesses that live in the area of that highway; through  
18 traffic would normally use relocated 11, would it not?

19 A That's right.

20 Q Now, in addition to the snow removal on the bridge,  
21 does the township ever use any salt or deicing chemicals in  
22 time of ice or bad weather?

23 A We use primarily cinders and sand because we can't  
24 afford the salt.

25 Q I'm glad you can't. All right, thank you, sir.

1           That's all I have, Your Honor.

2           JUDGE JONES: Any other cross examination from any  
3 other attorneys?

4           MR. WENICK: I have no questions.

5           JUDGE JONES: Mr. Kutz?

6           MR. KUTZ: A few, Your Honor; thank you.

7                           CROSS EXAMINATION

8 BY MR. KUTZ:

9           Q     Mr. Lewis, did you state that the township would  
10 be willing to maintain the surface of the bridge and its  
11 approaches?

12          A     We have up until this point and I don't see any  
13 reason why we cannot keep maintaining that part, that portion  
14 of it.

15          Q     However, you do not feel you should be responsible  
16 for maintaining other than that, is that correct?

17          A     We can't afford to maintain any other than that.

18          Q     Do you have any idea what your annual budget is  
19 in the township?

20          A     Yes, it runs between \$65 and \$70 thousand per year.

21          Q     You stated you are not an engineer. However, do you  
22 know what type of deck is on this bridge?

23          A     I would estimate that it's concrete over steel  
24 covered by blacktop.

25          Q     And are you able to tell us what type of wing wall

1 is located on the structure; the wing wall which is the  
2 subject of this complaint?

3 A It's concrete, reinforced with steel rods, it looks  
4 like.

5 MR. MAZOR: We will have testimony as to that,  
6 Mr. Kutz.

7 MR. KUTZ: May we go off the record for a second?

8 JUDGE JONES: Off the record.

9 (Discussion off the record.)

10 BY MR. KUTZ:

11 Q Mr. Lewis, in the complaint which was filed by your  
12 township you state that due to the present condition of the  
13 bridge, this creates an unsafe condition and endangers the  
14 safety and the welfare of the people who must traverse this  
15 structure. Would you expand upon that statement; giving us  
16 additional detail as to just how this does create a hazard  
17 or there is a safety problem to the public?

18 A To bring everybody that hasn't been at the bridge  
19 up to date of what we are talking about, the bridge was put  
20 in at an elevation over the railroad tracks. And in order to  
21 bring the road up to the elevation, a lot of fill was used to  
22 come up to the grade surface.

23 If the wing wall falls, the township feels that a  
24 section of our road that is on this fill would go, too. If  
25 it happened to be a truck, a bus or a schoolbus or car that

1 was there when that happened, it would be down over the bank  
2 and then they would in turn, more than likely, sue the town-  
3 ship because they had an accident on our road.

4 Q Then it's your feeling that the failure to take  
5 remedial measures with regard to this wing wall would present  
6 a safety hazard in the future, is that correct?

7 A I feel as a supervisor, yes, but again, I would  
8 like to say, I am not at present an engineer. That might be  
9 there for the next 30 years but it might go tomorrow, too,  
10 in the way I feel.

11 Q Fine. Over and above that one specific item that  
12 you have just discussed regarding the wing wall failure, is  
13 there any other matter or situation on that bridge which you  
14 feel presents a safety hazard to the public or which should  
15 be remedied by order of this Commission?

16 A No.

17 Q Mr. Lewis, one of the field conferences held by a  
18 representative of the Commission Staff, you had stated that  
19 you would have certain employees of the township go to the  
20 bridge locale and clean the debris from the deck that you  
21 have records; has that been done?

22 A Yes.

23 Q Had you noticed or have any of your representatives  
24 informed you as to any corrosion or deterioration of the steel  
25 in that area?



1 Q And you are familiar with the bridge which is the  
2 subject matter of the instant complaint?

3 A Yes.

4 Q Would you please let us have the exact corporate  
5 name of the owner and operator of the line of railroad  
6 involved and the name of the previous owner?

7 A Consolidated Rail Corporation is the present owner  
8 and operator of the line of railroad involved. The previous  
9 owner was the Erie-Lackawanna Railroad Company.

10 Q How many tracks are there under the bridge at this  
11 crossing and what is the volume, class and approximate speed  
12 of all trains operated daily over these tracks?

13 A There are two tracks located beneath the subject  
14 structure. Presently, approximately two freight trains per  
15 week operate over this line of railroad at a maximum speed of  
16 25 miles an hour.

17 Q Now, we are asked to testify as to whether there are  
18 any changes to the operations contemplated in the foreseeable  
19 future as far as ConRail is concerned.

20 A There are no changes proposed for the operations at  
21 this location in the foreseeable future.

22 Q Now, just for the record, however, this is a line  
23 of railroad which is being negotiated for purchase by the  
24 Delaware & Hudson from ConRail, and if that happens, there  
25 could be a change, is that not true?

1           A     That is true.

2           Q     Now, have you been able to find any plans of the  
3 existing bridge in the files that were turned over to ConRail  
4 by the previous owners?

5           A     ConRail Exhibit No. 1.

6           MR. MAZOR: If Your Honor please, I should like to  
7 have that marked for identification at this time as such;  
8 three copies have been furnished to the reporter and a copy  
9 to each party of record.

10           JUDGE JONES: It shall be so marked.

11                     (Whereupon, plans of subject bridge were  
12 produced and marked for identification  
13 as ConRail Exhibit No. 1.)

14           Q     Now, go ahead with your answer, Mr. Jefferis.

15           A     ConRail Exhibit No. 1 consists of three plans, the  
16 original design plans for the subject structure which was  
17 constructed in accordance with Public Service Docket No. 321  
18 in 1916.

19           Q     Now, sir, would you tell us the general type of  
20 the existing bridge, the number of spans, the principal  
21 dimensions, and I believe you just did give the date, and  
22 the purpose of its construction?

23           A     The structure is a single span thru plate girder  
24 bridge with concrete encased I Beams deck with macadam paving.  
25 It crosses the railroad diagonally on an angle of approximately  
45 degrees. The span has a width of 87.6 inches from center

1 to center of the bearing.

2 Q Excuse me, you said width. That would be length,  
3 would it not?

4 A That would be the length of the span. And the  
5 girders are on 27-foot centers and there is a clear road-  
6 way width of 24 feet on the bridge.

7 The purpose of the bridge is to carry the highway  
8 traffic above the grade of the railroad.

9 Q And it was built pursuant to a Public Service  
10 Commission order, is that not so?

11 A That is true.

12 Q Which eliminated two, at grade, crossings?

13 A That is correct.

14 Q Now, in your opinion, sir, what is the cause of any  
15 deterioration to the structure and particularly the one wing  
16 wall which was testified about here this morning?

17 A The deterioration of the southwest wing wall is  
18 apparently caused by a failure of concrete.

19 Q What is the general nature, scope and estimated  
20 cost, if you can tell us, which would be necessary to provide  
21 an adequate, safe and convenient crossing at this location?

22 A We would have to have a detailed inspection of the  
23 wing wall itself and plans prepared before we could submit  
24 an estimate.

25 Q Could you tell us the general nature of the work

1 that might be necessary?

2 A The general nature would be to remove the section  
3 of the wing wall above the fracture and to place dowels in  
4 the base and then place a reinforced concrete segment general-  
5 ly in design of the original plans.

6 Q However, to the best of your knowledge, was the  
7 original wing wall reinforced concrete or not?

8 A It was not.

9 Q Has ConRail performed an indepth inspection of the  
10 bridge or prepared any engineering studies or estimates?

11 A No, they have not.

12 Q Would ConRail willingly do so?

13 A They are unwilling to, yes.

14 Q To the best of your knowledge, is the bridge posted  
15 for any weight restriction?

16 A There is no posting.

17 Q Now, what is ConRail's present obligation with  
18 respect to the maintenance of the existing crossing, above  
19 grade, and the approaches?

20 A ConRail has no present obligation for the mainten-  
21 ance of the crossing or the approaches thereto.

22 Q Has ConRail performed any maintenance or done any  
23 work on the structure since its formation in April 1 of 1976?

24 A ConRail has not performed any maintenance to the  
25 crossing or the approaches since the inception of ConRail on

1 April 1, 1976.

2 Q Can you tell us what in ConRail's opinion are the  
3 party or parties that should be required to perform any actual  
4 work or corrective measures that the Commission may find  
5 necessary and order?

6 A It is our recommendation that parties other than  
7 ConRail perform any corrective measures required.

8 Q Would ConRail willingly agree to bear the cost of  
9 any portion of such work?

10 A No.

11 Q Is the involved crossing necessary for the service,  
12 accomodation, convenience and safety of the traveling public?

13 A It appears that the bridge is necessary for the  
14 local residents using the highway.

15 Q Would you say that the bridge itself is unsafe for  
16 any traffic using it at maximum loads allowable in the state?

17 A No.

18 Q Does the wing wall perform any function with  
19 respect to the structural integrity of the bridge itself?

20 A No.

21 Q What is the purpose of the wing wall then?

22 A The wing wall's purpose is to retain the fill which  
23 supports the highway.

24 Q Thank you, Mr. Jefferis.

25 The witness is available for cross examination.

1 JUDGE JONES: Cross examine.

2 CROSS EXAMINATION

3 BY MR. O'CONNOR:

4 Q Mr. Jefferis, I have a couple of questions.

5 Did you state ConRail was willing or unwilling to  
6 do an inspection of this?

7 A Unwilling.

8 Q Do you know who built this wall, sir?

9 A Well, it was built, I actually do not know. I have  
10 the plans showing it was built in 1916, and it was constructed  
11 when the entire bridge was constructed. What party actually  
12 constructed it, I do not know.

13 Q Do you know who paid for the construction of this  
14 bridge?

15 A No.

16 Q How did ConRail get control of these tracks that  
17 run underneath this bridge?

18 A Well, April 1, 1976, ConRail was established of  
19 segments of five bankrupt railroads. This was one of the  
20 railroads which was in bankruptcy. And the government  
21 established this organization, and ConRail was then created  
22 strictly as a freight mover.

23 Q Did ConRail take over the obligations of the bank-  
24 rupt railroads?

25 MR. MAZOR: Objection, Your Honor, that calls for a

1 legal conclusion.

2 JUDGE JONES: Overruled.

3 MR. MAZOR: If you know.

4 JUDGE JONES: If you know.

5 A I don't know.

6 Q Do you know if ConRail pays or keeps under repair  
7 any other bridges?

8 MR. MAZOR: Objection; irrelevant. The only  
9 question here is this bridge, sir.

10 JUDGE JONES: Sustained.

11 Q Is it your testimony that ConRail has never done  
12 any repair work on this bridge?

13 A That is correct.

14 Q Is it further your testimony that you feel this  
15 wing wall only supports the roadway around the bridge?

16 A The road approaching the bridge is on an embankment.  
17 The embankment is against the wing wall. It is questionable,  
18 actually, how much of the embankment would fail if the wing  
19 wall itself would fail.

20 Q If the road was not there, would there be a need  
21 for this bridge?

22 A No.

23 Q So that if the roadway were to fall in because of  
24 this failure of this wing wall, there would be no need for  
25 this bridge?

1           A     Well, what I am saying is, the point we do not know  
2 actually how much of the road, driven portion of the roadway  
3 itself, would collapse if this wing wall were to collapse. I  
4 would say it would not be the entire road. It may not be any  
5 portion of the road.

6           JUDGE JONES: Let him finish his answer.

7           A     It might be just part of the embankment.

8           Q     My point, Mr. Jefferis, is you're saying that  
9 ConRail has got no responsibility, in your understanding, for  
10 this wing wall. And you're also stating that this wing wall  
11 could cause a collapse of the road. The only reason for this  
12 wing wall and crossing being there is crossing over the  
13 bridge, over the railroad tracks.

14          A     Well, in order to separate a crossing, a bridge  
15 is required. What I am saying is that there is no outstand-  
16 ing order requiring ConRail to perform any maintenance on that  
17 structure.

18          Q     But isn't it a fact that the only reason for this  
19 bridge being there is so the traffic can get across the  
20 railroad?

21          A     That is correct.

22          MR. O'CONNOR: No further questions, Your Honor.

23          JUDGE JONES: Anything else?

24          MR. WENICK: No questions.

25          MR. KUTZ: Your Honor, I do have a few questions.

1 JUDGE JONES: All right.

2 CROSS EXAMINATION

3 BY MR. KUTZ:

4 Q Mr. Jefferis, it is also true that the bridge also  
5 permits the railroad line to pass beneath the structure, is  
6 that correct?

7 A That is correct.

8 Q With regard to your discussion on the wing wall,  
9 was it your position that the wing wall simply retains the  
10 fill of the highway?

11 A Well, there was a fill section behind the abutment.  
12 And if the roadway were to cross that bridge, I would say at  
13 90 degrees, we wouldn't have a problem today. But it's  
14 mainly that the road bends to the left towards the wing  
15 wall after traversing the bridge. So, there is a possibility  
16 of some of the wing, if the wing were to fall, some of the  
17 fill material would fall, also, and possibly a segment of the  
18 road would fail.

19 Q What stage of negotiation is ConRail presently in  
20 with D & H Railroad?

21 A I could not answer that.

22 Q Mr. Jefferis, is it not a fact that regardless of  
23 the angle of the bridge, it would still be necessary to have  
24 a wing wall?

25 A That is true.

1 Q You stated that your present obligation for  
2 maintenance on this structure is none, is that correct?

3 A That is correct.

4 Q And is that based upon the fact that there is no  
5 prior agreement on Commission order compelling ConRail to do  
6 so?

7 A That is correct.

8 Q You stated that ConRail, since its inception, has  
9 performed no maintenance.

10 A That is correct.

11 Q Do you have any records of the Erie-Lackawanna  
12 Railroad maintaining this structure at all?

13 A No. I do not.

14 Q Have you checked your files to ascertain whether or  
15 not there is any arrangements?

16 A I have checked the files; the correspondence runs  
17 from the period of about 1974 to the present date. And it  
18 does recognize that there is a crack in the bridge. But they  
19 have never finalized any decision to fix the bridge.

20 Q Therefore, ConRail's records, whatever they may be,  
21 indicate or at least can show no maintenance on this structure,  
22 is that correct?

23 A That is correct.

24 Q Now, you also stated the wing wall was deteriorating  
25 due to the failure of concrete.

1           A     This is supposition, this is correct. We must  
2 assume that something failed or we wouldn't have a crack.

3           Q     Are you able to attribute the cause of the failure?

4           A     No.

5           Q     And you stated ConRail would not be able to perform  
6 the detailed inspection of the wing wall unless ordered by  
7 the Commission, is that correct?

8           A     That is correct.

9                     (Discussion off the record.)

10          MR. KUTZ: I am ready to proceed, Your Honor.

11          Q     Mr. Jefferis, pursuing the discussion with the  
12 wing wall and its effect upon the stability of the bridge or  
13 the highway, is it not possible that failure of the wing  
14 wall could cause a substantial subsidance or failure of the  
15 roadway surface, the highway surface?

16          A     I don't have any facts to state exactly how much  
17 failure there would be to the highway.

18          Q     Thank you, sir. Understanding that you could not  
19 say unequivocably that there would not be failure due to  
20 wing wall failure.

21          A     It would definitely be, if the wing wall failed, the  
22 fill material behind the wing wall would spall out. Then,  
23 there could be possible damage to the driven portion of the  
24 road itself.

25          Q     Thank you, sir. With regard to Question and

1 Procedures No. 21, did you -- I may have asked this in a  
2 different vein earlier. Did you search all records which you  
3 received from Erie-Lackawanna Railroad concerning the main-  
4 tenance of this structure?

5 A Yes.

6 Q And you have either made them available or verbalized  
7 them today, is that correct?

8 A That is correct.

9 MR. KUTZ: That's all we have, Your Honor. Thank  
10 you.

11 JUDGE JONES: All right. Anything else of this  
12 witness?

13 You're excused.

14 MR. MAZOR: I move at this time, if Your Honor  
15 please, that the exhibit marked for identification as  
16 ConRail No. 1 be admitted into the record?

17 JUDGE JONES: Any objection?

18 It shall be so admitted.

19 MR. MAZOR: Thank you, Your Honor.

20 I believe we have answered all questions posed of  
21 us.

22 JUDGE JONES: The Pennsylvania Department of  
23 Transportation first; Mr. Wenick.

24 MR. WENICK: Yes, I would like to call my witness,  
25 Kenneth A. Brace.

1           KENNETH A. BRACE, called as a witness, being duly  
2 sworn, testified as follows:

3           JUDGE JONES: State your name, address and  
4 affiliation.

5           A     Kenneth A. Brace, and I am employed by the Pennsyl-  
6 vania Department of Transportation in the Scranton office as  
7 a civil engineer.

8                                 DIRECT EXAMINATION

9           BY MR. WENICK:

10          Q     Are you familiar with the railroad crossing involved  
11 in this proceeding?

12          A     Yes, I am.

13          Q     And you're authorized to testify on behalf of the  
14 Department here today?

15          A     Yes, I am.

16          Q     I would ask you to state whether the involved high-  
17 way is on the state highway system, and if not, submit testi-  
18 mony and exhibits relative to the location of the state  
19 highways in the vicinity. And in answering that question, I  
20 would ask you to refer to a copy of a map which I would now  
21 like to mark for identification as PennDOT Exhibit A.

22                         Copies have been distributed to all parties and  
23 three copies to the reporter.

24                                 (Whereupon, map was produced and marked for  
25 identification as PennDOT Exhibit No. A.)

1           A     This highway is not on the state highway system.  
2     It is a portion of the old legislative route 10 which is  
3     traffic route 11, and by abandonment proceedings in 1935,  
4     this portion of the old legislative route 10 was turned over  
5     to the township of Great Bend.

6           And on the exhibit, the current township route 821  
7     is shown in yellow. The existing location of legislative  
8     route 10 or traffic route 11 is shown in green. In addition,  
9     legislative route 57070 is shown in red. And a borough  
10    street in the borough of Hallstead is shown in purple. And  
11    the bridge in question is so marked.

12          Q     Okay, would you describe the general type of the  
13    existing bridge and also the date and the purpose of its  
14    construction?

15          A     This is a steel plate girder one-span with 85  
16    feet on the skewed angle of the curved roadway with the 24  
17    feet. The bridge was built on or about 1915, its purpose  
18    being to eliminate an, at grade, crossing known as Florence  
19    Crossing. The vertical clearance is approximately 23 feet.

20          Q     Now, did you obtain the information as to when  
21    the bridge was built and the purpose of its construction  
22    from the order of the Commission dated April 9, 1915, issued  
23    to Application Docket No. 321?

24          A     Right.

25                MR. WENICK: Your Honor, I would like to incorporate

1 by reference that order which also contains further informa-  
2 tion concerning the purpose of that construction and the  
3 assignment of maintenance and responsibility.

4 JUDGE JONES: It shall be so incorporated into the  
5 record by reference to the Commission's docket.

6 BY MR. WENICK:

7 Q Has the Department performed an indepth inspection  
8 of the bridge or prepared any engineering studies?

9 A PennDOT has not made an indepth inspection of the  
10 bridge or any engineering studies, estimates or construction  
11 plans for any improvement of the subject crossing because  
12 this crossing is not on the state highway system and PennDOT  
13 cannot agree to prepare any such data.

14 Q Would you state whether the bridge is posted for  
15 any weight restriction?

16 A It is not posted for any weight restriction.

17 Q What is the Department's present obligation with  
18 respect to the maintenance of the existing crossing and high-  
19 way approaches thereto?

20 A PennDOT has no maintenance responsibility at this  
21 highway because it is a township road.

22 Q And has the Department performed any maintenance or  
23 improvements on the structure or approaches thereto in the  
24 preceding five years?

25 A No, we have not.

1 Q And which party or parties should be required to  
2 perform the actual work of any corrective measures found  
3 necessary and ordered by the Commission?

4 A Because this is a township road over a railroad,  
5 parties other than PennDOT should be required to perform the  
6 actual work as allocated and set forth by the Commission.

7 MR. WENICK: Okay, the witness is available for  
8 cross examination.

9 JUDGE JONES: Cross examine.

10 MR. O'CONNOR: No questions.

11 CROSS EXAMINATION

12 BY MR. MAZOR:

13 Q Just a couple, Mr. Brace. Have you personally  
14 examined the previous Commission order to which Mr. Wenick  
15 referred and had incorporated in the record?

16 A Yes, I have.

17 Q Would you agree with me, sir, that that order  
18 does not place responsibility for maintenance of the bridge  
19 itself on any party?

20 A No, it does not. It mentions the responsibility  
21 of the roadway up to the bridge on each side.

22 Q Were you able to find in your records whether there  
23 was any indication that prior to 1935 when this road was  
24 turned back to the township that PennDOT performed any  
25 maintenance on the structure or any portion of it?

1 A No, I cannot find any records that far back.

2 MR. MAZOR: Thank you, sir. That's all I have.

3 JUDGE JONES: Anything else?

4 MR. KUTZ: Your Honor, I have two or three  
5 questions.

6 JUDGE JONES: Mr. Kutz, go ahead.

7 CROSS EXAMINATION

8 BY MR. KUTZ:

9 Q Mr. Brace, although this is not on the state  
10 highway system, in your opinion, does the department have  
11 any traffic figures or traffic counts on this structure?

