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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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SECRETARY'S OFFICE
Public Utility Commission

Docket No.
C-00018925

Borough of Homewood and Borough of
Big Beaver vs. Penn Central
Transportation Company, Department
of Highways of the Commonwealth
of Pennsylvania, Pennsylvania
Turnpike Commission, Company of
Beaver and Consolidated Rail
Corporation
Petition of Consolidated Rail
Corporation, for an order
appropriating a temporary construction
easement, filed with this Commission
June 1, 1987.

Further hearing

Pages 255 through 293 State Office Building
11th Floor
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222

Wednesday, July 15, 1987

Met, pursuant to notice, at 10:00 A.M.

BEFORE:

JOSEPH MATUSCHAK, Administrative Law Judge

APPEARANCES:

JAMES STEIN, ESQUIRE
1138 6th Penn Center
Philadelphia, PA 19103
(Conrail)

COMMONWEALTH REPORTING COMPANY, INC.
700 Lisburn Road
Camp Hill, Pennsylvania 17011

Camp Hill
(717) 761-7150

Philadelphia
(215) 732-1687

FOLDER

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JUL 28 1987

APPEARANCES (Continued):

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HERBERT G. ZAHN, ESQUIRE
521 Transportation and Safety Building
Harrisburg, PA 17120
(PennDOT)

DAVID L. GROPP, ESQUIRE
P.O. Box 223
Beaver, PA 15009
(Boroughs of Homewood and Big Beaver)

RICHARD HERSKOVITZ, ESQUIRE
P.O. Box 3265
Harrisburg, PA 17120
(Commission Staff)

C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Paul Kaufmann				
By Mr. Stein	258	--	282	--
By Mr. Herskovitz	--	269	--	--
By Mr. Gropp	--	271	--	--
By Mr. Berger	--	275	--	--
Thomas Berger				
By Mr. Stein	288	--	--	--

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

10:00 A.M.

1
2
3 ADMINISTRATIVE LAW JUDGE JOSEPH MATUSCHAK: On the
4 record. This is the time and place for further hearing in
5 the matter of Borough of Homewood and Borough of Big Beaver
6 versus Penn Central Transportation Company, Department of
7 Highways of the Commonwealth of Pennsylvania, Pennsylvania
8 Turn-- Turnpike Commission, County of Beaver and
9 Consolidated Rail Corporation at number C-00018925. This
10 -- This is a further hearing in which -- which was
11 instituted some time ago. I call your attention that
12 this is an examiner -- an examiner case, and you will not
13 have the benefit of my lucid decision -- Initial Decision
14 in this case.

15 Very well. Someone want to make a statement as to
16 the nature of -- of the proceeding in this at this time?

17 (No response.)

18 JUDGE MATUSCHAK: Mr. Herskovitz?

19 MR. HERSKOVITZ: Your Honor, this is a hearing to
20 determine the matters alleged in Conrail's Petition that
21 was filed June 1st, 1987, with the Commission requesting an
22 Order to appropriate a temporary construction easement. I
23 -- I guess some -- some property is needed temporarily
24 for Conrail to construct the new bridge, and we were just
25 here to decide what they need in terms of a temporary

1 easement.

2 JUDGE MATUSCHAK: Very well. I guess, Conrail, you
3 have the burden.

4 MR. STEIN: Yes. We're prepared to go ahead. I'd
5 like to call as my first witness, my only witness, Mr. Paul
6 Kaufmann.

7 JUDGE MATUSCHAK: Do you want to use that map
8 there?

9 MR. STEIN: He will eventually, but we're not --
10 Do you want to tack it up or something?

11 JUDGE MATUSCHAK: Do you want to come down here?
12 Raise your right hand to be sworn.

13 (Whereupon,

14 PAUL KAUFMANN

15 was duly sworn, according to the law, and testified as
16 follows:)

17 JUDGE MATUSCHAK: You may be seated.

18 DIRECT EXAMINATION

19 BY MR. STEIN:

20 Q Mr. Kaufmann, would you state your name and spell it
21 please for the record?

22 A Paul Kaufmann --

23 JUDGE MATUSCHAK: Keep your voices up.

24 BY MR. STEIN:

25 A -- K-a-u-f-m-a-n-n.

1 Q And, by whom are you employed and in what capacity?

2 A I'm employed by Consolidated Rail Corporation as a
3 senior civil engineer in the Design and Construction
4 Department.