12 A No, we do have.

13 Q Therefore, you cannot advise whether or not the  
14 figures given by Mr. Lewis are correct or incorrect?

15 A No, I have no way of knowing.

16 Q And it's also true that the present road leading  
17 to and from the subject structure is not a state highway, is  
18 that correct?

19 A No, it is not.

20 Q At the time the application of 1915 or 1916, 1916,  
21 that date is; was the road in question on the state highway  
22 system?

23 A Yes, it was.

24 Q And by what proceedings has it now been removed  
25 from that system?

1           A     By plan of 1935 and signed by Governor Earle, a  
2 portion of the then legislative route 10 or traffic route 11  
3 was abandoned and given to the township of Great Bend.

4           Q     And is it your understanding that since that date  
5 no maintenance has been performed by the department, or its  
6 predecessor, the Department of Highways?

7           A     That is correct.

8           Q     Thank you.

9           JUDGE JONES: The road was abandoned when, did you  
10 say?

11          A     1935.

12          JUDGE JONES: And did the township accept the road  
13 after the abandonment; do your records indicate?

14          A     Our records indicate that, in fact a portion of  
15 this exhibit was sent to them, in a letter of 1937, and I  
16 assume that they did accept the abandoned portion of the  
17 highway.

18          JUDGE JONES: Is there anything officially of  
19 record to show that?

20          A     I have a copy of the letter that was sent out, but  
21 I have no reply that they did actually accept the portion of  
22 the highway.

23          JUDGE JONES: Mr. O'Connor, directing the same  
24 question to you, do you know if the township accepted the  
25 road after the abandonment in 1935?

1 MR. O'CONNOR: I don't know, Your Honor.

2 Mr. Lewis?

3 MR. LEWIS: I don't remember; I don't think we have  
4 adequate records to check back that far.

5 MR. WENICK: Your Honor, I don't believe the town-  
6 ship has the option of rejecting the highway in question  
7 according to the relevant statutes. All they can do is  
8 dispute as to whether it is in first-class condition. But  
9 once that determination is made, they must accept it.

10 MR. MAZOR: They would have to bring proceedings to  
11 vacate it if they wanted to formally get rid of it.

12 JUDGE JONES: Thank you, gentlemen.

13 Does that conclude the testimony of the Pennsyl-  
14 vania Department of Transportation?

15 MR. WENICK: Yes, it does. And I would like to  
16 move for the admission of the Department's Exhibit A.

17 MR. MAZOR: No objection.

18 MR. O'CONNOR: No objection.

19 JUDGE JONES: It shall be so admitted into  
20 evidence.

21 We will take a five-minute recess and give the  
22 reporter a little break.

23 (Whereupon, a recess was taken.)

24 JUDGE JONES: All right, gentlemen.

25 Mr. Dean, are you ready to proceed then on behalf

1 of the county of Susquehanna?

2 MR. DEAN: Yes, Your Honor.

3 JUDGE JONES: Would you call your witness then?

4 MR. DEAN: Mr. Jack Masters.

5 JACK MASTERS, called as a witness, being duly  
6 sworn, testified as follows:

7 JUDGE JONES: State your name, your address and  
8 your affiliation.

9 A Jack Masters, chairman of the Susquehanna County  
10 Commissioners, Montrose, Pennsylvania.

11 DIRECT EXAMINATION

12 BY MR. DEAN:

13 Q Mr. Masters, were you designated to attend a  
14 meeting in connection with this bridge?

15 A Yes.

16 Q And do you recall when it was?

17 A It was about a month ago. I don't recall the  
18 exact date, it was about a month ago.

19 Q You heard these gentlemen that they attended the  
20 meeting approximately a month ago?

21 A Yes.

22 Q And you attended the same meeting?

23 A Yes.

24 Q Did you at that time have occasion to look over  
25 this wing wall that they have been talking about?

1 A Yes, I did.

2 Q And whether or not in your opinion there was any  
3 deterioration of this wall?

4 A It has definitely deteriorated.

5 Q What is wrong with it?

6 A Well, it's broken off.

7 Q Do you know what the cause of it was?

8 A One of those things; that's all.

9 JUDGE JONES: Could you make that more scientific?

10 Q Do you have any opinion on how it could be repaired?

11 A Yes, I do.

12 Q What is your opinion?

13 A I believe it could be knocked off their dowel and  
14 either another piece put on top or it could be cribbed up in  
15 back to hold the roadway.

16 Q Have you had any formal studies to determine the  
17 cost of this?

18 A No.

19 Q What occupation were you in before you became a  
20 county commissioner?

21 A Construction business, ready-mix concrete business.

22 Q Is that road construction, state highway?

23 A Yes.

24 Q How many years were you in the business?

25 A Forty years.

1 Q And do you have any estimate of the cost of  
2 repairing this?

3 A No.

4 Q Do you have any knowledge of whether the bridge is  
5 posted or not?

6 A The day I was there I saw no posting on it.  
7 Whether it has been since or not, I would not know.

8 Q Does the county of Susquehanna at the present time  
9 assume any maintenance of this grade crossing or highway?

10 A Of this particular one, no.

11 Q Have you ever, I'm referring to Susquehanna County,  
12 had anything to do with the maintenance of the existing  
13 crossing, above grade, and the highway approaches thereto?

14 A To the best of my knowledge, no.

15 Q Have you ever performed any maintenance on the  
16 crossing or the approaches thereto during the preceding five  
17 years?

18 A No.

19 Q How long have you been a county commissioner?

20 A Not quite four years.

21 Q From the records of the county, do you know of any  
22 obligation of the county to maintain it?

23 A There is nothing to indicate that there is.

24 Q Is the county willing at this time to assume any  
25 obligation to maintain it?

1 A No way.

2 Q Does the county, in your opinion, or do you have an  
3 opinion, as to whether this crossing is necessary to the  
4 service, accomodation, convenience, safety of the traveling  
5 public or whether the crossing can be abolished and the  
6 highway closed to all traffic in the vicinity of the crossing?

7 A From my own personal opinion, I think it should  
8 not be closed and I don't see how it could be, or why it  
9 should be.

10 Q Do you have any opinion as to who should bear the  
11 cost of this repair work that has to be done to that wing  
12 wall?

13 A Well, ConRail or some of their outfit, because  
14 they have for years. I mean, not ConRail necessarily, some  
15 portion of their organization.

16 Q Are you referring to their predecessor, the Erie-  
17 Lackawanna?

18 A Yes.

19 MR. DEAN: That's all; cross examine.

20 CROSS EXAMINATION

21 BY MR. O'CONNOR:

22 Q Mr. Masters, you stated that the deterioration was  
23 one of those things. Could you be a little more specific for  
24 us, please. What is the problem with this? Is the concrete  
25 deteriorating? What is happening?

1           A     After 50, 60 years, what can you say; the concrete  
2 has deteriorated, sure, but as to a cause for it, there is  
3 no specific cause and anybody that says there is, I say is  
4 wrong. It's just one of those things.

5           Q     You stated you had experience in road and bridge  
6 building; can you describe for us, if you know, what would be  
7 necessary to correct this problem over there?

8           A     Well, like I stated before, that portion of it that  
9 has broken off should be knocked off there and either doweled  
10 or a new piece put on top or else excavated and cribbed up  
11 there properly and refilled, because I feel it would let a  
12 portion of the roadway down in there.

13          Q     If this wing wall were to collapse, can you tell  
14 us what in your opinion would happen to the roadway?

15          A     I am almost sure that a portion of the roadway  
16 would be undermined.

17          Q     Can you tell us if you have any knowledge whether or  
18 not there is traffic going across this roadway?

19          A     Yes, there is defininitely, because we're in the  
20 ready-mix concrete business. In fact, we run through there  
21 quite often with our trucks for that portion of the area.

22          Q     Can you tell us whether or not if this wing wall  
23 did collapse, were to collapse, and part of the roadway were  
24 to collapse, would there be a safety problem?

25          A     Definitely. Both to the railroad if they continue

1 to use it or to the highway.

2 Q Is it your statement that the county has no  
3 responsibility for this bridge?

4 A Yes.

5 MR. O'CONNOR: No further questions, Your Honor.

6 JUDGE JONES: Thank you.

7 Mr. Dean, you have no further questions of this  
8 witness?

9 MR. DEAN: No further questions and no further  
10 witnesses.

11 JUDGE JONES: Cross examination?

12 MR. MAZOR: I have nothing, Your Honor.

13 MR. WENICK: I have no questions.

14 MR. KUTZ: I do, Your Honor. Thank you.

15 CROSS EXAMINATION

16 BY MR. KUTZ:

17 Q Mr. Masters, do you have any information on the  
18 traffic, flow of traffic patterns?

19 A No.

20 Q The county or the planning commission has nothing?

21 A I would say maybe the planning commission might  
22 have but I would doubt it very much at this point. I don't  
23 think there has ever been a traffic survey to the best of  
24 my knowledge taken on that, but I do believe that Mr. Lewis'  
25 statement is probably somewhere correct.

1 Q Do I take it to understand that you did personally  
2 inspect this structure, is that correct?

3 A Well, I was there. I didn't make an indepth study  
4 of it or anything else but I was there that day and looked  
5 at it, I believe, as much as anyone else probably did.

6 Q And while being present that day, did you note any  
7 other deterioration?

8 A Nothing other than the normal, you know, rusting  
9 and so forth.

10 Q But nothing else that necessitated immediate remedial  
11 action, is that correct?

12 A Nothing that I could see.

13 Q Thank you.

14 JUDGE JONES: Is that all?

15 MR. KUTZ: That's all, Your Honor, thank you.

16 JUDGE JONES: At the outset of the hearing, I  
17 asked whether any non-carrying, we used the word, non-  
18 carrier public utilities were present in the hearingroom.  
19 There was a representative of an electric company here.

20 MR. SMITH: Yes, I am.

21 JUDGE JONES: Would you like to testify at this  
22 time?

23 MR. MAZOR: He has described his facilities, Your  
24 Honor, with respect to the bridge.

25 JUDGE JONES: Well, there are some facts there that

1 we would like, probably, to get into the record here. I  
2 think maybe I would like to have you state a few facts for  
3 the record.

4 J. EDWARD SMITH, called as a witness, being duly  
5 sworn, testified as follows:

6 BY THE ADMINISTRATIVE LAW JUDGE:

7 Q State your name and your address.

8 A My name is J. Edward Smith. Do you want home or  
9 business?

10 Q Your business address.

11 A Box 98, Montrose, Pa., care of Pennsylvania Electric  
12 Company.

13 Q And do you have any facilities on this structure in  
14 question or above it or underneath it or what?

15 A We have no facilities attached to the bridge whatso-  
16 ever. We use an aerial crossing there of our wires for our  
17 20 KV line. We have a pole located on the east side of the  
18 railroad, and the south side of the highway. And we have a  
19 pole located on the west side of the railroad on the north  
20 side of the highway.

21 Q Whether your company would agree to assume the cost  
22 and expense of altering or relocating your facility in the  
23 event, if that were necessary, in the event the Commission  
24 directs the work to be done at the crossing?

25 A We are required by law to change our facilities as

1 necessary when our poles are located within highway right-of-  
2 way which in this case they both are. And such relocation  
3 must be done at our own expense.

4 Q So, you would agree to the cost then of the  
5 relocating?

6 A Of our facilities.

7 Q If necessary.

8 Pardon?

9 A Of our facility.

10 Q Of your facility, yes.

11 JUDGE JONES: Does any of the parties have anything  
12 further they would like to present for the record?

13 MR. MAZOR: I would just like to ask Mr. Smith  
14 one question for the record, Your Honor.

15 CROSS EXAMINATION

16 BY MR. MAZOR:

17 Q If the only work to be done on the bridge is the  
18 repair of that one wing wall, would that affect your present  
19 facilities in any way? Would they need relocation?

20 A No, sir.

21 Q Thank you, sir.

22 MR. KUTZ: Your Honor, I have one question; he may  
23 or may not know the answer to this.

24 CROSS EXAMINATION

25 BY MR. KUTZ:

1           Q     Sir, the Commonwealth Telephone Company, we have  
2     been advised, also has facilities in this vicinity. Do you  
3     know whether or not their facilities would necessitate  
4     moving in the event that this wing wall needed replacement  
5     or repair?

6           A     I am not a hundred percent certain, but I feel that  
7     if they are in that area, they would be on our poles. And  
8     they would come under the same proposition that we have in  
9     so far as moving their facilities. But I am speaking out of  
10    turn because that is their responsibility.

11          Q     I understand that. I just thought if you know;  
12    fine. If not, fine.

13                     That's all I have.

14                     JUDGE JONES: Anything else, gentlemen?

15                     Mr. Kutz?

16                     MR. KUTZ: The Commission Staff would like to call  
17    Mr. William Huff to the stand for a few short questions, if  
18    we may.

19                     WILLIAM W. HUFF, called as a witness, being duly  
20    sworn, testified as follows:

21                     JUDGE JONES: State your name, your address and  
22    your affiliation.

23                     A     William W. Huff, engineer with the Pennsylvania  
24    Public Utility Commission, Bureau of Rail Transportation,  
25    North Office Building, Harrisburg, Pennsylvania.

1 MR. KUTZ: Your Honor, I believe we could save  
2 some time qualifying Mr. Huff as an expert if all parties  
3 would stipulate to his qualifications as such.

4 MR. MAZOR: We don't know anybody more expert than  
5 him, sir.

6 MR. DEAN: If they say he is an expert, I will agree.

7 DIRECT EXAMINATION

8 BY MR. KUTZ:

9 Q Mr. Huff, have you personally inspected this bridge?

10 A I made a visual inspection, yes, I have on a couple  
11 of occasions.

12 Q And have you been present in this hearing room today  
13 to hear all testimony that was given?

14 A Yes, sir.

15 Q And you have seen all exhibits which were put into  
16 evidence?

17 A Yes, sir.

18 Q Based upon your expertise, your personal investiga-  
19 tion of the structure and the evidence adduced at this  
20 hearing today, do you have an opinion as to what course of  
21 conduct should be followed with regard to this wing wall  
22 which is allegedly in a hazardous condition?

23 A Well, it is my opinion that the wing wall has  
24 probably been that way for years; however, like someone has  
25 testified to today, it could go tomorrow. And I think it

1 possibly in the spring, when the water, when we get all the  
2 rain and the embankment is saturated with water, that might  
3 be when your problem will come, but not until that time.

4 So, it is my opinion that the wing wall should be  
5 repaired within the next year or so, so it can retain the  
6 embankment.

7 JUDGE JONES: What kind of repairs do you recommend?

8 A I think the county witness' testimony was, I will  
9 go along with that. But, of course, I think it would depend  
10 a lot on the condition of the concrete beneath the crack. I  
11 mean, it looks like it's in good condition, but I would say  
12 that it would depend quite a bit upon the condition of the  
13 concrete below the crack; the top portion should be removed.

14 JUDGE JONES: Do you have a cost estimate?

15 A No, sir.

16 JUDGE JONES: Could you estimate any kind of a  
17 figure? So called ballpark estimate, could you give?

18 A \$5 to \$10 thousand, maybe.

19 Q Somewhere between \$5 or \$10 thousand? Five,  
20 minimum; ten, maximum?

21 A It could be a lot less. I could be a lot less than  
22 five but I don't think it would be more than ten, no.

23 JUDGE JONES: Anything else?

24 Q Mr. Huff, do you think it would be necessary to do  
25 further inspection of this wing wall before determining just

1 what should be done?

2 A Well, I really don't know. I think it should  
3 eventually be put up for contract, and I think the contract  
4 maybe should include putting some concrete cores out of the  
5 lower part of the wing wall to be sure it is all right, but  
6 that would be the only thing I would know what to do.

7 JUDGE JONES: Should an engineering study be made?

8 A No, I don't believe so.

9 JUDGE JONES: It's not necessary.

10 A No.

11 I think, just determine what the condition of the  
12 concrete in the lower part of the wing wall.

13 JUDGE JONES: Mr. Huff, who would you in your  
14 opinion consider the one party that should do the work?

15 A I really have no opinion. It could be the township,  
16 it could be the county, it could be ConRail. I really have  
17 no opinion.

18 Or, it even could be, as far as I'm concerned,  
19 if I may make the statement, since it was a state highway  
20 at one time when the bridge was built, I think PennDOT could  
21 also be considered as a small contributor.

22 That is not shared with too many people.

23 MR. MAZOR: Particularly Mr. Wenick.

24 JUDGE JONES: Anything else?

25 Q Mr. Huff, you have heard testimony that there is no

1 prior agreement or Commission order delegating maintenance  
2 and responsibility on this structure. Do you think that there  
3 should also be a delegation in a Commission order, if in fact  
4 an order comes from the Commission?

5 A Oh, very definitely. I think that is one of the  
6 objectives of this complaint, is to assign the maintenance,  
7 and I think very definitely maintenance should be assigned to  
8 this crossing.

9 JUDGE JONES: Anything else?

10 MR. KUTZ: No, sir. Thank you, Your Honor.

11 JUDGE JONES: Does counsel of record have any  
12 further statements to make in this proceeding.

13 Mr. O'Connor?

14 MR. O'CONNOR: I have a small statement.

15 I feel that the township allowed this crossing to  
16 be made for the convenience of ConRail to avoid an on grade  
17 crossing and update it to an, above grade, crossing. That  
18 there would be no need for either this wall or for the  
19 bridge if the tracks were not there. And that the township  
20 should not be forced to pay any costs of repair of a wing  
21 wall which is there solely for the convenience of ConRail  
22 and for their convenience in putting this bridge above their  
23 crossing.

24 I think the responsibility for this should be  
25 on ConRail or some other party, but not on the township.

1           And secondly of all, I would also like to point  
2 out to His Honor that the township could not even afford to  
3 pay the costs of repair of this with the budget that they  
4 have, the costs of this would be detrimental to their budget.

5           JUDGE JONES: How many residents reside in the  
6 township?

7           MR. LEWIS: Sixteen hundred, Your Honor.

8           MR. DEAN: Mr. Jones, we don't know of any legal  
9 responsibility on Susquehanna County. This is a township  
10 road. And we believe it would be between the township and  
11 ConRail.

12           JUDGE JONES: And not the county.

13           MR. DEAN: And not the county.

14           JUDGE JONES: Mr. Mazor?

15           MR. MAZOR: Yes, I think I would like to make a  
16 few remarks, in view of Mr. O'Connor's statement.

17           I think the whole thing must be put in its proper  
18 perspective. The original bridge was built by Public Service  
19 Commission order to eliminate two, what were then considered  
20 hazardous at grade crossings. It must be kept in mind,  
21 however, at that time that railroad traffic was dramatically  
22 more substantial than it is today; two round trips a week,  
23 which is practically no railroad traffic at all.

24           That was the route of the Phoebe Snow, other  
25 passenger trains as well as many freight trains in former

1 days. And that traffic has dwindled down to practically  
2 nothing. In the same period, while the bridge was probably  
3 built only to accomodate horse wagons. The allowable weights,  
4 sizes and volume of vehicular traffic certainly has increased.  
5 So that to say that the bridge was built only for the benefit  
6 of the railroad is not recognizing the fact that the  
7 vehicular traveling public benefits as much from a separated  
8 grade crossing, if not more, than the railroad does.

9 And the Commission should certainly take into  
10 consideration all of those factors in making its decision.

11 JUDGE JONES: Mr. Wenick?

12 MR. WENICK: I have no comments.

13 JUDGE JONES: Mr. Kutz?

14 MR. KUTZ: Nothing, Your Honor.

15 JUDGE JONES: Do the attorneys wish to file  
16 briefs?

17 MR. MAZOR: I believe we just did.

18 JUDGE JONES: I think that was oral argument.  
19 Do you request to file briefs?

20 MR. MAZOR: No, sir, we don't. We are willing  
21 to go on the record.

22 JUDGE JONES: The record stands closed then.  
23 Thank you.

24 (Whereupon, the proceedings were concluded.)  
25

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I HEREBY CERTIFY that the proceedings are contained fully and accurately in the notes taken by me on the within cause, and that this is a true and correct transcription of same, to the best of my ability.

IN WITNESS WHEREOF, I have here unto subscribed my hand this 7th day of November, A.D., 1979.

*Kathryn LeStrange*  
Kathryn LeStrange

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COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

RECEIVED

JAN 21 1981

SECRETARY'S OFFICE  
Public Utility Commission

1 GREAT BEND TOWNSHIP, :  
2 Claimant :

3 vs. :

4 CONSOLIDATED RAIL CORP., :  
5 PENNSYLVANIA DEPARTMENT OF :  
6 TRANSPORTATION, :  
7 COUNTY OF SUSQUEHANNA, :  
8 PENNSYLVANIA ELECTRIC COMPANY :  
9 and COMMONWEALTH TELEPHONE CO., :  
10 Respondent :

C 79081404

11 TRANSCRIPT OF PROCEEDINGS  
12 before Administrative Law Judge, Thomas J. Jones, as taken by  
13 Teresa Alise, at Scranton State Office Building, Scranton,  
14 Pennsylvania, on January 6, 1981, commencing at 1:15 p.m.,  
15 and concluding at 1:30 p.m., of said day, numbering pages  
16 2 to 7.

17 A P P E A R A N C E S:

18 FOR CONSOLIDATED RAIL  
19 CORPORATION:

JOEL E. MAZOR, ESQUIRE  
Consolidated Rail Corporation  
1138 Six Penn Center Plaza  
Philadelphia, Pennsylvania 19104

20 FOR PENNSYLVANIA DEPT.  
21 OF TRANSPORTATION:

SCOTT OLIN, ESQUIRE  
Rm. 1203, State Office Building  
Broad & Spring Garden Street  
Philadelphia, Pennsylvania 19701

22 FOR DELAWARE & HUDSON  
23 RAILWAY COMPANY:

GEORGE H. KLEINBERGER, ESQUIRE  
40 Beaver Street  
Albany, New York 12207

24 FOR P.U.C. TRIAL STAFF:

JOHN J. GALLAGHER, ESQUIRE  
631 North Office Building  
Harrisburg, Pennsylvania 17120

25 DOCKETED

NEIL A. HELFANT REPORTING SERVICE, 217 CAMINS PARKWAY, R.D. 1, CLARK SUMMIT, PENNSYLVANIA 16811

JAN 26 1981

TEL. No. (717) 586-0346

DOCUMENT  
FOLDER

1 THE JUDGE: The Pennsylvania Public Utility  
2 Commission now calls for a hearing in the matter  
3 of Great Bend Township versus Consolidated Rail  
4 Corporation, Pennsylvania Department of Trans-  
5 portation, County of Susquehanna, Pennsylvania  
6 Electric Company and the Commonwealth Telephone  
7 Company. This hearing is assigned to the office  
8 of Administrative Law Judge by reason of the  
9 order of the commission dated, well adopted  
10 October 16, 1980, and entered October 24th, 1980.  
11 The hearing is a result of a petition filed by  
12 Consolidated Rail, Conrail, on September 16th  
13 with the commission requesting modification of  
14 the commission order adopted March 28th, 1980,  
15 entered August 14th, 1980, to substitute either  
16 another party to this proceeding or the Delaware  
17 and Hudson Railway Company, Delaware and Hudson,  
18 for Conrail with respect to the obligation issued  
19 by ordering Paragraph No. 2 of said order. The  
20 commission by its order as aforementioned denied  
21 the petition of Conrail without a prejudice with  
22 the right to pursue rights it may have under the  
23 September 8th, 1980 seal and transfer to Delaware  
24 and Hudson. By further order of the commission,  
25 the Delaware and Hudson Railway Company is ordered

1 and was ordered to show cause why it should not  
2 be joined as a party to these proceedings. That  
3 the Delaware and Hudson Railway Company was also  
4 directed to show cause why it should not be deter-  
5 mined to be a concerned and interested party  
6 responsible for performing the obligations  
7 opposed upon Conrail, either alone or jointly  
8 with Conrail under order of the commission  
9 entered August 14th, 1980, and otherwise deter-  
10 mined to be a concerned and interested party in  
11 these proceedings under Section 2702C of the  
12 Public Utility Code. By further provision of  
13 the order of the commission, the matter was  
14 remanded to the office of Administrative Law  
15 Judges for the purpose of conducting a hearing  
16 for receipt of evidence regarding the obligations  
17 of Conrail assumed by Delaware and Hudson under  
18 provisions of the September 8th, 1980, sale and  
19 transfer discussed in the order of the commission  
20 under the aforementioned date, and such other  
21 evidence material and relevant to a determination  
22 of the proper party or parties as concerned and  
23 interested parties in accordance with Section  
24 2702C of the Public Utility Code 66PACSA 2702C.

25 I note the following appearances of counsel

1 in this proceeding. Attorney Joel E. Mazor of  
2 6 Penn Center of Philadelphia, Pennsylvania,  
3 appearing for Conrail. Attorney John J.  
4 Gallagher, of North Office Building, Harrisburg,  
5 Pennsylvania, appearing for P.U.C. trial staff.  
6 Attorney George H. Kleinberger, Albany, New  
7 York, appearing for Delaware and Hudson Railway  
8 Company. Attorney Scott Olin of Philadelphia,  
9 Pennsylvania, appearing for PennDOT. Are there  
10 any other attorneys in the hearing room that  
11 would like to make their appearances note of  
12 record at this time? Let the record show there's  
13 no response.

14 All right, Gentlemen, we will proceed.

15 MR. KLEINBERGER: Your Honor, I am here,  
16 physically present in the hearing room at this  
17 moment being 1:20 p.m. by virtue of the fact  
18 that I was present this morning for the hearing  
19 in connection with the rehabilitation of the  
20 Grove Street Bridge in Clarks Summit.

21 THE JUDGE: That would be at I 80010328?

22 MR. KLEINBERGER: Yes, your Honor. By  
23 virtue of being at the Grove Street hearing,  
24 I was informally told about that this hearing  
25 was scheduled for 1:30 p.m. on this date. I

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did not receive any formal notice of this hearing. I did not know that this hearing was to take place until I arrived in the building this morning. Hence, neither I nor D & H is prepared to proceed at this time. Accordingly, we request an adjournment for such time as D & H is ready to proceed.

THE JUDGE: Does other counsel have any comments to make?

Counsel does not have any comments to make.

MR. MAZOR: Your Honor, I've known Mr. Kleinberger for many years, and I am certainly inclined to believe that if he tells your Honor he did not get notice of this hearing, he did not do so. I don't know whether it would be fair under the circumstances when he's here not prepared to go ahead, to make him do so. Unfortunately, once in a while there is a slipup in the administrative process and the hearing notice does not get sent out. It's a human error that nobody can do much about, and under the circumstances I don't just think it's fair to make--to have the hearing unless the main party involved and again, we're on the same type of situation as this morning. In order to show cause against

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the D & H, you would normally have the burden of coming in, and it just wouldn't be right there to force them to proceed if they haven't been previously notified.

MR. GALLAGHER: If they're not prepared, your Honor, there's no purpose in proceeding with this hearing.

THE JUDGE: Mr. Kleinberger, for the record, would you state then the manner in which you would like your appearance noted of record? Your name and your office address for the record?

MR. KLEINBERGER: My name is George H. Kleinberger. My office address is 40 Beaver Street, Albany, New York, 12207. I would like the record to note that I appear specially in behalf of Delaware and Hudson Railway Company.

THE JUDGE: You request at this time the continuance of the proceeding to another date at which time you could be more prepared, is that right?

MR. KLEINBERGER; Yes, your Honor.

THE JUDGE: The zip at your office address is what?

MR. KLEINBERGER: 12207.

THE JUDGE: All right. In regard then to

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the motion of Attorney Kleinberger for continuance of this proceeding, by reason of he not receiving on behalf of Delaware and Hudson Railway Company notice of this hearing. He now at this time being a party of record. The motion is granted, and the hearing is continued to be rescheduled by the commission.

MR. KLEINBERGER: Thank you, your Honor.  
(A discussion was held off the record.)

THE JUDGE: Mr. Kleinberger is going to direct a question to the Court.

MR. KLEINBERGER: Your Honor, for the record, would you advise me whether or not Delaware and Hudson Railway Company appears on the service list attached to the notice to appear for this hearing today?

THE JUDGE: Well, I'm looking at the communication under date of November 20th, 1980, as issued by the commission directed to all the interested parties. I am particularly now noting the service sheet, and Delaware and Hudson Railway and particularly your name as Counsel for Delaware and Hudson Railway does not appear here on the service sheet.

MR. KLEINBERGER: Thank you, your Honor.

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the hearing of the above cause, and that this is a correct transcript of the same to the best of my ability.

*Teresa Alise*

TERESA ALISE

RECEIVED

AUG 20 1981

SECRETARY'S OFFICE  
Public Utility Commission

BEFORE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

C-79081404 Great Bend Township  
versus Consolidated Rail  
Corporation, Pennsylvania  
Department of Transportation,  
County of Susquehanna, Pennsyl-  
vania Electric Company and  
Commonwealth Telephone  
Company Alleging that re-  
spondents have failed to  
maintain properly a bridge  
over tracks (#H 176.25).  
Further hearing.

DOCKETED  
AUG 21 1981

PLACE:

State Office Building  
First Floor Hearing Room  
Lackawanna Avenue  
Scranton, Pennsylvania

DATE:

DOCUMENT  
FOLDER

Wednesday, July 29, 1981  
Commencing at 10:00 a.m. and  
Ending at 11:20 a.m.

BEFORE:

Thomas J. Jones  
Administrative Law Judge

REPORTER:

Kathleen R. Monick

\* \* \* \* \*

G & G REPORTING AGENCY, INC.

FRED L. GILOTTI, C.S.R., PRES.  
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APPEARANCES:

For PennDot:	HERBERT G. ZAHN, ESQ. 522 Transportation & Safety Bldg. Harrisburg, Pennsylvania 17120
For PUC Trail Staff:	BARRY J. GROSSMAN, ESQ. G-31 North Office Building Harrisburg, Pennsylvania 17120
For Delaware and Hudson Railway Company:	GEORGE H. KLEINBERGER, ESQ. Albany, New York 12207
For ConRail:	JOEL E. MAZOR, ESQ. 1138 6 Penn Center Philadelphia, Pennsylvania 19104

\* \* \* \* \*

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<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
John A. Smith	9	12	13	--
Harry E. Shultz	18			
(By Mr. Mazor)		27		
(By Mr. Grossman)		28		
(By Mr. Zahn)		28	31	
(By Mr. Grossman)				33

E X H I B I T S

CONRAIL EXHIBITS

MARKED

No. 1 - Copy of Paragraph Seven 14

DELAWARE AND HUDSON EXHIBITS

No. 1 - Agreement of Sale 22

No. 2 - Interstate Commerce Commission Decision 34

\* \* \* \* \*

1 JUDGE JONES: The Pennsylvania Public  
2 Utility Commission now calls for further  
3 hearing in the matter of Great Bend Township  
4 versus Consolidated Rail Corporation, Pennsyl-  
5 vania Department of Transportation, County of  
6 Susquehanna, Pennsylvania Electric Company  
7 and Commonwealth Telephone Company. I note  
8 the following appearance of Counsel in this  
9 proceeding: Attorney Herbert G. Zahn,  
10 Transportation Safety Building, Harrisburg,  
11 Pennsylvania appearing for Penn Dot. Joel  
12 E. Mazor of Philadelphia, Pennsylvania appear-  
13 ing for ConRail; Attorney George H. Kleinber-  
14 ger of Albany, New York appearing for Delaware  
15 and Hudson Railway Company; Barry J. Grossman,  
16 Public Utility Commission Trail Satff, Harris-  
17 burg, Pennsylvania.

18 Are there any other Attorneys in the  
19 hearing room that would like to make their  
20 appearance noted of record at this proceeding?  
21 Are there any representatives of the Township  
22 of Great Bend in the hearing room? Let the  
23 record show there was no response and no one  
24 present to represent the interest of Great  
25 Bend Township in this proceeding.

1           There has been an order made by the  
2 Commission adopted October 16, 1980 and  
3 answered October 24, 1980 in this proceeding.  
4 In the order as made by the Commission they  
5 have set forth a history of the proceeding  
6 to date which for the record briefly would  
7 be as follows: Great Bend Township filed  
8 with the Commission on September 6, 1979 a  
9 complaint against ConRail, the Pennsylvania  
10 Department of Transportation and Susquehanna  
11 County, alleging that respondents had failed  
12 to properly maintain a bridge, carrying Town-  
13 ship Road 821 (old U.S. Route 11) over and  
14 above the tracks of ConRail situated in  
15 Great Bend Township, Susquehanna County,  
16 located approximately two miles south of the  
17 Hallstead-Great Bend Township Border. The  
18 complaint alleged that the southwest wing wall  
19 of the bridge had a shearing and horizontal  
20 crack and that a spawling of the wall had  
21 occurred.

22           Hearings in this matter were held at  
23 Montrose on November 1, 1979 before this  
24 Administrative Law Judge who by initial  
25 decision issued February 14, 1980 directed

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ConRail, inter alia, to prepare at its initial cost and expense, and submit to the parties of the record and the Commission for approval, within six months of the date of service of the Commission order, detailed plans for reconstruction of the southwest wing wall of the bridge which will eliminate a horizontal crack and concrete spawling condition, and to remove any unsound concrete in the lower portion of the wing wall. It was at that time directed that the repairs be made by ConRail and be completed on or before December 31, 1981.

The Commission by its order entered August 14, 1980, adopted the initial decision of this Administrative Law Judge modified only to the extent of expediting the repair work by requiring ConRail to submit plans within three months of the date of service of the order and to complete the bridge repair on or before July 1, 1981.

ConRail stated in its petition for modification that on September 8, 1980 the line of the railroad underneath the structure which was the subject matter of the complaint was

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sold and transferred to Delaware and Hudson. ConRail also states that all obligations for maintenance which had previously belonged to ConRail were transferred to Delaware and Hudson.

By the order then of the Commission with that background in mind made the order as appears to be referred to on October 24, 1980 as follows: It is ordered: One, that the petition of ConRail is hereby denied without prejudice and with the right to pursue rights it may have under the September 8, 1980 sale and transfer to Delaware and Hudson; two, that Delaware and Hudson Railway Company is hereby ordered to show cause why it should not be joined as a party to these proceedings.

Three, that Delaware and Hudson Railway Company is hereby directed to show cause why it should not be determined to be a concerned and interested party responsible for performing the obligations imposed upon ConRail, either alone or jointly with ConRail, under order of the Commission entered August 14, 1980, and otherwise determined to be a concerned and interested party in these proceedings under

1 Section 2702 sub (c) of the Public Utility  
2 Code.

3 Four, that this matter be remanded to  
4 the Office of Administrative Law Judges for  
5 the purpose of conducting a hearing for  
6 receipt of evidence regarding the obligations  
7 of ConRail assumed by Delaware and Hudson  
8 under provisions of the September 8, 1980 sale  
9 and transfer discussed in this order and such  
10 other evidence material and relevant to a  
11 determination of the proper party or parties,  
12 as concerned and interested parties, in  
13 accordance with Section 2702 sub (c) of the  
14 Public Utility Code, 66 Pa. C.S.A. 2702 sub  
15 (c). And finally paragraph five that ConRail  
16 is hereby directed to serve a copy of its  
17 petition on Delaware and Hudson.

18 Said order as previously stated has been  
19 entered October 24, 1980 and which is the  
20 reason for the hearing we are involved with  
21 today. And as previously stated Great Bend  
22 Township is not present in the hearing room,  
23 so we will proceed and note for the record  
24 those matters which have been directed by the  
25 Commission as to the referenced order.

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Does Counsel have any comments to make before we proceed?

MR. MAZOR: You stated the situation quite exactly. I think though, although not technically included, I think for the sake of the record we would like to have the status of the plans and cost estimates which had been previously ordered submitted with respect to their submission and what the Commission has done in respect to those and what is happening, I think the record should reflect this both for the record's sake and D & H's sake where that stands. To that extent I would like to call Mr. Smith to testify for ConRail.

J O H N A, S M I T H, called on behalf of ConRail, sworn in by Judge Jones, was examined and testified as follows:

JUDGE JONES: State your name, address and affiliation?

THE WITNESS: John A. Smith, 15 North 32nd Street, Philadelphia, Pennsylvania.

DIRECT EXAMINATION:

BY MR. MAZOR:

Q Mr. Smith, by whom are you employed and in what capacity?

1           A     Consolidated Rail Corporation as a  
2 Senior Civil Engineer.

3           Q     You are a Registered Professional Engineer  
4 in the Commonwealth of Pennsylvania?

5           A     Yes.

6           Q     Sir, in accordance with the Commission's  
7 order as His Honor has recited, were plans and cost  
8 estimates submitted to the Commission and all parties  
9 of record?

10          A     Yes, sir.

11          Q     And what was the response of the Com-  
12 mission to those?

13          A     The response of the Commission was that  
14 they thought the type of repair and the cost involved  
15 was excessive.

16          Q     For the record, would you please tell us  
17 what the cost estimate was?

18          A     I believe it was in the neighborhood of  
19 a hundred and three thousand dollars.

20          Q     As a result of the Commission's reaction  
21 was there a meeting in Harrisburg within the last two  
22 months to discuss the problem?

23          A     Yes, sir.

24          Q     And you were present at that meeting?

25          A     Yes, sir.

1 Q As a result of that meeting what is Con-  
2 Rail now in the process of doing?

3 A ConRail is in the process of coming up  
4 with a scheme whereby the actual wing wall itself will  
5 not be repaired but we will attempt to come up with a  
6 scheme whereby we will drive some sheet piling behind  
7 the wall which should serve the same purpose as the  
8 original order specified that we do at a greatly reduced  
9 cost.

10 Q Can you for the record state what were  
11 the specific objections of the Commission to the  
12 original plan as proposed by ConRail?

13 A I guess you would say they thought it was  
14 too elaborate and excessive in cost.

15 Q Do you have at this point any idea what  
16 the cost may be reduced to as a result of the revision  
17 of the plans as requested by the Commission?

18 A No, sir, I don't. We did come up with a  
19 cost; however, the Chief Engineer, Structural Engineer  
20 for ConRail wanted to review the type of repair that  
21 we have and I would prefer to await his decision as it  
22 may affect our cost that we have at the present time.

23 Q Do you have an idea when that decision  
24 will be made?

25 A I would say we would be able to report to

1 the Commission within a week from Monday.

2 Q In other words, the calendar week next  
3 week?

4 A Yes, that is correct, sir.

5 Q We will send to the Commission and to all  
6 parties of record the revised plans and cost estimates,  
7 is that correct?

8 A I believe that may take a little longer  
9 to get the plans revised but I believe we can report to  
10 the Commission the actual cost that we have within that  
11 week period I specified.

12 MR. MAZOR: Sir, that takes care of the  
13 status of where we are with the plans. If  
14 Your Honor please, I would like to tend to the  
15 witness for any cross-examination any party  
16 may tend to have.

17 JUDGE JONES: Cross-examine.

18 MR. GROSSMAN: No questions, Your Honor.

19 MR. ZAHN: No questions, Your Honor.

20 CROSS-EXAMINATION:

21 BY MR. KLEINBERGER:

22 Q Do you have any idea how much less than  
23 a hundred three thousand dollars the new figure will  
24 be?

25 A It would be less than half, considerably

1 less than half.

2 MR. KLEINBERGER: That is all.

3 JUDGE JONES: What were the changes in  
4 the reduced cost like that? How were you  
5 able to save?

6 THE WITNESS: Our original plan, sir,  
7 was to actually repair the wing, take the  
8 damaged portion of the concrete, remove it,  
9 remove the deteriorated concrete and rebuild  
10 that deteriorated section back to its original  
11 shape and provide buttresses and dollying (sic)  
12 that would prevent any further movement of the  
13 wall.

14 However, during our discussions with  
15 Engineers from the Public Utility Commission  
16 we agreed that we could arrive at the same  
17 solution which was to prevent any further  
18 damage to the highway to the approaches to  
19 the bridge highway and still service the pur-  
20 pose of preventing any damage or the wing it-  
21 self from falling down on the railroad tracks  
22 with this scheme that we have now.

23 JUDGE JONES: Anything else?

24 REDIRECT EXAMINATION:

25 BY MR. MAZOR:

1 Q Does ConRail at this time operate over  
2 this line at all?

3 A No, sir, I don't believe they do.

4 Q To the best of your knowledge is D & H  
5 the only operator over this portion of line at present?

6 A To the best of my knowledge, yes, sir,  
7 that is correct.

8 JUDGE JONES: You are excused, Mr. Smith,  
9 thank you.

10 MR. MAZOR: With respect to the other  
11 problem involved, the agreement of sale which  
12 was referred to and I have here a photostatic  
13 duplicate copy of the agreement entered into  
14 on the 8th day of September, 1980 by and  
15 between ConRail and D & H, I have expected  
16 therefrom to introduce as an exhibit on behalf  
17 of ConRail, the paragraph seven of that agree-  
18 ment.

19 JUDGE JONES: You want this marked now?

20 MR. MAZOR: Yes, I would like that marked  
21 as ConRail Exhibit Number Two.

22 (At this time ConRail Exhibit Number Two  
23 is marked for identification.)

24 MR. MAZOR: I just would like to call  
25 Your Honor's attention to paragraph seven of

1 that agreement now. ConRail still owns the  
2 line, there is no question about that, title  
3 has not been transferred. ICC however gave  
4 D & H authority to run over that line in the  
5 interim which as I believe they have been doing  
6 since until such time a settlement is made.  
7 The rights and obligations and the use of the  
8 rail are set forth in the exhibit.

9 And paragraph seven basically says, that  
10 D & H would be entitled to the use of the line,  
11 it pays ConRail for that privilege on the  
12 first day of each month during the time of  
13 use. But more important is paragraph C, during  
14 the term of use D & H will have the sole right  
15 of maintaining and operating the line of rail-  
16 road, pay all costs in connection therewith,  
17 be responsible for and release, save harmless  
18 and indemnify ConRail from and against any and  
19 all liability of any nature arising out of the  
20 use of the line.