5 Q And, how long have you been so employed?

6 A I've been employed by Conrail since 1977. I've had
7 my current position since June of 1987.

8 Q Okay. And, are you familiar with the project that
9 is involved here, the reconstruction of the Homewood
10 Bridge?

11 A Yes, I am.

12 Q Are you authorized to testify on behalf of Conrail
13 today?

14 A Yes, I am.

15 Q Now, what was your prior position before you assumed
16 your current job?

17 A Program Engineer of Structures, also with the Design
18 and Construction Department.

19 Q Okay. Could you explain very briefly what the
20 nature of this project is?

21 A Very briefly, there is an existing reenforced
22 concrete viaduct. We're going to replace that in the same
23 location, so the project would consist of demolishing the
24 existing structure and rebuilding a new viaduct.

25 Q Okay. And, what does it -- What does the viaduct

1 carry, and what is Conrail's involvement?

2 A The viaduct carries vehicular traffic. It crosses
3 Conrail tracks, Pennsylvania Turnpike, creek, some local --
4 crosses a small little valley. It's a viaduct across the
5 valley.

6 Q Okay. And is the road a local road?

7 A Yes, it is.

8 Q Okay. Is this work being done pursuant to an Order
9 of the Public Utility Commission?

10 A Yes, it is.

11 Q Would you explain in general terms your involvement
12 with this project?

13 A My involvement was to take the completed design
14 plans, prepare a bid package by putting together
15 specifications, qualified bidders list, proposal forms and
16 so forth, conducting a pre-bid meeting with proposed
17 contractors, explaining the job to them, answering their
18 questions, issuing addenda that would -- for questions
19 that came up during the bidding process, obtaining the
20 bids, recommending a contractor to Conrail's Purchasing
21 Department, and getting the job under construction.

22 Q I'm not sure whether you testified this. What was
23 your involvement in preparing the specifications for the
24 contractor?

25 A The --

1 Q Were you involved at all?

2 A -- construction specifications were written by our
3 Structures Department. I had some input into them. I
4 wrote the -- what we would call the bidding
5 specifications.

6 Q Okay. So, are you thoroughly familiar with the --

7 A Yes, I am.

8 Q -- requirements? Okay. Have the plans been
9 submitted to and approved by the Public Utility Commission?

10 A Yes, they have.

11 Q Okay. Has Conrail entered into a contract with a
12 contractor for this project?

13 A We had awarded a contract to the R. G. Smith
14 Company, and we were in a position to start construction
15 until we ran into the property access problem.

16 Q All right. We'll get into that a little bit later,
17 the property access problem. Is there any provision in the
18 specifications or in the contract of what the
19 responsibility of the contractor will be if there's any
20 damage to nearby houses?

21 A Yes, there is.

22 Q Could you expand upon that? Do you want to look at
23 your notes?

24 A The contract, itself, has a provision in it which --
25 relating to insurance.

1 Q Would you read that into the record?

2 A Okay. This is section twenty-three of our contract.
3 It states, "Public liability insurance, including
4 contractual liability insurance, with a limit of not less
5 than two million dollars single limit, bodily injury and/or
6 property damage for damages arising out of bodily injuries
7 to or death of all persons in any one occurrence, and for
8 damage to or destruction of property, including the loss of
9 use thereof in any one occurrence."

10 Q Okay. In plain language, does that require the
11 contractor to obtain insurance?

12 A That's correct. We would not award a contract until
13 we had evidence of said insurance from the contractor.

14 Q And, the insurance is meant to cover property damage
15 --

16 A That's correct.

17 Q -- to enforce the contract? Could you also refer
18 to your notes about the -- the specifications, and whether
19 that has any provision for damage to property?

20 A The specifications state, this is in addendum number
21 two to the bidding document...

22 Q You could read that into the record also, if it's...

23 A Okay. "Access to the viaduct south of Water Street
24 for both demolition and reconstruction shall be limited to
25 twenty-five feet outside the limits of the street right of

1 way. All existing buildings shall be protected from
2 damages at all times. The contractor shall submit for the
3 engineer's approval a procedure for protection of the
4 buildings during demolition and construction.

5 All areas used during construction must be restored
6 to their original condition. Any damages caused by the
7 contractor shall be repaired promptly."

8 Q So, in other words, this specification in the bid is
9 what lead -- is related to that contractual requirement?

10 A That is correct.

11 Q Okay. Now, you talked before about an access
12 problem. Could you describe what that problem is?

13 A The...

14 Q You might want to refer to your chart.

15 A The new structure that we're building will have the
16 same limits...

17 MR. STEIN: I wonder if he can -- Is it possible
18 to hold that up somehow, or at least show it to the -- I
19 don't know. Can -- Can you see this?

20 A The new structure will have the same limits as the
21 existing structure does. We don't require any property to
22 build the new structure. However, coming up from the
23 street here, we're going to have to get in from either side
24 to do both demolition and reconstruction.

25 This would be for both -- for men just walking

1 along, and also for construction equipment. There's --
2 This is a viaduct. We'd have to come in, as I say, from
3 the side.