21 I appreciate the fact the law is establish-  
22 ed in Pennsylvania that the Commission does not  
23 have to recognize this agreement is between  
24 the parties and can leave the parties to what-  
25 ever <sup>recourse</sup> recost they might have under the agree-

1                   ment. We are asking though under those circum-  
2                   stances and in view of the fact that D & H is  
3                   the only operator at the present time and  
4                   ConRail no longer operates there, that they  
5                   revise the obligations of its original order  
6                   with respect to responsibility for the repairs  
7                   and future maintenance of this structure, and  
8                   this basically is our position based on that  
9                   portion of the agreement which we have put in  
10                  evidence.

11                 JUDGE JONES: Thank you.

12                 Mr. Kleinberger, do you have any comments  
13                 at all?

14                 MR. KLEINBERGER: In the course of our  
15                 direct case, yes.

16                 JUDGE JONES: Does ConRail now rest?

17                 MR. MAZOR: Yes, we now rest.

18                 MR. GROSSMAN: Your Honor, I have one  
19                 question of Mr. Mazor. Does the agreement,  
20                 the parties which were not reproduced, contain  
21                 an outside date on which this rental is termin-  
22                 ated if settlement does not take place?

23                 MR. MAZOR: Yes, I believe it does. The  
24                 closing is to be held at a mutually acceptable  
25                 location and date within thirty days after

1 certain conditions, one of which is now being  
2 fulfilled; that is, approval of the transfer  
3 by the Interstate Commerce Commission, that  
4 has taken place. The payment and funding has  
5 not taken place.

6 There is an outside date, we are looking  
7 for it. The agreement shall terminate upon  
8 the earlier of the following. December 31st,  
9 1982. If by such date either the ICC has not  
10 issued an order or shall not have received  
11 the funding necessary to and all the other  
12 consents, so I believe that is the outside  
13 date, December 31, 1982.

14 MR. GROSSMAN: What would happen at that  
15 time, ConRail would return to becoming opera-  
16 tor of the line?

17 MR. MAZOR: As far as I know ConRail  
18 does not intend ever to operate on that line  
19 in any event. If the transactions fall  
20 through by that date the next step would be  
21 obviously for ConRail to seek abandonment with  
22 the ICC and the procedures for that I under-  
23 stand is going to be greatly shortened in the  
24 Act now before Congress and certainly would  
25 be passed by that time.

1 JUDGE JONES: Mr. Kleinberger, are you  
2 ready to proceed?

3 MR. KLEINBERGER: Yes, Your Honor, I call  
4 Harry E. Shultz.

5 H A R R Y E. S H U L T Z, called as a witness on  
6 behalf of Delaware and Hudson Railway Company,  
7 sworn in by Judge Jones, was examined and testi-  
8 fied as follows:

9 JUDGE JONES: State your name, address  
10 and affiliation?

11 THE WITNESS: Harry E. Shultz.

12 JUDGE JONES: Your affiliation?

13 THE WITNESS: Assistant Chief Engineer with  
14 Delaware and Hudson Railway Company.

15 DIRECT EXAMINATION:

16 BY MR. KLEINBERGER:

17 Q Mr. Shultz, what is your office address?

18 A 40 Beaver Street, Albany, New York.

19 Q Are you authorized to testify for Delaware  
20 and Hudson Railway Company in this proceeding?

21 A Yes, I am.

22 Q How long have you been with Delaware and  
23 Hudson Railway Company?

24 A Thirty-nine years.

25 Q And all of that time it has been spent in

1 the Engineering Department?

2 A Yes, it has.

3 Q How long have you held your present posi-  
4 tion?

5 A Nine years.

6 MR. ZAHN: If Your Honor please, he has  
7 testified before, he is a qualified witness,  
8 I do not think we have to go into that.

9 JUDGE JONES: If Counsel so stipulate.

10 MR. MAZOR: Of course, Your Honor.

11 MR. GROSSMAN: Yes.

12 MR. KLEINBERGER: Will they also stipulate  
13 then D & H is a Delaware Corporation with its  
14 correct corporate name of Delaware and Hudson  
15 Railway Company?

16 MR. MAZOR: Yes.

17 MR. GROSSMAN: So stipulated.

18 MR. ZAHN: Yes.

19 BY MR. KLEINBERGER:

20 Q In your capacity as Assistant Chief  
21 Engineer have you had occasion to visit the Township  
22 Road 821 Bridge in the Township of Great Bend, Susque-  
23 hanna County?

24 A Yes.

25 Q Should D & H be determined to be a con-

1 cerned and interested party responsible for performing  
2 any obligations imposed upon ConRail either alone or  
3 jointly with ConRail under the Commission's order in  
4 this proceeding entered August 14, 1980?

5 A No.

6 Q Why not?

7 A Negotiations between D & H and Consolidated  
8 Rail Corporation, ConRail, thus far has resulted in an  
9 agreement of sale dated September 8, 1980 under which  
10 ConRail has agreed to convey and D & H agreed to acquire  
11 a line of railroad extending from Scranton, Pennsylvania  
12 to Binghamton, New York. The subject line of railroad  
13 passes under the bridge carrying Township Road 821 over  
14 it in Great Bend Township, Susquehanna County.

15 The petition of Consolidated Rail Corpora-  
16 tion for modification of the Commission's order of  
17 August 14, 1980 subscribed on September 15, 1980  
18 alleges in part, in paragraph two that quote "On  
19 September 8, 1980 the line of railroad underneath the  
20 structure which was the subject matter of the captioned  
21 complaint was sold and transferred to Delaware and  
22 Hudson Railway Company" unquote. The allegation is  
23 incorrect in that by the Sale Agreement ConRail merely  
24 agreed to sell to D & H and D & H merely agreed to pur-  
25 chase from ConRail the previously mentioned line of

1 railroad extending from Scranton, Pennsylvania to  
2 Binghamton, New York. However, no closing has, as yet,  
3 taken place, and accordingly title has not yet passed  
4 from ConRail to D & H.

5 Pending the closing and passing of title,  
6 D & H is using the subject line of railroad under a  
7 quote "Term of Use" unquote, provided for in the Sale  
8 Agreement. The Sale Agreement further provides that  
9 during the Term of Use D & H shall pay all costs in  
10 connection with maintaining and operating the subject  
11 line of railroad. There is no language anywhere in  
12 the subject agreement spelling out responsibility for  
13 reconstruction costs. Thus, if for any reason D & H's  
14 temporary Term of Use is not succeeded by transfer of  
15 title, imposition now upon D & H of any Township Road  
16 Number 821 bridge wing wall reconstruction costs would  
17 clearly be inequitable and inappropriate.

18 Therefore, as between ConRail and D & H,  
19 D & H should in fairness and equity not be required by  
20 this Commission to contribute to the costs of recon-  
21 structing a structure whose alleged deterioration  
22 occurred prior to D & H's operation thereunder and to  
23 its acquisition of title thereto.

24 MR. KLEINBERGER: May we mark this docu-  
25 ment D & H Exhibit Number One for identification?

1 JUDGE JONES: Would you identify the docu-  
2 ment?

3 MR. KLEINBERGER: Entire Agreement of  
4 Sale between ConRail and D & H.

5 JUDGE JONES: It shall be so marked.

6 (At this time Delaware and Hudson Railway  
7 Company Exhibit Number One was marked for iden-  
8 tification.)

9 BY MR. KLEINBERGER:

10 Q Mr. Shultz, would you tell us what D & H  
11 Exhibit Number One for identification is, please?

12 A A true copy of the Agreement of Sale  
13 dated September 8, 1980 between ConRail and D & H under  
14 which has agreed to convey and D & H has agreed to  
15 acquire the line of railroad which extends from Scrant-  
16 ton, Pennsylvania to Binghamton, New York and which  
17 passes under Township Road 821, Great Bend Township,  
18 Susquehanna County.

19 MR. KLEINBERGER: I offer D & H Exhibit  
20 Number One for identification as D & H's  
21 Exhibit Number One in evidence.

22 JUDGE JONES: Any objections?

23 MR. MAZOR: No.

24 MR. GROSSMAN: No.

25 MR. MAZOR: ConRail's Exhibit Number Two

1 is a proportion of that of course.

2 MR. KLEINBERGER: Your Honor, I have just  
3 completed direct examination of Mr. Shultz  
4 essentially on the question of whether D & H  
5 should assume any reconstruction costs with  
6 respect to ConRail.

7 Now, my question is in view of the fact  
8 there is a final order allocating construction  
9 costs among railroad and nonrailroad parties;  
10 is it permissible for me to go into whether  
11 D & H should be allocated costs of these  
12 nonrailroad parties?

13 JUDGE JONES: Would you repeat that  
14 again?

15 MR. KLEINBERGER: Is it permissible in the  
16 view of the final order --

17 JUDGE JONES: Is there a final order?

18 MR. GROSSMAN: Yes.

19 MR. MAZOR: Yes.

20 JUDGE JONES: It's been remanded?

21 MR. GROSSMAN: The order itself has not  
22 been appealed. Commission Trial Staff would  
23 tend that order is res judicata. Your Honor's  
24 original order except for the narrow area of  
25 remand is res judicata as no party has filed

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an appeal thereto.

JUDGE JONES: This remand is because of petition of ConRail?

MR. MAZOR: That is correct, Your Honor.

JUDGE JONES: Was that filed after the final order?

MR. MAZOR: Yes.

MR. GROSSMAN: Yes. Nor did ConRail appeal an apportionment of the costs.

MR. MAZOR: No, certainly not.

JUDGE JONES: Do you agree it is a final order then, Mr. Mazor?

MR. MAZOR: Final order subject to any change the Commission may desire to make as a result of our petition.

JUDGE JONES: Which Commission may do.

MR. MAZOR: Only between the two railroads involved and nothing else. So I think the matter that Mr. Kleinberger is raising probably should be submitted in form of a brief or memorandum of law I would guess.

JUDGE JONES: State it again for me, please.

MR. KLEINBERGER: In view of the fact there is a final order allocating costs between

1 railroad and nonrailroad parties may I now  
2 go into questioning as to whether or not  
3 D & H should be required to contribute to the  
4 costs with respect to its rights against  
5 nonrailroad parties?

6 JUDGE JONES: You may.

7 BY MR. KLEINBERGER:

8 Q As opposed to nonrailroad parties, Mr.  
9 Shultz, should D & H be required to pay any of the  
10 costs of detailed plans or reconstruction of the south  
11 wing wall, the work and materials to reconstruct the  
12 wing wall, flagmen and watchmen necessary to protect  
13 railroad operations during the construction period and  
14 any necessary engineering and construction inspection  
15 service in connection with reconstruction of the south-  
16 west wing wall as previously mentioned?

17 A No.

18 Q Why not?

19 A Firstly, D & H should not be required to  
20 pay any of such costs because the proposed reconstruc-  
21 tion will be a public improvement, and as such should  
22 be wholly paid for with public funds; secondly, it is  
23 the public, rather than the railroad, which makes the  
24 overwhelming use of the crossing. While there are only  
25 a handful of rail movements at the crossing per week,

1 there are undoubtedly hundreds of motor vehicles move-  
2 ments at the crossing per day.

3 Thirdly, in report submitted to Congress  
4 partially in 1971 and partially in 1973, the Federal  
5 Railroad Administration and the Federal Highway Adminis-  
6 tration recommended that the railroad assessment on  
7 Federal Aid Highway Railroad Projects being reduced  
8 from ten percent to five percent of the total cost for  
9 grade separation projects and remain at no cost to the  
10 railroad for highway railroad grade separation recon-  
11 structions.

12 Fourthly, D & H is operating under  
13 budgetary restraints of the utmost austerity. Such  
14 austerity results from the fact that D & H suffered  
15 ordinary losses of eight million six hundred ninety-  
16 seven thousand dollars and nine million two hundred  
17 sixteen thousand dollars for the years 1979 and 1980  
18 respectively and suffered a further five million nine  
19 hundred forty-seven thousand dollars ordinary loss in  
20 the first five months of 1981. It is therefore readily  
21 apparent that D & H simply does not have the funds with  
22 which to contribute to the costs of a crossing recon-  
23 struction project which primarily benefits the  
24 traveling public.

25 Lastly, D & H is looking to provide the

1 utmost service possible to the shipping public, including  
2 that portion of the shipping public which lives and  
3 operates businesses and industries in the Commonwealth  
4 of Pennsylvania. In view of D & H's financial posi-  
5 tion, we believe that the public interest would be  
6 poorly served were D & H to be required to subsidize  
7 a crossing of reconstruction project primary benefit  
8 to the traveling public rather than to rail shippers.

9 Q Under D & H operation, will you tell us  
10 please the volume, classes and approximate speed of  
11 all rail movement at the subject crossing?

12 A I believe currently there are three trains  
13 in each direction, a total of six trains per day.  
14 Maximum speed of forty miles per hour and maximum  
15 train length a hundred twenty-five cars, average about  
16 ninety cars per train.

17 Q Are they local freights, thru-freights?

18 A Thru-freights.

19 MR. KLEINBERGER: Cross-examine.

20 CROSS-EXAMINATION:

21 BY MR. MAZOR:

22 Q Mr. Shultz, on this particular portion  
23 of the railroad, does anybody else operate other than  
24 D & H?

25 A Not to my knowledge.

1 Q And the agreement which you have intro-  
2 duced is D & H Exhibit Number One, am I correctly stating  
3 that paragraph seven A says that D & H shall be entitled  
4 to use the line of railroad to the same extent as if  
5 closing had occurred at least until closing or termina-  
6 tion date set in the agreement?

7 A Yes.

8 MR. MAZOR: Thank you, sir.

9 That is all I have, Your Honor.

10 CROSS-EXAMINATION:

11 BY MR. GROSSMAN:

12 Q Sir, do you have any information as to  
13 whether Delaware and Hudson will meet the closing date  
14 or not?

15 A No, I do not.

16 Q Is it the D & H's intent to operate the  
17 line of railroad, to continuously operate the line of  
18 railroad?

19 A To my knowledge, yes.

20 Q Do you anticipate any increase of traffic  
21 volume in the next two, three years?

22 A It is a question I am not qualified to  
23 answer.

24 MR. GROSSMAN: No further questions.

25 CROSS-EXAMINATION:

1 BY MR. ZAHN:

2 Q You understand, sir, that the Federal  
3 requirements of reducing railroad's obligations from  
4 ten to five percent are Federally aided projects, is  
5 a Federal Regulation not one under Pennsylvania Law,  
6 you understand that, do you not, sir?

7 A Yes.

8 Q And your railroad could not operate if  
9 this bridge were removed and that area were filled in?

10 MR. MAZOR: I object to this question.

11 BY MR. ZAHN:

12 Q Disrupt the line, would it not?

13 MR. MAZOR: I do not see the relevance.

14 JUDGE JONES: What is the objection?

15 MR. MAZOR: I do not see the relevance.

16 First of all, it could not happen without  
17 abandonment of the line and Interstate Commerce  
18 approval, it is just too speculative to be  
19 worth answering.

20 MR. ZAHN: He testified this was benefit  
21 to the traveling public and very little to the  
22 railroad.

23 JUDGE JONES: The objection is overruled.  
24 Do you want the question restated again?

25 THE WITNESS: Yes, please.

1 BY MR. ZAHN:

2 Q That line of railroad you could not operate  
3 over it if that bridge were removed and the area were  
4 filled in, is that correct?

5 A From Binghamton to Scranton, Pennsylvania  
6 that is correct.

7 Q The hundred or so cars that you move  
8 there, what sort of freight do you carry?

9 A The type of freight?

10 Q Yes.

11 A Variable type of freight, coal, groceries,  
12 food products, automobiles.

13 Q That is a profitable operation, is it not,  
14 you get paid for that --

15 MR. MAZOR: I object again, the profit-  
16 ability of the railroad has nothing to do with  
17 it. The financeability, profitability are  
18 immaterial and public safety is the only  
19 thing that is of concern of this Commis-sion.

20 MR. ZAHN: I agree and I move all his  
21 testimony be stricken as far as whether or not  
22 this railroad is losing money or not.

23 JUDGE JONES: Objection is overruled.  
24 Do you want the question read again?

25 THE WITNESS: I think I answered it.

1 MR. ZAHN: Would you read it back.

2 THE REPORTER: "Question: That is a  
3 profitable operation, is it not, you get paid  
4 for that -- "

5 THE WITNESS: We receive revenue for it,  
6 yes.

7 MR. ZAHN: I have no further questions.

8 REDIRECT EXAMINATION:

9 BY MR. KLEINBERGER:

10 Q If the Bridge were removed entirely could  
11 D & H operate it as a common carrier back and forth?

12 A Yes.

13 MR. KLEINBERGER: That is all.

14 JUDGE JONES: Any other questions?

15 MR. MAZOR: No.

16 JUDGE JONES: Referring to D & H's Exhibit  
17 Number One which is the total Agreement of  
18 Sale and ConRail's Exhibit Number Two, which  
19 is a partial content of the Agreement of Sale,  
20 between ConRail and D & H, what is your inter-  
21 pretation then of paragraph seven C where D & H  
22 agrees, during the Term of Use D & H shall have  
23 the sole right of maintaining and so on,  
24 including but limited to repairs and replace-  
25 ments, do you consider work on this bridge a

1 repair or a replacement.

2 THE WITNESS: I consider it a recon-  
3 struction.

4 JUDGE JONES: That is a fine line, repair  
5 and reconstruction.

6 THE WITNESS: I would say it is a  
7 division between reconstruction and repair,  
8 yes.

9 JUDGE JONES: What is your distinction  
10 between replacement and reconstruction?

11 THE WITNESS: I think I would have to say  
12 that if rails were to break or something to  
13 that effect, rails we are operating this  
14 period of time should require replacing this  
15 is an operating cost we would have to do.  
16 You are talking about reconstructing a  
17 structure that really deteriorated prior to  
18 the D & H operation at this point.

19 JUDGE JONES: That would not be a repair?

20 THE WITNESS: I consider this recon-  
21 struction something that has not deteriorated  
22 in D & H's use of the line.

23 JUDGE JONES: Anything else?

24 MR. GROSSMAN: I have a few questions  
25 along that line, Your Honor.

RE CROSS EXAMINATION:

1  
2 BY MR. GROSSMAN:

3 Q Sir, does the D & H regularly maintain  
4 the facilities since it has entered into this Agreement  
5 of Sale?

6 A Would you qualify facilities.

7 Q Do you have maintenance of way, forces  
8 assigned to maintain this line of track?

9 A Yes, we do.

10 MR. GROSSMAN: No further questions.

11 MR. KLEINBERGER: Your Honor, for the  
12 sake of a clear record, I would like to point  
13 out that seven C of ConRail's Exhibit and the  
14 D & H Exhibit Number One gives D & H the  
15 right to maintain and operate but does not  
16 impose upon the duty of doing so.

17 MR. MAZOR: That is a question reading  
18 the whole paragraph, Your Honor, not just that  
19 one portion and it is a legal matter anyway.

20 JUDGE JONES: Anything else of this  
21 witness? You're excused, thank you.

22 Anything else?

23 MR. KLEINBERGER: Your Honor, I have  
24 D & H Exhibit Number Two in evidence I would  
25 like to submit a true copy of the document

1           entitled Interstate Commerce Commission  
2           Decision, Financial Docket Number 29486,  
3           Delaware and Hudson Rail Company-purchase  
4           portion, Consolidated Rail Corporation,  
5           decided May 27, 1981, served May 29, 1981.

6           MR. MAZOR: No objection, Your Honor.

7           JUDGE JONES: You want that marked as  
8           D & H Exhibit Number Two?

9           MR. KLEINBERGER: Yes.

10           (At this time Delaware and Hudson Railway  
11           Company Exhibit Number Two is marked for  
12           identification.)

13           JUDGE JONES: Have you moved that in evi-  
14           dence?

15           MR. KLEINBERGER: Yes.

16           This is the order of the Commission  
17           approving the purchase by D & H Line over which  
18           Township Road Bridge Number 821.

19           JUDGE JONES: Which pertains to D & H  
20           Number One, the Agreement of Sale?

21           MR. KLEINBERGER: Yes.

22           MR. ZAHN: This is ICC Commission.

23           JUDGE JONES: Approval of that agreement?

24           MR. KLEINBERGER: Approval of that trans-  
25           action, that is correct.

1 MR. MAZOR: Which is just one of the condi-  
2 tions prior to the closing.

3 MR. KLEINBERGER: I would like to direct  
4 the Commission's attention however to  
5 ordering paragraph three and four of the  
6 Exhibit Number Two which provides that this  
7 decision shall be effective on the date it is  
8 served and that unless the transaction is  
9 consummated within one year from the effected  
10 date, this decision shall have no further  
11 force and effect. Meaning, if you read para-  
12 graph three and four and the service date  
13 together this order is good until May 29,  
14 1982.

15 JUDGE JONES: Anything else, gentlemen?

16 MR. MAZOR: No, Your Honor.

17 JUDGE JONES: Does PennDot have anything?

18 MR. ZAHN: We have offered everything  
19 in evidence at the last hearing, that it was  
20 not a State Highway, it was transferred in  
21 twenty-five of the Township.

22 JUDGE JONES: Mr. Grossman, does Trial  
23 Staff have any comments?

24 MR. GROSSMAN: We do not have a witness,  
25 except our position in the matter is that

1 D & H is properly a party in this proceeding  
2 although it is jointly with ConRail.

3 MR. KLEINBERGER: Your Honor, are  
4 closing statements permitted?

5 JUDGE JONES: Yes, they are. Has testi-  
6 mony been concluded in this proceeding?

7 MR. MAZOR: Yes.

8 MR. GROSSMAN: Yes.

9 JUDGE JONES: Let the record show they  
10 all responded it has.

11 Mr. Kleinberger?

12 MR. KLEINBERGER: To paraphrase the order  
13 to show cause dated October 16, 1980 D & H  
14 should not be joined as a party to these pro-  
15 ceedings: First, because its status as the  
16 permanent operator of the line of railroad at  
17 which the Township Road Number 821 Highway  
18 Bridge crossing is located is as yet unsettled.  
19 D & H is not the owner of that line by means  
20 of an agreement dated September 8, 1980  
21 between ConRail and D & H which is D & H's  
22 Exhibit Number One in evidence, D & H has  
23 agreed to purchase the line. However, no  
24 closing has yet been taken place and according-  
25 ly title has not yet passed from ConRail to

1 D & H.

2 Moreover, while by order dated May 27,  
3 1981 which is D & H's Exhibit Number Two in  
4 evidence, the Interstate Commerce Commission  
5 has approved D & H's application to purchase  
6 the line, that order by its terms will be of  
7 no force and effect if the transaction is not  
8 consummated by May 29, 1982. A further reason  
9 why D & H should not be joined as a party to  
10 these proceedings relates to Section 703F of  
11 the Public Utility Code, that section provides  
12 that after an order has been made by this  
13 Commission any party may within fifteen days  
14 after service of the order apply for a re-  
15 hearing and that if the application is granted  
16 the Commission may affirm, rescind or modify  
17 its original order.

18 In this proceeding ConRail's petition to  
19 modify sworn to September 15, 1980 does not  
20 indicate that it was made within fifteen days  
21 of service of the Commission's order, entered  
22 August 14, 1980. Therefore, it is specifically  
23 urged that ConRail's petition to modify should  
24 be denied with prejudice.

25 D & H on the other hand had no opportunity

1 to apply for rehearing within the fifteen day  
2 period as it was not a party to this proceeding  
3 at that time. If D & H had been a party it  
4 most assuredly would have applied for a re-  
5 hearing following any order of this Commission  
6 and directing it to pay fifty percent of the  
7 wing wall reconstruction costs. However, even  
8 if D & H were now to be made a party to this  
9 proceeding it could not apply for a rehearing  
10 since the fifteen day period has expired.

11 Moreover, the Commission cannot waive  
12 the fifteen day period since it is statutory.  
13 Therefore, the injustice of making D & H  
14 party to the proceeding at this date is  
15 apparent.

16 Again, paraphrasing the previously men-  
17 tioned order to show cause, D & H should not  
18 be determined to be a concerned and interested  
19 party responsible for performing any portion of  
20 ConRail's obligations under the Commission's  
21 order entered August 14, 1980 since D & H  
22 was not a party to this proceeding when those  
23 obligations were imposed. Section 2704,  
24 Subdivision A of the Public Utility Code  
25 clearly provides that crossing construction and

1 alteration costs shall be borne by the Public  
2 Utilities or Municipalities concerned or by  
3 the Commonwealth as the Commission may deter-  
4 mine but only after the notice and hearing.  
5 As to D & H there was no hearing, nor can there  
6 truly be one now because of the fifteen day  
7 limitation previously mentioned.

8 To illustrate the potential injustice,  
9 the order entered August 14, 1980 adopted, for  
10 example, the Administrative Law Judge's find-  
11 ings and initial decision of January 29,  
12 1980 that failure of the top portion of the  
13 wing wall would cause the embankment to wash  
14 out from under the highway approach and allow  
15 the roadway to sink. Perhaps if D & H had  
16 participated in the original hearing it would  
17 have produced incontrovertible proof, leading  
18 to a finding that nothing of the sort would  
19 have occurred. We will never know, however,  
20 because D & H was not offered due notice and  
21 opportunity to be heard as required by Section  
22 2704, Subsection A.

23 In the light of all the foregoing there-  
24 fore D & H should not be joined as a party to  
25 this proceeding and should not be determined

1 to be a concerned and interested party for per-  
2 forming the obligations imposed upon ConRail,  
3 either alone or jointly with ConRail under  
4 Order of th Commission entered August 14,  
5 1980, or otherwise determined to be a con-  
6 cerned or interested party in these proceedings  
7 under Section 2702, Subdivision C of the  
8 Public Utility Code.

9 MR. MAZOR: Obviously this argument calls  
10 for an Answer, Your Honor. Rather than be-  
11 laboring the record I would rather do mine in  
12 the form of a brief.

13 JUDGE JONES: A brief will be filed by  
14 ConRail?

15 MR. MAZOR: Yes.

16 JUDGE JONES: Trail Staff?

17 MR. GROSSMAN: I would like to point out  
18 the following: First of all, it is a well-  
19 established principle of law within equitable  
20 title passes Agreement of Sale and therefore  
21 at least with regard to Delaware and Hudson,  
22 Delaware and Hudson is the equitable over this  
23 line of railroad. In addition, a Public  
24 Utility as defined by Public Utility Code as  
25 any owner or operator of a rail line, inter

1 alia, within the Commonwealth of Pennsylvania.

2 Delaware and Hudson is operating upon this  
3 line; therefore, we believe that Delaware and  
4 Hudson is a proper party. I might also point  
5 out and a concerned party within the definition  
6 of the Section 2702 of the Public Utility  
7 Code.

8 In addition, I point out to Your Honor,  
9 the case of ConRail versus the Public Utility  
10 Commission which in the Commonwealth Court --  
11 I'll provide Your Honor subsequently with the  
12 exact Atlantic Citation, decided last Decem-  
13 ber, that held maintenance responsibilities  
14 are transferred between railroads when sale  
15 occurs. Any maintenance responsibility imposed  
16 upon Your Honor's previous order would pass to  
17 the Delaware and Hudson by operation of this  
18 case if not by operation of law.

19 JUDGE JONES: This case being?

20 MR. GROSSMAN: Commonwealth versus  
21 Public Utility Commission, I will have to pro-  
22 vide Your Honor with the exact citation.

23 JUDGE JONES: Does Trial Staff desire to  
24 file a brief?

25 MR. GROSSMAN: I believe we should file a

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brief.

JUDGE JONES: You will file a brief.

MR. KLEINBERGER: May D & H make a reply  
brief? It should be an original rather than  
reply.

JUDGE JONES: Mr. Zahn, do you have any-  
thing?

MR. ZAHN: No.

JUDGE JONES: Parties as stated will file  
briefs.

This hearing stands concluded.

(At this time the hearing was concluded  
at eleven twenty a.m.)

STENOGRAPHER'S CERTIFICATE

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I, Kathleen R. Monick, do hereby certify that the proceedings and evidence are contained fully and accurately to the best of my ability in the stenographic notes taken by me on the hearing of the above cause and that this copy is a correct transcript of the same.

*Kathleen R. Monick*  
KATHLEEN R. MONICK  
G & G REPORTING AGENCY, INC.  
POST OFFICE BOX 123  
OLD FORGE, PENNSYLVANIA 18518

EX-21

C. 29081404

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SECRETARY'S OFFICE  
Public Utility Commission

agency, including the ICC, providing benefits or protective arrangements for the employees of such party affected by the transaction and shall indemnify and save harmless the other party from and against any such costs and expenses, regardless of the party upon which said cost and expenses might be imposed by said court or governmental body.

VII. Right to Use Line of Railroad. Prior to Closing, Conrail agrees to allow D&H the use of the Line of Railroad (which, for purposes of this Paragraph VII, shall include the trackage described in paragraphs IX and X), subject to the following terms and conditions:

A. D&H shall be entitled to use the Line of Railroad to the same extent as if the Closing had occurred, beginning at the later of September 1, 1980, or the date of obtaining all necessary ICC authorizations, and continuing until the Closing Date or until the termination of this Agreement pursuant to Section XIV hereof, such period of time being hereafter referred to as the "Term of Use".

B. For its right to use the Line of Railroad, D&H shall pay \$23,000 to Conrail on the first day of each month during the Term of Use.

C. During the Term of Use, D&H shall have the sole right of maintaining and operating the Line of Railroad, and shall pay all costs in connection therewith, including but not limited to,

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Conrail  
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all taxes, water and sewer rents, assessments, repairs and replacements.

D. D&H shall be responsible for, and shall release, save harmless, defend and indemnify Conrail from and against, any and all liability of any nature arising out of the use of the Line of Railroad during the Term of Use.

VIII. Trackage Rights of Conrail. During the Term of Use and continuing thereafter following the Closing until such time as D&H no longer owns or uses the Line of Railroad, D&H shall grant to Conrail the right to operate its engines, trains and cars over that portion of the Line of Railroad between the following points: (a) from the junctions of D&H and Conrail at Taylor Yard and Bridge 60 ("Overhead Trackage Rights"); and (b) between Conrail interlocking BD and D&H BX Cabin in the east leg of the Wye at Binghamton, New York ("Overhead and Local Service Trackage Rights"). The terms and conditions of such Overhead Trackage Rights and Overhead and Local Service Trackage Rights are set forth in a separate Agreement between the parties of even date herewith.

IX. Trackage Rights of D&H. In addition to the Line of Railroad to be conveyed hereunder, Conrail shall grant to D&H Overhead Trackage Rights for the purpose of enabling D&H to reach its Vine Street Branch via Bridge 60 at Scranton, Pennsylvania, and for it to connect with and across the interlocking at BD Binghamton

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SECRETARY'S OFFICE  
Public Utility Commission

AGREEMENT OF SALE

THIS AGREEMENT, entered into as of this 8th day of September, 1980, by and between CONSOLIDATED RAIL CORPORATION ("Conrail"), a corporation of the Commonwealth of Pennsylvania, and DELAWARE AND HUDSON RAILWAY COMPANY ("D&H"), a corporation of the State of Delaware.

Whereas, D&H desires to acquire from Conrail a Line of Railroad between Binghamton, New York, and Scranton, Pennsylvania, as more particularly described herein, pursuant to the terms of this Agreement; and

Whereas, Conrail desires to sell said Line of Railroad to D&H.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

I. Purchase and Sale.

A. Conrail agrees to sell to D&H, and D&H agrees to purchase from Conrail, all of Conrail's Line of Railroad between Bridge 60 at Scranton, Pennsylvania, and Conrail interlocking "BD" at Binghamton, New York ("Line of Railroad"), as described below:

1. All of Conrail's real estate <sup>at Scranton</sup> ~~between~~ Binghamton, New York, between Conrail interlocking BD and D&H BX Cabin, together with all of the appurtenances, hereditaments, franchises, ways, waters, minerals, rights, privileges, improvements, fixtures, licenses, leaseholds, reversions, easements, rights under

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operations, trackage and joint facility agreements, rents, issues, profits and other items and interests belonging to or in any way appertaining to such real property, all of which is shown on Exhibit A attached hereto, reserving, however, to Conrail an easement for tracks owned and maintained by Conrail west of the east leg of the Wye as shown in green on Exhibit A. *[Attached to original only]*

2. That portion of Conrail's Bloomsburg Branch, also known as the Taylor Secondary, between its connection with the main line of the former Erie Lackawanna Railway Company at Bridge 60 at Scranton, Pennsylvania, and the D&H property at Minooka Junction, Pennsylvania, including a portion of Taylor Yard, as shown on Exhibit B attached hereto. *[Attached to original only]*

3. That portion of Conrail's real estate at Cayuga Junction north of Scranton, Pennsylvania, together with all of the appurtenances, hereditaments, franchises, ways, waters, minerals, rights, privileges, improvements, fixtures, licenses, leaseholds, reversions, easements, rights under operations, trackage and joint facility agreements, rents, issues, profits and other items and interests belonging to or in any way appertaining to such real property, as shown on Exhibit C attached hereto. *[Attached to original only]*

4. All of the rest of Conrail's real estate between Bridge 60 at Scranton, Pennsylvania, and Conrail interlocking "BD" at Binghamton, New York, and all of the East Binghamton Yard, together with all of the appurtenances, hereditaments, franchises, ways, waters, minerals, rights, privileges, improvements, fix-

tures, licenses, leaseholds, reversions, easements, rights under operations, trackage and joint facility agreements, rents, issues, profits and other items and interests belonging to or in any way appertaining to such real property, valuation maps for which property have previously been furnished D&H by Conrail.

5. All track, structures, signals, equipment, buildings and personal property of any kind whatsoever owned by Conrail, excluding rolling stock and maintenance-of-way equipment, which is ~~now~~<sup>now</sup> currently in place on the real estate described in subparagraphs 1, 2, 3 and 4 of this paragraph II.A.

B. Conrail will grant D&H a right of first refusal to purchase the portion of Taylor Yard retained by Conrail in the event of its abandonment by Conrail.

II. Purchase Price. The purchase price of the assets to be sold hereunder is \$2,300,000, to be paid as follows:

A. The sum of \$1,700,000 will be paid in cash or by certified check at the Closing described below.

B. At the Closing, D&H shall deliver to Conrail a promissory note in the principal amount of \$600,000, bearing interest on the unpaid balance at 12% per annum, such note to be payable in four installments of \$150,000 each, plus interest, due respectively on the first day of the sixth, twelfth, eighteenth, and twenty-fourth month following the Closing Date.

C. Allocation of Purchase Price. Twenty-four (24%) per-

cent. of the purchase price is allocated to property located in the State of New York and seventy-six (76%) percent is allocated to property located in the Commonwealth of Pennsylvania.

III. Warranties of Conrail. Conrail hereby represents and warrants to D&H as follows:

A. Title to Real Property. Conrail has, or at the Closing will have, and will convey, such title to all of the property, real or personal, to be conveyed hereunder as was obtained from the Trustees of Erie Lackawanna Railway Company, Debtor, and any other parties on or subsequent to April 1, 1976. As of the commencement of the Term of Use referred to hereinafter, Conrail shall have paid all taxes required to be paid in connection with the property to be transferred hereunder. Real estate taxes, water and sewer rents shall be apportioned as of the commencement of the Term of Use. Conrail has permitted no material encumbrances on any of the real or personal property to be conveyed hereunder since its acquisition thereof. Attached hereto as Exhibit D are descriptions of all encumbrances to Conrail's title known to Conrail, as well as a description of all leases attaching the premises or personalty thereon, copies of which are being delivered to D&H with this Agreement.

B. Organization and Standing. Conrail is a duly organized, validly existing corporation in good standing under the laws of the Commonwealth of Pennsylvania, with full corporate power and

authority to engage in the business in which it is now engaged.

C. Authorization. Conrail has the corporate authority to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Conrail has been duly authorized by all necessary corporate action.

D. Compliance With Laws. Neither the execution and delivery of this Agreement by Conrail nor (as at the Closing Date) the consummation by Conrail of the transactions herein contemplated will violate any law or regulation, or any order or decree of any court or governmental instrumentality, or the Articles of Incorporation or By-Laws of Conrail, or will conflict with or result in a material breach of any instrument or agreement with respect to the business of Conrail to which Conrail is a party or otherwise bound.

E. Litigation. Except for an action before the Pennsylvania Public Utility Commission at Docket No. 180010328 (as to which D&H has received a copy of an initial decision dated July 23, 1980), there is no suit, action, or legal, administrative, arbitration or other proceeding or governmental investigation pending (other than those proceedings necessary for the approval of the transaction contemplated by this Agreement) or, to the knowledge of Conrail, threatened against Conrail, which, if determined adversely to Conrail would materially and adversely affect the value of the properties transferred hereunder, and there is no decree, injunction or order of any court, governmental department

or agency outstanding or, to the knowledge of Conrail, threatened against Conrail which would have such effect.

F. Condition of Real Estate. All real property to be transferred hereunder is currently being used for a purpose or purposes not prohibited by any applicable federal, state or local statute, ordinance or regulation.

G. Survival of Representations and Warranties. All representations and warranties made by Conrail herein shall survive the Closing, except that the representations and warranties contained in subparagraph F of this paragraph shall terminate as of the commencement of the Term of Use.

#### IV. Warranties of D&H.

D&H hereby represents and warrants to Conrail as follows:

A. Organization and Standing. D&H is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with full corporate power and authority to engage in the business in which it is now engaged.

B. Authorization. D&H has the corporate authority to execute, deliver, and perform this Agreement. The execution, delivery and performance of this Agreement by D&H have been duly authorized by all necessary corporate action.

C. Compliance With Laws. Neither the execution and delivery of this Agreement by D&H nor (as at the Closing Date) the consummation by D&H of the transactions herein contemplated will

violate any law or regulation, or any order or decree of any court or governmental instrumentality, or the Articles of Incorporation or By-Laws of D&H, or will conflict with or result in a material breach of any instrument or agreement with respect to the business of D&H to which D&H is a party or otherwise bound.

D. Survival of Representations and Warranties. All representations and warranties made in this Agreement by D&H shall survive the Closing.

V. The Closing.

A. The Closing will be held at a mutually acceptable location and date within 30 days following the date upon which all of the following conditions shall have occurred:

1. The parties hereto shall have received approval and authorizations of all appropriate regulatory authorities for the consummation of the sale contemplated by this Agreement, and the time within which any party might file an appeal from said approvals has expired. Such approvals and authorizations shall include orders from the Interstate Commerce Commission ("ICC") authorizing (i) the abandonment of the Line of Railroad by Conrail if said approval is required by law; and (ii) the acquisition and operation of the Line of Railroad by D&H.

2. D&H shall have received, in a form satisfactory to it, an irrevocable commitment from a lender, which may include a governmental agency, to provide it with funds necessary to pur-

chase the Conrail property, and shall have furnished a copy of such commitment to Conrail.

3. D&H shall have received such consents from mortgagees, lenders or other parties to agreements with D&H as may be necessary to enable D&H to consummate this transaction without breach of any covenant or other undertaking of D&H to any such party, and shall have furnished copies of such consents to Conrail.

B. At the Closing each of the parties hereto shall deliver to the other such checks, notes, bills of sale, endorsements, assignments and other instruments of transfer as are specifically required by this Agreement or as shall reasonably be necessary to consummate the transactions contemplated hereby, and each of the parties hereto shall deliver to the other such further documents, instruments, certifications, opinions and further assurances as are specifically required by this Agreement or as such other party shall reasonably request.

C. All real estate transfer taxes imposed by any government body shall be borne by Conrail in connection with real estate located in New York, and shall be shared equally by the parties in connection with real estate located in Pennsylvania.

VI. Employee Protection. As between the parties hereto, each party shall pay all costs and expenses arising under any collective bargaining agreement or by order of any court or governmental

agency, including the ICC, providing benefits or protective arrangements for the employees of such party affected by the transaction and shall indemnify and save harmless the other party from and against any such costs and expenses, regardless of the party upon which said cost and expenses might be imposed by said court or governmental body.

VII. Right to Use Line of Railroad. Prior to Closing, Conrail agrees to allow D&H the use of the Line of Railroad (which, for purposes of this Paragraph VII, shall include the trackage described in paragraphs IX and X), subject to the following terms and conditions:

A. D&H shall be entitled to use the Line of Railroad to the same extent as if the Closing had occurred, beginning at the later of September 1, 1980, or the date of obtaining all necessary ICC authorizations, and continuing until the Closing Date or until the termination of this Agreement pursuant to Section XIV hereof, such period of time being hereafter referred to as the "Term of Use".

B. For its right to use the Line of Railroad, D&H shall pay \$23,000 to Conrail on the first day of each month during the Term of Use.

C. During the Term of Use, D&H shall have the sole right of maintaining and operating the Line of Railroad, and shall pay all costs in connection therewith, including but not limited to,

all taxes, water and sewer rents, assessments, repairs and replacements.

D. D&H shall be responsible for, and shall release, save harmless, defend and indemnify Conrail from and against, any and all liability of any nature arising out of the use of the Line of Railroad during the Term of Use.

VIII. Trackage Rights of Conrail. During the Term of Use and continuing thereafter following the Closing until such time as D&H no longer owns or uses the Line of Railroad, D&H shall grant to Conrail the right to operate its engines, trains and cars over that portion of the Line of Railroad between the following points: (a) from the junctions of D&H and Conrail at Taylor Yard and Bridge 60 ("Overhead Trackage Rights"); and (b) between Conrail interlocking BD and D&H BX Cabin in the east leg of the Wye at Binghamton, New York ("Overhead and Local Service Trackage Rights"). The terms and conditions of such Overhead Trackage Rights and Overhead and Local Service Trackage Rights are set forth in a separate Agreement between the parties of even date herewith.

IX. Trackage Rights of D&H. In addition to the Line of Railroad to be conveyed hereunder, Conrail shall grant to D&H Overhead Trackage Rights for the purpose of enabling D&H to reach its Vine Street Branch via Bridge 60 at Scranton, Pennsylvania, and for it to connect with and across the interlocking at BD Binghamton

between segments of the line. If at some future time, Conrail seeks to have D&H provide service to the Green Ridge and Diamond branches at Scranton, the trackage or trackage rights needed to provide such service will be conveyed to D&H at no cost to D&H. The terms and conditions of such Overhead Trackage Rights are set forth in a separate Agreement between the parties of even date herewith.

X. Connecting Tracks. During the period of time referred to in paragraph VIII hereof, Conrail shall grant D&H, without charge, the right to use the Keyser Valley Branch Wye tracks, its tracks 16, 17 and 18 at Taylor Yard and sufficient connecting tracks, and D&H will grant Conrail, without charge, the right to use certain tracks, for the purpose of turning trains, locomotives and equipment. The terms and conditions of such rights are set forth in a separate Agreement between the parties of even date herewith.

XI. Conditions Precedent to Closing - D&H. All obligations hereunder of D&H are subject to fulfillment, prior to or at the Closing, of each of the following conditions:

A. Conrail's representations and warranties contained in this Agreement shall be true at and as of the time of Closing as though such representations and warranties were made at and as of such time (except to the extent that they are stated therein to be true as of some other time) and Conrail shall have delivered to D&H a certificate to such effect dated the date of the Closing and

signed by a duly authorized officer.

B. Conrail shall have delivered to D&H the affirmative opinion of Conrail's counsel, satisfactory to D&H, with respect to the matters referred to in subparagraphs B, C, D, and E of paragraph III hereof. This opinion shall also state that this Agreement is a legal, valid and binding obligation of Conrail enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditor's rights generally and equitable principles related thereto or in furtherance thereof. In rendering such opinion, counsel may rely on certificates of officers of Conrail as to matters of fact and on the opinion of other counsel as to matters of law and jurisdiction in which such counsel shall deem such opinion necessary.

XII. Conditions Precedent to Closing - Conrail. All obligations hereunder of Conrail are subject to fulfillment, prior to or at the Closing, of each of the following conditions:

A. D&H's representations and warranties contained in this Agreement shall be true at and as of the time of Closing as though such representations and warranties were made at and as of such time (except to the extent that they are stated therein to be true as of some other time) and D&H shall have delivered to Conrail a certificate to such effect dated the date of the Closing and signed by a duly authorized officer.

B. D&H shall have delivered to Conrail the affirmative opinion of D&H's counsel, Fell, Spalding, Goff & Rubin, with respect to the matters stated in paragraph IV hereof. This opinion shall also state that this Agreement is a legal, valid and binding obligation of D&H enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditor's rights generally and equitable principles related thereto or in furtherance thereof; and that the execution and delivery of this Agreement by D&H will not result in a material breach of any instrument or agreement to which D&H is a party or otherwise bound. In rendering such opinion, counsel may rely on certificates of officers of D&H as to matters of fact and on the opinion of other counsel as to matters of law and jurisdiction in which such counsel shall deem such opinion necessary.

C. D&H shall have paid all amounts due pursuant to Sections VII, B, C and D.

D. D&H shall have received all approvals, commitments and consents referred to in paragraph V.

XIII. Best Efforts. Each party shall use its best efforts to expedite the obtaining of any governmental approvals required for the use of the Line of Railroad by D&H during the Term of Use and the sale of the Line of Railroad. Conrail and D&H shall respectively make prompt application to the ICC for the respective

approvals and authorizations referred to in this Agreement.

XIV. Termination of Agreement.

A. This Agreement shall terminate upon the earlier of the following:

1. Decision by the ICC that it will not grant the necessary regulatory approval for the acquisition and operation of the Line of Railroad by D&H, and the expiration of the time within which to appeal such decision.

2. December 31, 1982, if by such date either

(a) The ICC has not issued an order with respect to the acquisition and operation of the Line of Railroad by D&H;

(b) D&H shall not have received the commitment referred to in paragraph V.A.2; or

(c) D&H shall not have received all of the consents referred to in paragraph V.A.3.

B. This Agreement shall also terminate on the date of Closing if D&H does not satisfy at such date, or has not previously satisfied, the conditions specified in Section XII.

C. In the event this Agreement is terminated, neither D&H nor Conrail shall have any rights or obligations hereunder, except that D&H shall continue to be liable for any amounts pursuant to Sections VII.B., C or D which may be due and unpaid as of the termination. Termination of this Agreement shall not affect the Settlement Agreement of even date herewith between the parties.

XV. Arbitration. Any dispute or difference of opinion arising between the parties hereto, or the failures of the parties hereto to agree, as to matters arising out of this Agreement shall be referred to arbitration in Philadelphia, Pennsylvania, at the offices of the American Arbitration Association under the rules of the American Arbitration Association pertaining thereto. The award of an arbitrator or arbitrators shall be final and binding upon the parties. Each party will bear its own legal fees, costs and expenses, including, without limitation, the cost of its expert witnesses, unless otherwise determined by the arbitrator(s). The fees and expenses of any arbitrator(s) incurred in performing the duties hereunder will be shared equally by the parties.

XVI. Notices. Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall have been deemed to have been given when deposited in the mail directed to each party as follows or at such other addresses either of the parties hereto may designate by written notice to the other party hereto:

If to D&H to:

Delaware and Hudson Railway Company  
40 Beaver Street  
Albany, New York 12207  
Attention: President

If to Conrail to:

Consolidated Rail Corporation  
1528 Walnut Street  
Philadelphia, Pennsylvania 19102  
Attention: Assistant Vice President - Contracts

XVII. Contents of Agreements; Parties in Interest. This Agreement sets forth the entire understanding of the parties hereto with respect to the transactions contemplated hereby (except for the Administrative Agreement, the Interchange Agreement, the Interlocking Agreement and the Trackage Rights Agreement, all dated as of the date hereof between the parties) and may not be amended except by written instrument executed by the parties hereto. Any previous agreements or understandings between the parties regarding the subject matter hereof are merged into and superseded by this Agreement. All representations, warranties, covenants, terms, conditions and provisions of this Agreement shall be binding upon and inure to the benefit and be enforceable by the successors and assigns of the respective parties. Nothing herein shall prohibit D&H from assigning its right to purchase the Line of Railroad to a party who shall then lease the Line to D&H. Any such assignment shall be subject to the rights of Conrail under this Agreement, and any such party shall expressly so agree in writing. No such assignment shall relieve D&H of any of its obligations hereunder. Conrail's rights under paragraph VIII and X shall be unaffected by any subsequent sale or disposition of the Line of Railroad or any portion thereof or interest therein.

XVIII. Governing Law. This Agreement and the rights and obligations accruing hereunder shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

XIX. Section Headings. All section headings herein have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

XX. Exhibits. All Exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written.

CONSOLIDATED RAIL CORPORATION

By: \_\_\_\_\_

*R. W. Orr*

DELAWARE AND HUDSON  
RAILWAY COMPANY

By: \_\_\_\_\_

*M. P. Schreiber*

EXHIBIT "D"

There are no material encumbrances to Conrail's title to the line of Railroad known to Conrail.

The following is a description of all leases attaching to the premises or personalty thereon:

Scranton to Nichols, PA

<u>Location</u>	<u>Lease #</u>	<u>Lessee</u>	<u>Rental per Annum</u>
Clark Summit, PA	29-50633	Gilbert Weinberger, Inc.	\$ 240
Clark Summit, PA	29-50632	Pedmar, Inc.	780
Clark Summit, PA	40-00095	Airline Petroleum Co.	1 310
Clark Summit, PA	40-00441	Agway, Inc.	2,740
Clark Summit, PA	40-00352	Frank Martz Coach	1,114
LaPiume, PA	40-00197	Robert M. Osmun	360
Factoryville, PA	40-00442	Agway, Inc.	100
Factoryville, PA	40-02482	North Penn Utilities	120
Nicholson, PA	40-02895	J. G. Robinson, Inc.	140
Nicholson, PA	40-02766	Marie Brown	11
Nicholson, PA	40-00204	Western Auto Associate Store	960
TOTAL			\$9,010

Nichols, PA to Binghamton, NY

New Milford, PA	29-50553	Calvary Baptist Church	1 1
New Milford, PA	40-00362	New Milford Agway	240
New Milford, PA	40-00546	Andre & Sons	540
Corballin, NY	40-00102	Emmerich J. Bares, Jr.	90
Binghamton, NY	40-00121	Columbia Gas Transmission Corp.	1,110
TOTAL			\$2,581

EX. # 2 C-7-981404

V20

INTERSTATE COMMERCE COMMISSION  
DECISION

SERVICE DATE  
**RECEIVED** 1981  
AUG 20 1981  
SECRETARY'S OFFICE  
Public Utility Commission

Finance Docket No. 29486

DELAWARE AND HUDSON RAILWAY COMPANY--PURCHASE (PORTION)  
CONSOLIDATED RAIL CORPORATION

Decided: May 27, 1981

On December 4, 1980, Delaware and Hudson Railway Company (D&H) filed an application for authority to purchase and operate the 60.34 mile line of Consolidated Rail Corporation (Conrail) between Binghamton, NY and Scranton, PA, in Broome County, NY, and Susquehanna, Wyoming, and Lackawanna Counties, PA. The application was filed under our current consolidation regulations, 49 C.F.R. Part 1111, as modified in Ex Parte No. 282 (Sub-No. 3), Railroad Consolidation Procedures, 363 I.C.C. 200 (1980). The transaction is governed by 49 U.S.C. 11343 and the time limits of 49 U.S.C. 11345, as those sections are modified by section 228 of the Staggers Rail Act of 1980, P.L. 96-448, October 14, 1980.

Notice of the application was published in the Federal Register on January 7 and February 19, 1981. The Brotherhood of Locomotives Engineers (BLE) filed the only timely comments in this proceeding. Railway Labor Executives' Association (RLEA) subsequently filed a Petition for Leave to Intervene and to File Comments. By decision served April 14, 1981, the petition was granted and the comments accepted. RLEA and BLE both request the imposition of conditions protecting the interests of employees.

DH currently owns and operates a single-track line between Nineveh, NY and Scranton, PA, which lies roughly parallel to the Conrail Binghamton-Scranton line. The line is part of the DH mainline connecting Canada and New England with the Eastern and Southern United States. In 1979, DH moved approximately 159,700 cars over this line. The DH line includes a 40-mile segment between Lanesboro and Scranton, PA, which it claims is considerably more costly to operate than the parallel Conrail line. The DH line is 20 miles longer than the Conrail line, suffers from adverse grades and curvature, and has a summit 810 feet higher than the parallel line. DH estimates that each trip over the Conrail line will save 355 gallons of fuel when compared to its own line.

The DH line needs substantial rehabilitation. Track speed is currently limited to 10 miles per hour at nine locations. DH experienced 28 track related derailments on its line during the

**DOCKETED**  
AUG 21 1981  
H

**DOCUMENT FOLDER**

DH  
E/NO. 2  
7/29/81 KRM

18-month period ending June 20, 1980. The Conrail line consists entirely of 131- and 132-pound rail in good condition. With the exception of one tunnel, the Conrail line is all double-tracked. DH estimates that with relatively modest rehabilitation the line will support operating speeds of 40 miles per hour. Such operations would result in a 40-percent time savings relative to the DH line.

By Service Order No. 1486, effective September 27, 1980, our Railroad Service Board authorized DH to operate temporarily over the Conrail line. That service order expired January 31, 1981. However, by decision served January 30, 1981 in Finance Docket No. 29430 (Sub-No. 1), we temporarily exempted DH from the requirement that it receive our approval prior to conducting operations over Conrail's line. DH has been able to continue service on the line under this exemption.

#### DISCUSSION AND CONCLUSIONS

This transaction involves two Class I railroads, but is not a merger or control. In our decision-notice of February 12, 1981, we found that this proposal would not constitute a major market extension and would be considered a minor transaction. We also found that the proposal is not of regional or national transportation significance. 49 C.F.R. 1111.5(a). This transaction is therefore governed by 49 U.S.C. 11345(d) which controls the time we have to issue a decision, and 49 U.S.C. 11344(d), which provides the criteria we must follow.

Under section 11344(d), enacted in the Staggers Rail Act of 1980, if a proceeding does not involve the merger or control of at least two class I railroads, we must approve the application unless we find (1) as a result of the transaction there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States, and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

We cannot find that this proposal would adversely affect competition in freight surface transportation. DH's only rail competitor in the region--Conrail--has already diverted all of its overhead traffic to another line; the line is not necessary for Conrail's ability to provide competitive service. By contrast, DH will be better able to compete as a result of this transaction. Its running times will decline by 1 1/2 hours and its operating costs will be reduced. Finally, no shipper served by both carriers will lose the services of either carrier as a result. Indeed, operations under service order and pursuant to exemption have benefitted shippers. DH is presently providing

local service over the line more frequently than had been provided by Conrail, and DH's overhead service on the line is safer and more efficient than service over its parallel line.

Since this proposal has no anticompetitive effects which must be outweighed by the public interest, we will approve the proposal.

With imposition of the conditions for the protection of employees provided in New York Dock Ry. Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), the interests of employees will be fairly and adequately protected.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

It is ordered:

1. The acquisition by DH of the Conrail Binghamton-Scranton line is approved upon the terms and conditions contained in the proposed agreement between the parties submitted as part of the application, subject to the employee protective conditions discussed in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

2. No changes or modifications shall be made in the terms and conditions herein approved, without the prior approval of this Commission.

3. This decision shall be effective on the date it is served.

4. Unless the transaction is consummated within one year from the effective date, this decision shall have no further force and effect.

5. Applicant shall confirm in writing to this Commission, within 15 days from commencement of the operations authorized, the date the sale occurs.

6. DH, when establishing rates and charges applicable to the line, shall refer to this decision by date and docket number.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich  
Secretary

(SEAL)

COMMONWEALTH OF PENNSYLVANIA **RECEIVED**

PUBLIC UTILITY COMMISSION **AUG 17 1984**

----- X SECRETARY'S OFFICE \

Great Bend Township vs. Conrail, Penn- : Public Utility Commission

sylvaniana Department of Transportation, : :

Susquehanna County, Pennsylvania : :

Electric Company, Commonwealth : :

Telephone Company and Delaware and : Docket Number

Hudson Railway Company : **C-79081404**

Bridge carrying Township Road 821 - : :

(old U.S. Route 11) over and above : :

railroad tracks in Great Bend Township, : :

Susquehanna County. : :

Hearing : :

----- X

Pages 44 through 86

State Office Building  
100 Lackawanna Avenue  
Scranton, Pennsylvania

Thursday, July 26, 1984

Met, pursuant to adjournment, at 10:00 a.m.

BEFORE:

EDWARD R. CASEY, Administrative Law Judge

APPEARANCES:

JOEL E. MAZOR, Esquire  
1138 Six Penn Center Plaza  
Philadelphia, Pennsylvania 19104  
(For Consolidated Rail Corporation)

**DOCKETED**  
**AUG 20 1984**

**DOCUMENT**  
**FOLDER**

**Commonwealth Reporting Company, Inc.**

700 Lisburn Road  
Camp Hill, Pennsylvania 17011

Camp Hill  
(717) 761-7150

Philadelphia  
(215) 732-1687

1 APPEARANCES (Continued):

2 GEORGE H. KLEINBERGER, Esquire  
3 Delaware and Hudson Railway Company  
4 Albany, New York 12207  
5 (For Delaware and Hudson Railway Company)

6 HERBERT ZAHN, Esquire  
7 522 Transportation & Safety Building  
8 Harrisburg, Pennsylvania 17120  
9 (For PennDOT)

10 WALTER GALLOWAY  
11 R.D. 2, Box 103  
12 Susquehanna, PA 18847  
13 (For Great Bend Township)

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C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Edward Dower (By Mr. Kleinberger)	54	--	66	--
(By Mr. Zahn)	--	58	--	--
(By Mr. Galloway)	--	60/65	--	--
John A. Smith (By Mr. Mazor)	67	--	--	--
(By Mr. Galloway)	--	72/73	--	--
Walter Galloway (By Mr. Zahn)	--	81	--	--
(By Mr. Kleinberger)	--	84	--	--

E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
(None)		

P R O C E E D I N G S

1  
2 JUDGE CASEY: We will call the hearing to order. On  
3 May 22, 1984, the Commission gave notice to all parties of  
4 record that the matter of Great Bend Township versus Conrail,  
5 Pennsylvania Department of Transportation, Susquehanna County,  
6 Pennsylvania Electric Company, Commonwealth Telephone Company  
7 and Delaware and Hudson Railway Company was being reopened.

8 This concerns a bridge carrying Township Road 821,  
9 Old U.S. Route 11, over and above the railroad tracks in Great  
10 Bend Township, Susquehanna County, directed that a hearing be  
11 held and a petition filed by Consolidated Rail Corporation  
12 on January 21, 1983, and the answering petition filed by Dela-  
13 ware and Hudson Railway Company on January 17, 1984.

14 The Commission docket number in this proceeding is  
15 C-79081404. The parties on notice of the hearing this morning  
16 are as follows: Francis O'Conner, esquire, solicitor for Great  
17 Bend Township; Joel E. Mazor, general attorney, Consolidated  
18 Rail Corporation; Richard S. Herskovitz, assistant counsel,  
19 PUC Trial Staff; George H. Kleinberger, corporate counsel,  
20 Delaware and Hudson Railway Company; Spencer A. Mancorp chief  
21 counsel, Pennsylvania Department of Transportation.

22 The Department appears here this morning through  
23 Herbert Zahn, esquire, and Robert G. Dean, solicitor of Susque-  
24 hanna Township, Montrose, Pennsylvania; James R. Leva, presi-  
25 dent, Pennsylvania Electric Company, and finally, William R.

1 Sonnet, Jr., director of revenue for Commonwealth Telephone  
2 Company.

3           The parties who have executed the appearance sheet  
4 are Mr. Kleinberger, who appears on behalf of D&H Railway  
5 Company; Joel E. Mazor, for Conrail; Herbert G. Zahn, for  
6 PennDOT; Walter Galloway, who appears for Great Bend Township.

7           Are you the current solicitor of Great Bend Township?

8           MR. GALLOWAY: No, at present we do not have a soli-  
9 citor; I am chairman of the Board of Supervisors of the  
10 township.

11           MR. ZAHN: Oh, you're not an attorney?

12           MR. GALLOWAY: No, I'm not an attorney.

13           JUDGE CASEY: You are not an attorney?

14           MR. GALLOWAY: No, I'm not.

15           JUDGE CASEY: Alright, let me indicate that.

16           MR. GALLOWAY: If I may, Mr. O'Conner is no longer  
17 associated with the township.

18           JUDGE CASEY: Alright, the moving party is Conrail.  
19 I should also make mention for the benefit of the record that  
20 we have a letter dated July 17, 1984, from the PUC Trial Staff,  
21 signed by Richard S. Herskovitz, esquire, indicating as follows:  
22 "Please be advised that the Commission Trial Staff has no evi-  
23 dence to offer, or other matters to raise at the hearing sched-  
24 uled for July 26, 1984, in the above-captioned case. Trial  
25 Staff will not attend the hearing."

1           So, the Commission is not an active participant at  
2 least in this hearing, although it will remain a party of  
3 record for purposes of service of any orders, or decisions  
4 rendered in the case.

5           Is there any comment by counsel before I turn the  
6 matter over to Mr. Mazor?

7           MR. MAZOR: No, I think I just have, I think, an  
8 opening statement to put in perspective why we're here today,  
9 if your Honor please.

10          JUDGE CASEY: You may proceed.

11          MR. MAZOR: In October of 1979, this complaint was  
12 filed by the township. The basic problem of the bridge in  
13 question, which carried a township road, which had formerly  
14 been a state highway, over Conrail's tracks was that the  
15 southwest wing wall had been cracked and required repair.

16          The evidence adduced at the initial hearing indica-  
17 ted that this was indeed a fact, and that the Commission, on  
18 August 14, 1980, entered an order requiring Conrail to prepare  
19 plans and make the necessary repairs, with the township to con-  
20 tribute 50 percent of the total cost.

21          Shortly thereafter, and on September 8, 1980,  
22 Conrail entered into an agreement of sale for the involved  
23 line of railroad with the Delaware and Hudson Railway Company;  
24 and thereafter, the Delaware and Hudson became the only opera-  
25 tor on the line, although Conrail still owned it pending the

1 settlement and transfer of the line.

2 That ultimately took place on December 29, 1982; and  
3 since that date, the D&H has been the only owner and operator  
4 of the line of railroad involved.

5 Pursuant to the original order of the Commission  
6 requiring the repairs, Conrail was ordered to maintain the sub-  
7 structure and superstructure of the bridge, exclusive of the  
8 roadway paving, which was the township's responsibility.

9 In view of the fact that Conrail is no longer the  
10 owner and/or operator of the line, we have petitioned the  
11 Commission to transfer the maintenance responsibility pre-  
12 viously assigned to it by the Commission to the now owner and  
13 operator of the railroad, or such other party as the Commission  
14 may deem proper.

15 JUDGE CASEY: That's the purpose of this hearing?

16 MR. MAZOR: That is the purpose of the hearing. I  
17 don't think any of the facts are in dispute, your Honor.

18 JUDGE CASEY: I read Judge Jones' prior initial  
19 decision in the matter, and at the time that was rendered, the  
20 agreement of sale, which was in existence between Conrail and  
21 D&H, had not been fully consummated.

22 MR. MAZOR: That is correct, your Honor.

23 JUDGE CASEY: Could you tell me the date when the  
24 title was actually transferred?

25 MR. MAZOR: Yes, December 29, 1982.

1 JUDGE CASEY: There's no dispute about that, Mr.  
2 Kleinberger?

3 MR. KLEINBERGER: None, your Honor.

4 JUDGE CASEY: So, we're talking about future main-  
5 tenance; the prior allocation of cost covered all of the nec-  
6 essary repairs?

7 MR. MAZOR: Yes, those have been made and paid for.

8 JUDGE CASEY: And it is not a matter of concern in  
9 this proceeding?

10 MR. MAZOR: That is correct, sir. We are asking no  
11 contribution from anybody else with respect to the cost of  
12 repairs; only transfer of maintenance.

13 JUDGE CASEY: Now, apparently there is some dispute  
14 with respect to future maintenance responsibilities at this  
15 time; or are you simply saying that that should be re-fixed in  
16 view of present circumstances?

17 MR. MAZOR: That is our position, your Honor. Mr.  
18 Kleinberger, of course, feels it should be someone other than  
19 his railroad, as his answer and cross petition indicates, but  
20 I know Mr. Kleinberger is perfectly capable of speaking for  
21 himself.

22 JUDGE CASEY: Mr. Zahn?

23 MR. ZAHN: I would like to make this one statement:  
24 Mr. Mazor said that his petition here was to transfer the main-  
25 tenance responsibility to the D&H, or other parties, and the

1 only thing that's stated in his petition is to transfer to the  
2 D&H.

3 MR. MAZOR: Well, alright. The D&H is the one ask-  
4 ing that it be other parties. I'll amend my statement in that  
5 respect.

6 JUDGE CASEY: I see, alright.

7 Before you present any evidence, do you want to give  
8 me an overview of D&H's position with respect to future main-  
9 tenance, Mr. Kleinberger?

10 MR. KLEINBERGER: Well, your Honor, first of all,  
11 Conrail's petition requests two things; number one, that the  
12 maintenance requirements be transferred to D&H, and also that  
13 the various reporting requirements regarding the progress of  
14 the reconstruction work also be transferred to D&H.

15 Perhaps we can stipulation<sup>e</sup> for the record that the  
16 actual construction work has been completed, and therefore any  
17 transferring from the reporting requirements is now academic.

18 MR. MAZOR: Yes, work was completed September 23,  
19 1982, your Honor.

20 JUDGE CASEY: And the Commission did not impose any  
21 residual safety monitoring responsibilities concerning that  
22 repair work and see if it was satisfactory?

23 MR. MAZOR: I'll ask my engineer that.

24 Are there any requirements to make reports once the  
25 repair work was done?

1 MR. SMITH: Not to my knowledge.

2 MR. MAZOR: No, sir, okay. That completed that  
3 phase of it, so the only thing left open is the maintenance.

4 JUDGE CASEY: Mr. Galloway, was the township  
5 required to bear any of these repair costs?

6 MR. GALLOWAY: Yes, it was, your Honor, we bore 50  
7 percent of the repair costs of the fix that was put on the  
8 bridge.

9 JUDGE CASEY: And that obligation has been  
10 discharged?

11 MR. GALLOWAY: Yes, sir, it has.

12 JUDGE CASEY: Alright. And you're here simply to  
13 take a position with respect to future maintenance?

14 MR. GALLOWAY: Yes, your Honor.

15 JUDGE CASEY: Alright.

16 MR. KLEINBERGER: Otherwise, your Honor, our basic  
17 position, which will be developed in testimony, is that the  
18 bridge is a public improvement, and should be paid for by public  
19 funds; and as I say, our position will be brought out in  
20 greater detail with D&H's witnesses.

21 JUDGE CASEY: As the Petitioner, Mr. Mazor, let's  
22 take it the order of proof would be Conrail first, and then D&H.

23 MR. MAZOR: Well, if your Honor please, the essen-  
24 tial elements of our petition are not in dispute. The fact  
25 that we are no longer the operator, or the owner of the line

1 involved, and that is basically the basis for our request of  
2 the Commission; and I don't think at this time we need any  
3 testimony, since that has already been admitted, and not denied  
4 by any party.

5 JUDGE CASEY: Well, in effect, you're saying that  
6 as the Petitioner, and that gave rise to this additional hear-  
7 ing, jurisdiction would continue over Conrail.

8 But Conrail's real position in the matter at this  
9 point is that it is no longer a utility or interested party in  
10 the future, and having transferred all title to the operating  
11 line, Delaware and Hudson Railway Company.

12 MR. MAZOR: Right, we have retained no ownership,  
13 or any other interest in this particular line, and ask to be  
14 relieved of any responsibility for the crossing.

15 And the facts constituting the basis for that posi-  
16 tion are not denied by anyone. Therefore, we rest on our pet-  
17 ition and the answers.

18 JUDGE CASEY: Alright: and you have no need to call  
19 any witnesses this morning?

20 MR. MAZOR: No. If, after other parties have, we  
21 feel that any rebuttal is necessary, I do have someone avail-  
22 able if we so deem it essential.

23 JUDGE CASEY: Alright.

24 Let me ask this: Obviously, Mr. Kleinberger has a  
25 witness to call in this proceeding. Do any other parties have

1 Testimony to present before the Commission, other than Delaware  
2 and Hudson Railway Company?

3 MR. ZAHN: Pennsylvania Department of Transportation  
4 is just an innocent bystander here. We have no witnesses.

5 JUDGE CASEY: Mr. Kleinberger, you may call your  
6 witness at this time.

7 MR. KLEINBERGER: D&H calls Edward Dower.

8 Whereupon,

9 EDWARD MICHAEL DOWER  
10 having been duly sworn, testified as follows:

11 JUDGE CASEY: Mr. Dower, you may be seated. You may  
12 proceed, Mr. Kleinberger.

13 DIRECT EXAMINATION

14 BY MR. KLEINBERGER:

15 Q Mr. Dower, for the record, would you give us your  
16 complete name and address?

17 A Edward Michael Dower; twelve Miller Street, Oneota,  
18 New York.

19 Q By whom are you employed?

20 A Delaware and Hudson Railway Company.

21 Q In what capacity?

22 A Presently an engineer of bridges and buildings.

23 Q What is your office address?

24 A Office address is Building 17, Oneota, New York.

25 Q Are you authorized to testify for Delaware and

1 Hudson Railway Company in this proceeding?

2 A. Yes.

3 Q. How long have you been employed by Delaware and  
4 Hudson Railway Company, or D&H, as it's popularly known?

5 A. Approximately 26 years.

6 Q. What is your educational background?

7 A. High school, college, night courses, graduate  
8 engineer.

9 Q. Where did you go to college?

10 A. United States Naval Academy.

11 Q. What are your duties as engineer of bridges and  
12 buildings?

13 A. Presently, I have the entire system, and we are in  
14 the process of getting a new program in order under new manage-  
15 ment; but basically, inspection and maintenance, and recommen-  
16 dations as to repairs to all our existing structures, which are  
17 approximately at present between 515 and 600 bridges.

18 Q. By structures, you mean both bridges and buildings?

19 A. And buildings.

20 Q. For the record, what is the exact corporate name of  
21 the owner and operator of the rail line involved at the subject  
22 rail highway grade crossing?

23 A. Delaware and Hudson Railway Company.

24 Q. In your capacity as engineer of bridges and build-  
25 ings, have you had occasion to visit the Township Road 821

1 bridge, which carries Township Road 821 over the tracks of the  
2 D&H in Great Bend Township?

3 A. Yes, I have.

4 Q. How many tracks are located at the site?

5 A. Two main tracks.

6 Q. How many trains operate daily on those tracks and at  
7 that site?

8 A. Approximately three or four freight trains in each  
9 direction for the day.

10 Q. Do any local trains operate at the site?

11 A. No.

12 Q. What is the authorized train speed at the site?

13 A. Thirty-five miles per hour.

14 Q. Are there any changes contemplated in either the  
15 train speed, or the number of trains, or the number of tracks at  
16 the site in the immediate future?

17 A. No.

18 Q. Subsequent to completion of construction, the order  
19 of the Commission in this proceeding dated August 14, 1980,  
20 requires Conrail, at its sole cost and expense, to do all work  
21 and furnish all material necessary, and thereafter to maintain  
22 this railroad facilities at the crossing, including the bridge,  
23 substructure and superstructure, exclusively of bituminous  
24 roadway wearing surface.

25 Conceding that the owner and operator of the line in

1 question is now D&H and not Conrail, should D&H be required to  
2 assume responsibility for maintaining the subject crossing  
3 structure in the future?

4 A. No.

5 Q. Why not?

6 A. Firstly, D&H does not wish to incur possible liabi-  
7 lity arising from a structure from which it derives only mini-  
8 mal benefit.

9 Secondly, D&H does not have the forces with which to  
10 undertake such responsibility.

11 Q. Should D&H be required to pay for the cost and  
12 expense for maintaining the bridge substructure and  
13 superstructure?

14 A. No.

15 Q. Why not?

16 A. Firstly, D&H will not agree, and should not be  
17 required to pay any such costs, because the bridge is a public  
18 improvment, and as such should be wholly maintained with public  
19 funds.

20 Secondly, it is the public rather than the railroad  
21 which makes the overwhelming use of the crossing. There are  
22 only six to eight rail movements at the crossing per day, and  
23 there are undoubtedly maybe hundreds of motor vehicle movements  
24 over the crossing per day.

25 Thirdly, the bridge undoubtedly carries a substantial

1 amount of truck traffic. Some or all of that truck traffic is  
2 in competition with D&H.

3 D&H should not be required to contribute financially to  
4 the maintenance of a structure which has absolutely nothing  
5 whatsoever to do with maintaining the efficiency of railroad  
6 operation, but which would maintain the efficiency of competi-  
7 tive truck operations.

8 Lastly, D&H is working to provide the utmost service  
9 possible to a shipping public which moves and operates busines-  
10 ses and industries in the Commonwealth of Pennsylvania.

11 In view of D&H's financial position, we believe public  
12 interest would be fully served were D&H required to subsidize  
13 the maintenance of the bridge, which would be of primary bene-  
14 fit to the travelling public rather than the rail shipper.

15 MR. KLIENBERGER: Cross-examine.

16 JUDGE CASEY: Any questions?

17 MR. MAZOR: I have none, your Honor.

18 JUDGE CASEY: Mr. Zahn?

19 MR. ZAHN: Well, I must ask one or two questions.

20 CROSS-EXAMINATION

21 BY MR. ZAHN:

22 Q Beside the reasons that you set forth of why your  
23 company should be responsible to maintain this structure, why  
24 should the Commission change the maintenance responsibility  
25 when Conrail could have had the same arguments that obviously

1 were overlooked?

2 Why is your company any different than Conrail's?

3 A. Personally, more money. As I stated here, in my  
4 position, knowing our maintenance force, I am really not in a  
5 position to say that I can maintain that structure fully under  
6 what I have to work with at present.

7 Should some other type of agreement be made, possibly a  
8 working situation would be developed.

9 Q. Are you saying that it's your interpretation that  
10 only your forces are to maintain it? Couldn't independent  
11 engineers or firms be employed to maintain, or do work neces-  
12 sary for the maintenance of the bridge?

13 A. That would be a possibility if it was worked out  
14 with our management, I suppose.

15 Q. Now, this carries a township road, does it not?

16 A. Correct.

17 Q. If this were not a separated crossing, or if it were  
18 a non-grade crossing, wouldn't your company have more responsi-  
19 bilities as far as accidents or maintenance of automatic  
20 signals?

21 Wouldn't that be an additional charge that your company  
22 would have to bear?

23 A. I would say it would be.

24 MR. ZAHN: I have no further questions.

25 JUDGE CASEY: Mr. Galloway?

1 MR. GALLOWAY: Yes, if I may.

2 JUDGE CASEY: Mr. Galloway is appearing for the township  
3 in his capacity as Chairman of the Board of Supervisors.

4 MR. GALLOWAY: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MR. GALLOWAY:

7 Q When you inspected the bridge, I'm sure you noted  
8 the temporary fix that was put there to put the road back;  
9 that's the piling.

10 On the rest of the bridge, the wing wall is still broken  
11 loose from the bridge. In your opinion, is that safe to the  
12 railroad to leave that wing wall hanging as it is?

13 A. No.

14 Q It is not?

15 A. My two visits -- one was high railer; and the next  
16 one was more or less a cursory glance at the wing wall that  
17 you're referring to; and I agree that it's not detrimental to  
18 operation, but to what degree --

19 Q There is an exposure to that collapsing onto the  
20 rail.

21 A. Right. It should be addressed.

22 Q The rest of the bridge, did you inspect it when you  
23 were there, dealing with concrete, metal corrosion, that sort  
24 of thing?

25 A. Just visually.

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Q. Would you agree that it needs considerable work?  
A. I would say it does.  
Q. Thank you.

Then your point on truck traffic; did you take any truck counts? Did you see any trucks on that road?  
A. No, sir, I didn't.

Q. It's my opinion it's a secondary road, and if there were one commercial truck a week, I'd be very surprised. There's just no place to go up there, except the residents who live in that area; therefore, I don't think the competition to D&H is there, in your point that you made on truck traffic.

A hundred motor vehicles a day; that's possible. That's possible, there could be a hundred cars go over that both ways a day, but absolutely no trucks.

JUDGE CASEY: Are you asking whether the witness disputes your observations? Is that in the form of a question?  
MR. GALLOWAY: Yes, yes.

JUDGE CASEY: Do you have that degree of personal familiarity, Mr. Dower?

THE WITNESS: No. These questions, as far as the amount of traffic is purely assumption, and no traffic counts have been conducted at that point.

BY MR. GALLOWAY:

Q. In your analysis, the bridge was built by the railroad, and has been maintained by the railroad, I believe, for

1 the past 50 to 75 years, is that true?

2 A. I would say that's probably the case.

3 MR. GALLOWAY: I have nothing further, your Honor.

4 JUDGE CASEY: In connection with your appearance here,  
5 Mr. Dower, did you do any research about the history of the  
6 bridge from the standpoint of age and maintenance in the past?

7 THE WITNESS: No, your Honor, I haven't. I haven't had  
8 the opportunity to do that.

9 JUDGE CASEY: Has the volume of train traffic increased  
10 or diminished since the prior hearing in this proceeding? It  
11 was once identified as six trains daily.

12 THE WITNESS: I have no present knowledge. I would say  
13 that it's either the same, or it has increased since D&H has  
14 taken over.

15 JUDGE CASEY: What was your earlier testimony as to the  
16 average daily volume of train traffic?

17 THE WITNESS: Approximately three or four freight trains  
18 travelling in each direction per day.

19 JUDGE CASEY: What are the origin and the destination  
20 of those trains?

21 THE WITNESS: Well, anything that goes through there is  
22 either reclassified in Binghamton or Taylor, depending on  
23 which -- Taylor, Pennsylvania -- depending on which direction  
24 of travel.

25 And then from there to Buffalo in one direction, or

1 Albany and points north or east in that direction. And from  
2 Taylor, trains would ultimately arrive in Harrisburg, Philadel-  
3 phia or Washington.

4 JUDGE CASEY: While trains from Taylor, which is on the  
5 outskirts of the City of Scranton --

6 THE WITNESS: Right.

7 JUDGE CASEY: -- headed in the direction of Harrisburg,  
8 would not travel through Susquehanna County or Great Bend  
9 Township, is that correct?

10 THE WITNESS: Right.

11 JUDGE CASEY: How about trains made up in Taylor going  
12 north?

13 THE WITNESS: Yes, they would.

14 JUDGE CASEY: And what was the other terminus point that  
15 you mentioned, Binghamton?

16 THE WITNESS: Right; from Taylor they would go through  
17 the area in question, and end up in Binghamton for further  
18 rerouting.

19 JUDGE CASEY: A distance of approximately 60 or 65 miles?

20 THE WITNESS: Correct.

21 JUDGE CASEY: In response to some of Mr. Galloway's  
22 questions, are you indicating that the repair work order by the  
23 Commission is of such a stop gap nature that the bridge is  
24 still in need of major repairs or replacements?

25 THE WITNESS: No, I would not say that it's in need of

1 major repairs. The wing wall in question needs further inves-  
2 tigation, and some time spent on it.

3 Like I say, that's important to the railroad's point of  
4 view for operation. The bridge itself is comparable to many  
5 other bridges of that same nature over the railroad.

6 JUDGE CASEY: Is the wing wall for the purpose of  
7 retaining the embankment?

8 THE WITNESS: Originally, that's the purpose that it  
9 served. The embankment is being retained due to work that was  
10 done -- because of work that was done.

11 JUDGE CASEY: Rather than replacing the wing wall they  
12 were using pilings to shore up the bridge and hold the embank-  
13 ment in place?

14 THE WITNESS: Correct. The piling is retaining the  
15 embankment, it's not shoring up the bridge.

16 JUDGE CASEY: Do you have a professional engineering  
17 opinion as to the anticipated life of that improvement?

18 THE WITNESS: At this point I don't.

19 JUDGE CASEY: Do you have a reaction as to what poten-  
20 tial hazard this might constitute to the trains passing through  
21 the structure?

22 THE WITNESS: With further erosion there -- not erosion,  
23 but deterioration -- chunks of concrete could fall off.

24 JUDGE CASEY: Is there any danger that there could be a  
25 collapse of the structure in a major tropical type storm?

1 THE WITNESS: I do not feel so.

2 JUDGE CASEY: Is the bridge itself posted with a weight  
3 limit?

4 THE WITNESS: Judge, I asked that question this morning,  
5 and I don't recall myself.

6 JUDGE CASEY: One further thing; now, you, of course,  
7 are not legal counsel for D&H, but were there discussions at  
8 the time the agreement of sale was executed, and thereafter  
9 when it was completed, and your employer took title, as to  
10 inheriting responsibilities that the Commission had bestowed on  
11 Conrail with respect to maintenance?

12 THE WITNESS: Nothing was stated to me as my responsibi-  
13 lity to the structure. I was not, and have not been told.

14 JUDGE CASEY: Was there any effort by D&H to seek indem-  
15 nification from any other party, including Conrail, in the event  
16 the Commission ordered D&H to assume full responsibility for  
17 future maintenance?

18 THE WITNESS: I'm not familiar with that aspect.

19 JUDGE CASEY: Alright.

20 I have no further questions of the witness.

21 MR. GALLOWAY: I have, if I may, your Honor.

22 CROSS-EXAMINATION (Continued)

23 BY MR. GALLOWAY:

24 Q. Before the temporary fix the piling was put on to  
25 hold the road back, there was an estimate to repair just the

1 wing wall -- and I'm sure Conrail remembers that -- of over  
2 \$100,000.00.

3 Do you feel that would be the approximate cost to repair  
4 just that wing wall?

5 A. It could very possibly be.

6 MR. GALLOWAY: Thank you. No further questions.

7 JUDGE CASEY: Mr. Kleinberger, do you have any redirect?

8 MR. KLEINBERGER: Yes, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. KLEINBERGER:

11 Q. Do I take it, Mr. Dower, that the wing wall now is  
12 not weight bearing; is that correct?

13 A. I would say so.

14 Q. That it is not?

15 A. Right.

16 Q. And in response to one of Mr. Galloway's questions  
17 regarding whether or not D&H had taken a traffic count at the  
18 bridge, does D&H have the manpower to undertake such a count?

19 A. I would doubt it very much. We are understaffed in  
20 all areas right now. To send somebody out there on a 24 hour  
21 count, which is the normal -- I mean, you don't send an indivi-  
22 dual, you send two or three.

23 And presently, I just couldn't see where they -- unless  
24 they went outside to hire somebody.

25 MR. MAZOR: Off the record.

1 (Discussion off the record.)

2 MR. KLEINBERGER: I have nothing further.

3 JUDGE CASEY: Alright. If there are no further ques-  
4 tions of the witness, we will excuse Mr. Dower.

5 (Witness excused.)

6 MR. MAZOR: I don't know if anybody else has testimony  
7 at this point, but I would like to put Mr. Smith on, perhaps to  
8 allay some of Mr. Galloway's fears, and also to give your  
9 Honor a perspective of what happened with respect to the original  
10 plans, and what ultimately was done.

11 Mr. Smith was very familiar with all that, and I think  
12 maybe for the record, it ought to be on.

13 JUDGE CASEY: Very good.

14 MR. MAZOR: Mr. Smith, please.?

15 Whereupon,

16 JOHN A. SMITH

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MAZOR:

20 Q State your full name and business address for the  
21 record, please.

22 A John A. Smith; 15 North 32nd Street, Philadelphia,  
23 Pennsylvania, 19104.

24 Q Are you the same Mr. Smith who previously testified  
25 in this case at a hearing held in July of 1981?

1 A. That's correct, sir.

2 Q. And you are still authorized to testify on behalf of  
3 Conrail?

4 A. Yes.

5 Q. Now, the original Commission order ordered Conrail  
6 to prepare plans for repair of the wing wall, did it not?

7 A. That's correct, sir.

8 Q. Were those plans prepared and submitted to the  
9 Commission and all parties of record?

10 A. That's correct, sir.

11 Q. At that time, what was the estimated cost of doing  
12 the job, which consisted of basically a complete repair of the  
13 existing wing wall that was the problem?

14 A. My recollection of that repair cost was that it was  
15 in the neighborhood of \$120,000.00.

16 Q. After that was submitted, were you not, and in fact,  
17 was I not present when you were called to the Commission to  
18 discuss the problem?

19 A. That's correct, sir.

20 Q. What were we then instructed to do by the  
21 Commission?

22 A. The Commission instructed us to look into other  
23 possibilities whereby we would not actually repair the wing  
24 wall itself, but relieve this wing wall of the horizontal pres-  
25 sure behind it.

1           What was happening to the wing wall, it had a horizontal  
2 crack through the entire length of the wing wall, and the earth  
3 pressure behind there -- of course, when you get water mixed  
4 with that, you get an equivalent fluid pressure, which can  
5 fluctuate depending on the amount of moisture in the earth.

6           This wing wall was gradually moving toward the railroad  
7 tracks, and there was a possibility that the approach roadway  
8 right adjacent to the abutment of the bridge could give way and  
9 cause some serious problems; so that we went back and looked  
10 into it from another standpoint whereby we would leave the  
11 wing wall, per se, alone, and come in behind the wing wall and  
12 drive sheet piling, which would therefore relieve the pressure  
13 -- the horizontal pressure on this wall.

14           And it was left, let's say, status quo, and this sheet  
15 piling that we put in there, we put along the roadway -- the  
16 approach roadway for a certain length, and also just behind the  
17 wing wall, thereby relieving the pressure on the wall.

18           Q. Now, was that plan acceptable to the Commission, and  
19 did they approve it?

20           A. The plans were acceptable to the Commission; and yes,  
21 sir, they did approve our method of repair.

22           Q. And the cost of that as compared to the previous was  
23 what, in the neighborhood of \$10,000.00, was it?

24           A. I'm sorry, sir?

25           Q. Was it in the neighborhood of \$10,000.00, the

1 ultimate repairs that were made?

2 A. No, the ultimate repair was in the neighborhood of  
3 \$29,000.00.

4 Q. Alright.

5 Now, when was the last time you personally inspected the  
6 bridge?

7 A. I looked at the bridge yesterday.

8 Q. Did you observe the conditions at the wing wall?

9 A. Yes, I did.

10 Q. Did it appear to you as an engineer, known to the  
11 Commission and qualified as such, that there is any danger,  
12 either to the travelling public, or to the railroad at this  
13 point?

14 A. There's certainly -- I can't see any danger to the  
15 travelling public. In a review of the rest of the bridge in a  
16 cursory inspection, the underside of the deck appears sound;  
17 no problems.

18 The structure is a through girder -- steel through gir-  
19 dered bridge with transverse floor beams, which are encased in  
20 concrete, and probably integrally poured with the deck.

21 Now, some of the encasement on the floorbeams shows evi-  
22 dence of some deterioration. However, this is more of a cos-  
23 metic nature.

24 The wing wall itself is -- I can't honestly say whether  
25 that has continued to move since the repair was made. However,

1 I would doubt that it has.

2           There is a possibility, I can't deny, that in the future  
3 that may fall down. However, I don't believe it would cause  
4 any concern to anybody.

5           The question is whether it would approach the near  
6 track. I think originally that bridge was built to span an  
7 addition track on that area.

8           Now, if that wing wall were to come down -- and we're  
9 talking now about the top portion of the wall; I don't think  
10 that there's any question whatsoever that the remaining portion  
11 of the wall would stay.

12           There's no pressure on it; the pressure's been relieved.  
13 There might be a slight bit there due to some earth between  
14 the wall itself and the sheeting behind it.

15           But I just can't conceive of it being a concern to any-  
16 one, other than that there would be a cleanup, probably.

17           I don't think it would fall on the track, in my own  
18 opinion.

19           Q. Is the bridge posted for any weight limit?

20           A. I did not notice any posting, no.

21           MR. MAZOR: Thank you, that's all I have.

22           JUDGE CASEY: Any questions of Mr. Smith concerning  
23 these matters, Mr. Galloway?

24           MR. GALLOWAY: Yes.

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## CROSS-EXAMINATION

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BY MR. GALLOWAY:

Q I think the exposure is still there, and I think you will admit that that wing wall could possibly fall. You said it might not fall on the track; it could possibly fall on the track and could possibly cause an accident.

A Are you talking about rail accidents?

Q Yes.

A In my own opinion, I would say no, it would not fall on the tracks.

Q But it's a possibility; it could?

A It's a possibility. That possibility always exists. I don't know when it falls what position it will finally take. However, as far as the township is concerned, I see no possibility of there being any -- if the wing wall were to fall, I can't see that it would affect this township road in any way at all.

Q However, if we had ownership of the road, or the bridge, we would have the liability associated with that.

MR. MAZOR: I believe that's a legal question, your Honor, and I don't think this witness can answer that.

MR. GALLOWAY: Okay.

JUDGE CASEY: Are you finished with your questions?

MR. GALLOWAY: Yes.

JUDGE CASEY: You would minimize any potential danger

1 from the collapse of the wing wall, but could sections of con-  
2 crete possibly fall on the tracks?

3 A. I don't believe it would. We talk about the collapse  
4 of the wing wall; we're only talking about the upper portion,  
5 your Honor.

6 This wing wall is what we'd refer to, maybe, as an ele-  
7 phant ear type of wing wall, which slopes down along the rail-  
8 road track.

9 The upper portion of this wall has been shifting towards  
10 the track as a result of some failure that occurred some time  
11 ago, and it could possibly -- this upper portion of this wing  
12 wall could come down.

13 Inasmuch as the bridge was originally designed for an  
14 additional track in that area, I believe that if this upper  
15 portion of the wall were to fall, it would only fall adjacent  
16 to the track.

17 I can't believe, in my opinion, and reviewing the situa-  
18 tion, that it would actually <sup>fall on</sup> follow the tracks.

19 MR. GALLOWAY: One further question, your Honor.

20 JUDGE CASEY: Yes.

21 CROSS-EXAMINATION (Continued)

22 BY MR. GALLOWAY:

23 Q. Do you know how deep the sheet piling was driven Was  
24 it driven below the foundation of the wing wall?

25 A. No, sir, I can't answer to you how deep it was

1 driven. I know that it was driven further than what we had  
2 originally anticipated.

3 Q If it isn't driven below the foundation of that wing  
4 wall, there's exposure to pressures under the sheet piling  
5 then?

6 A With the design of it, I would assume that it did go  
7 down at least that far. And let's again say now, the lower  
8 portion of the wall has no problem.

9 There's no evidence of any cracking in the lower portion  
10 of the wall.

11 Q If I may, it has broken loose from the rest of the  
12 bridge structure, and it's hanging there; and vibrations from  
13 primarily, the heavy trains going; I'm sure there's a lot of  
14 vibration to that wall.

15 A None whatsoever.

16 Q Alright.

17 A No way.

18 MR. GALLOWAY: No further questions.

19 JUDGE CASEY: Are you an engineer, Mr. Smith?

20 THE WITNESS: Yes, sir, a registered professional engin-  
21 eer for 30 years in the Commonwealth.

22 JUDGE CASEY: The wing wall that has the horizontal  
23 crack, is that reinforced? Is there steel in the wall?

24 THE WITNESS: There may have been some, your Honor.

25 However, I think it's a gravity -- what we refer to as a gravity

1 type wall, whereas the wall -- the construction of the wall --  
2 the resultant always stayed within what we would refer to as  
3 the kern, or the middle section of the wall, such that it was  
4 always <sup>in</sup> ~~an~~ equilibrium.

5 And I believe, in my estimation, from my personal recol-  
6 lection of this wall -- now, I haven't reviewed it, of course,  
7 in a couple years; but I believe it's what would be referred to  
8 as a gravity type wall, and it was not reinforced as a canti-  
9 lever designed wall.

10 Our original repair, your Honor, was to do it that way  
11 as an added safety factor when the original repair was estimated.

12 JUDGE CASEY: And vibrations from long freight trains  
13 would not have any effect on that concrete structure?

14 THE WITNESS: I do not believe so, no, your Honor.

15 JUDGE CASEY: Or cause soil subsidance above the wall?

16 THE WITNESS: I believe, in my own opinion, the original  
17 failure -- you know, I wasn't around then; I wasn't with the  
18 railroad at that parituclar time; but I would hazard a guess  
19 that it was a result of approach roadway drainage.

20 And the normal earth pressure on a wall is probably  
21 somewhere around 32 pounds per cubic foot, I guess it is, or  
22 square foot; and when you get this water connected with it, and  
23 you get into a super-saturated condition, it can actually  
24 exceed the pressure of water itself, which is what, 62.4.

25 It can get up as high as 80 and 90 psi. So, we're

1 talking here about a situation -- in my opinion, what happened  
2 is that this pressure just built up.

3 . And probably in combination with that, inasmuch as this --  
4 failure seemed to occur up at this height where the pressure  
5 wasn't as great, there must have been other considerations.

6 I believe a good possibility is when that wing wall was  
7 poured they ran into a problem and maybe had to put a joint  
8 along there or something in their bore, and that could have  
9 created a problem.

10 I can't honestly say, but it could have been a combina-  
11 tion of super-saturation and the construction itself around it.

12 JUDGE CASEY: Alright.

13 Mr. Zahn, I think you had something on redirect.

14 MR. ZAHN: I have nothing more.

15 JUDGE CASEY: Alright. If there are no further ques-  
16 tions, you may step down and be excused.

17 (Witness excused.)

18 MR. MAZOR: We rest, your Honor.

19 JUDGE CASEY: Mr. Zahn?

20 MR. ZAHN: We have no witnesses.

21 JUDGE CASEY: Mr. Galloway?

22 MR. GALLOWAY: Yes, just a couple of comments, your  
23 Honor, if I may.

24 JUDGE CASEY: I think under the circumstances, since you  
25 are not counsel for the township, I may have to ask you to make

TP 1-B

1 statements or give testimony of any nature under oath.

2 MR. GALLOWAY: Alright.

3 Whereupon,

4 WALTER DAVID GALLOWAY

5 having been duly sworn, testified as follows:

6 JUDGE CASEY: Please give your full name for the  
7 record.

8 THE WITNESS: Walter David Galloway.

9 JUDGE CASEY: And your address, sir?

10 THE WITNESS: My address is R.D. 2, Box 103, Susquehanna,  
11 Pennsylvania.

12 JUDGE CASEY: You are here on behalf of Great Bend  
13 Township in your capacity as Chairman of the Board of  
14 Supervisors, is that right?

15 THE WITNESS: Yes, your Honor.

16 JUDGE CASEY: When were you so elected to that position?  
17 Or appointed; I don't know what the procedure is.

18 THE WITNESS: I was elected April, 1982.

19 JUDGE CASEY: You were elected as supervisor in April,  
20 1982?

21 THE WITNESS: And appointed as chairman in January, 1984.

22 JUDGE CASEY: January, 1984?

23 THE WITNESS: Yes.

24 JUDGE CASEY: Alright. As you know, Great Bend Township  
25 has been a party to this proceeding since its inception in 1979,

1 is that correct?

2 THE WITNESS: Yes.

3 JUDGE CASEY: And notice was given to an attorney who  
4 was previously identified as solicitor of Great Bend Township.  
5 He is no longer associated with the township in that capacity,  
6 is that right?

7 THE WITNESS: That's right.

8 JUDGE CASEY: Would you, in your own words, tell me  
9 what is the township's present position with respect to the  
10 completed repairs and responsibility for the maintenance of  
11 the deck portion of that structure?

12 THE WITNESS: As far as the repair that's been done, it  
13 is satisfactorily holding the road surface, and appears to be  
14 a good job.

15 We're still concerned with the wing wall, as I have  
16 stated previously, and still feel that there is danger of  
17 collapsing.

18 JUDGE CASEY: And that fear is based on what, simply  
19 visual observation of the structure?

20 THE WITNESS: Yes, your Honor.

21 JUDGE CASEY: Do you have a township engineer employed  
22 in any capacity such as an outside firm?

23 THE WITNESS: Yes, we do have one, yes.

24 JUDGE CASEY: And does that engineer have anything to do  
25 with structures in the township that have to be maintained,

1 such as bridges?

2 THE WITNESS: Yes, he could. We have not called upon  
3 him to do that, but he'd be able to do that.

4 JUDGE CASEY: Perhaps if this becomes a matter of grave  
5 concern in the future, you might want to contact the Commission  
6 or file a petition of some kind.

7 It would be best if it was supported by the opinion of  
8 an engineer as to the condition.

9 Let me ask you this: Are you a lifetime resident of  
10 that area in Susquehanna County?

11 THE WITNESS: Yes, I am.

12 JUDGE CASEY: Now, one time that was old U.S. 11, which  
13 was part of the state highway system.

14 THE WITNESS: Yes,

15 JUDGE CASEY: When did the change occur, causing it to  
16 become a township road?

17 THE WITNESS: It was previous to my connection with the  
18 township in an official capacity; I do not know.

19 JUDGE CASEY: Well, apparently, the Commonwealth, through  
20 its Department of Highways, reconstructed U.S. 11 in that area,  
21 and bypassed the old road?

22 THE WITNESS: Yes, your Honor.

23 JUDGE CASEY: Does that township highway feed into any  
24 major state highway, or interstate route to your knowledge?

25 THE WITNESS: No, it does not.

1 JUDGE CASEY: What is it basically used for?

2 THE WITNESS: Local traffic; residents that live on the  
3 road. And also some school bus traffic; there are school  
4 buses.

5 JUDGE CASEY: Is Great Bend a borough?

6 THE WITNESS: Yes.

7 JUDGE CASEY: But the township surrounds the outlying  
8 parts?

9 THE WITNESS: Yes.

10 JUDGE CASEY: What is the population of the Borough of  
11 Great Bend, if you know?

12 THE WITNESS: I believe it's approximately 640 people.

13 JUDGE CASEY: Did you say 640?

14 THE WITNESS: Yes.

15 JUDGE CASEY: And the population of the township?

16 THE WITNESS: Nineteen hundred and fifty, approximately.  
17 It changes on a daily basis.

18 JUDGE CASEY: So, the traffic count that's been men-  
19 tioned several times in the testimony this morning, what is  
20 your best judgment of that, although there has been no traffic  
21 count, as to the volume of traffic on a daily or weekly basis?

22 THE WITNESS: Well, on a daily basis, it's been stated  
23 at 100 per day. I probably would not argue with that. I'm  
24 sure between 50 and 100 would be close.

25 JUDGE CASEY: You did dispute that there was any

1 substantial volume of truck or tractor trailer traffic using  
2 this structure?

3 THE WITNESS: Yes, your Honor, that is correct.

4 JUDGE CASEY: I think you made a comment that there is  
5 one a week, probably.

6 THE WITNESS: Yes. I have never personally seen a trac-  
7 tor trailer or commercial truck of any kind on that road.

8 JUDGE CASEY: There are no major industries, plants or  
9 factories in this immediate area?

10 THE WITNESS: No.

11 JUDGE CASEY: Is it in the heart of the dairy farming  
12 community?

13 THE WITNESS: Yes. It's really residential; the road  
14 really hasn't much at all on it except residents.

15 JUDGE CASEY: You don't have livestock carriers and  
16 milk tank trucks coming in and out of the area?

17 THE WITNESS: No.

18 JUDGE CASEY: Does anyone have any questions of this  
19 witness?

20 MR. ZAHN Just briefly.

21 CROSS-EXAMINATION

22 BY MR. ZAHN:

23 Q This is a township road, is it not?

24 A Yes.

25 Q The township maintains the roadway approaches to this

1 bridge, does it not?

2 A. Yes, and --

3 Q. And the town --

4 A. I'm sorry.

5 Q. Did you say they do?

6 A. Yes, we do.

7 Q. And you receive your share of liquid fuel tax funds  
8 for repair of your road?

9 A. Yes.

10 MR. ZAHN: Thank you, sir.

11 JUDGE CASEY: Would you know whether you had increased  
12 maintenance responsibilities regarding the deck and approaches,  
13 would that be reflected in your liquid fuels tax?

14 THE WITNESS: No.

15 JUDGE CASEY: That's based on another formula or consid-  
16 eration, is that correct?

17 THE WITNESS: Bridge maintenance -- we are paid for the  
18 maintenance of the roadway over the bridge under liquid fuel  
19 taxes. But bridge maintenance, there is no program.

20 JUDGE CASEY: Is that the only structure that the town-  
21 ship is concerned with?

22 THE WITNESS: Yes, but we do have another small bridge;  
23 smaller, over a creek.

24 JUDGE CASEY: Has the county, in the past, participated  
25 or cooperated in your responsibilities with respect to bridges

1 structures?

2 THE WITNESS: Yes.

3 JUDGE CASEY: To what extent?

4 THE WITNESS: On bridge inspections is primarily is  
5 where they have helped us to the extent of about 70 to 80 per-  
6 cent of the federal requirements for bridge inspections.

7 JUDGE CASEY: Alright, very good.

8 Any further questions?

9 (No response.)

10 THE WITNESS: May I make a statement?

11 JUDGE CASEY: Oh, yes, you may make a brief statement.

12 THE WITNESS: If I may take a township position, the  
13 last repair that was made by the township was what amounted to  
14 our share of \$14,914.00. We had to borrow money to pay that.

15 I think the point that I'll probably make is that finan-  
16 cially, if the township were to assume responsibility for this  
17 bridge, it would place an undue hardship on the township.

18 Presently, in our tax -- the legal limit of taxation;  
19 we see no significant growth in the near future, and we there-  
20 fore just cannot assume the cost of maintaining the bridge.

21 JUDGE CASEY: Do your remarks include the terminus  
22 paving of the deck and roadway crosses?

23 THE WITNESS: No, we will maintain, have maintained,  
24 and will continue to maintain the bridge on its terminus sur-  
25 face, yes.

1 JUDGE CASEY: Alright.

2 MR. KLEINBERGER: I have just one question.

3 CROSS-EXAMINATION

4 BY MR. KLEINBERGER:

5 Q According to your testimony, the traffic over that  
6 bridge is indeed local?

7 A Yes, it is.

8 MR. KLEINBERGER: That's all.

9 JUDGE CASEY: You are excused. Thank you.

10 (Witness excused.)

11 JUDGE CASEY: Is there no further evidence or testimony  
12 to be placed on the record?

13 MR. MAZOR: None, your Honor.

14 JUDGE CASEY: Alright, apparently we have concluded our  
15 business this morning. I will give the parties to this pro-  
16 ceeding the opportunity, or the option to file briefs if they  
17 desire.

18 But if you want to make a decision here this morning  
19 that you will not submit briefs, I won't insist upon it.

20 MR. MAZOR: I think our position, as one of the moving  
21 petitioners, is clear, since we no longer use, operate or get  
22 any benefit from the operation of this line; somebody should  
23 take the previously ordered maintenance responsibility that  
24 the Commission gave us off our hands.

25 I know our petition said it should be transferred to the

1 railroad; however, that is a matter, basically, for the  
2 Commission to determine.

3 I see no basis for continuing any further maintenance  
4 on Conrail at this particular crossing. We certainly derive no  
5 benefit from it whatsoever.

6 MR. KLEINBERGER: Your Honor, I don't have the docket  
7 numbers at my immediate disposal, but D&H's legal position in  
8 this matter is the same as that expressed in the hearing  
9 involving the Traffic Route 706 Bridge at Milford, and in var-  
10 ious other proceedings before this Commission on similar sub-  
11 ject matter over the last several years.

12 JUDGE CASEY: Alright.

13 And Mr. Zahn, the Department of Transportation has no  
14 interest, because there is no state highway involved, is that  
15 basically your position?

16 MR. ZAHN: I think the testimony clearly shows that it's  
17 a local road, local traffic; and the Department, of course,  
18 would not agree to make any contribution, or be made responsi-  
19 ble for any portion of the maintenance.

20 JUDGE CASEY: Alright, we will take all those positions  
21 into consideration when we prepare our initial decision in  
22 this matter.

23 I now declare the record closed in this proceeding.

24 (Whereupon, at 10:59 a.m., the hearing was  
25 concluded.)

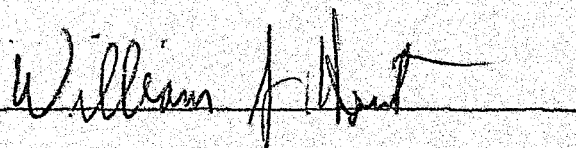
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I hereby certify, as the stenographic reporter,  
that the foregoing proceedings were taken stenographically by  
me, and thereafter reduced to typewriting by me, or under my  
direction; and that this transcript is a true and accurate  
record to the best of my ability.

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William J. Horst