4 Q Could you explain where the house is that the access
5 problem?

6 A This is the house here that's in question, and it...

7 Q The relief that Conrail is requesting is a temporary
8 construction easement. Could you explain what that is and
9 what will be required in this case?

10 A Well, all we're looking for is access over property
11 during the construction. We're not looking to build
12 anything on that.

13 Q Um-hmm. And this is the property belonging to the
14 Bergers?

15 A That's correct.

16 Q Okay. Is there also any requirement, or request,
17 that they vacate the property for a certain amount of time?

18 A It was our suggestion that during the phase when we
19 were doing demolition, right in this area, that the Bergers
20 vacate the -- the house while we're doing the work in that
21 area.

22 Q Okay. And why is that?

23 A You would have a -- a possibility of a stray chunk
24 of concrete, or something, falling down into this addition,
25 which has been built onto the house.

1 Q Um-hmm.

2 A There also would be considerable noise, dirt, dust,
3 things of that nature, while we were working right in this
4 area during demolition.

5 Q So, the vacating requirement's primarily for the
6 benefit of the owners of the house, to spare them from
7 any...

8 A That's correct.

9 Q Okay. Why is it necessary to have access across
10 their property? Is there any other way in that could be
11 used? Why is this the most appropriate access?

12 A No. They own the property from the street along
13 this side, all the way.

14 Q Um-hmm. Can you identify the street names?

15 A It's shown on our drawings as Water Street. I
16 understand that it is actually referred to as Second
17 Street.

18 Q Okay. And, is -- is there also involvement of
19 State Street in there, do you know?

20 A State Street is the road which carries the -- or,
21 the viaduct carries State Street, I should say.

22 Q Okay. And where is their home in relation to the
23 viaduct? I mean, is it -- Okay.

24 A We have a picture here looking this way, which shows
25 the house in question with the addition that has been

1 built.

2 Q Is the house currently located beneath the viaduct?

3 A The house, original house is not. The addition does
4 carry underneath the viaduct.

5 Q Does -- In -- In your observation, does the
6 addition encroach on the right of way beneath the road?

7 A Yes, it does.

8 Q Does any portion of the -- Will any portion of the
9 new construction actually be located on their property?

10 A No, it will not.

11 Q Okay. Is there any reason, in your opinion, to
12 condemn the property and purchase it from the Bergers?

13 A No.

14 Q Is that required for the construction at all?

15 A No.

16 Q Okay. Is there any kind of protection that Conrail
17 will require the contractor to take, any steps that he must
18 take in order to protect the house and the encroachment?

19 A Yes. We would require that he submit to us a -- a
20 demolition plan, which would be prepared by a registered
21 professional engineer, which would include calculations,
22 and so forth, of how they do propose to do demolition in
23 that area. The requirement -- He -- The contractor would
24 be required to build a shield over top of the addition to
25 the house to protect it from falling debris. We are

1 requiring the same type of structure over our -- Conrail's
2 tracks for the portion of the viaduct it crosses, Conrail's
3 tracks to protect our train traffic, so...

4 Q When we talked about the insurance, it sounds like
5 the contractor will be liable for any damage. Why does
6 Conrail, in addition, require this sort of protection?

7 A To -- We -- We feel so safety is one of our prime
8 concerns here. It's just a -- a -- we feel, a proper way
9 to do the job. We're not going to send a contractor out
10 with a carte blanche to do whatever he --

11 Q Um-hmm.

12 A -- would like to.

13 Q Okay. Are there any other access problems that are
14 still unresolved for this project?

15 A No.

16 Q Okay. Do you know whether anyone has approached the
17 Bergers with a request that they execute an agreement for a
18 temporary construction easement?

19 A Yes.

20 Q Do you know what the result has been of that
21 conversation?

22 A They were unable to obtain one.

23 Q Okay. Do you have any opinion or understanding as
24 to which party is responsible for compensation of the
25 homeowners in this case?

1 A Yes.

2 Q And, who is that party?

3 A The Borough.

4 Q And what is that based on?

5 A The -- The PUC ruling.

6 Q Okay. So in other words, any compensation that's
7 ordered, in your understanding, will not be paid by
8 Conrail; is that correct?

9 A That's correct.

10 Q Do you know who initiated the Complaint that lead to
11 the reconstruction of the bridge?

12 A The Borough.

13 Q Okay. Will there be any benefit to Conrail of this
14 reconstruction project?

15 A No.

16 Q Okay. Is -- Apart from this problem with access,
17 is Conrail, in all other respects, ready to execute a
18 contract and have the work begin?

19 A Yes, we are.

20 Q Okay. Because of this delay, will it be possible
21 for Conrail to complete the construction project on the
22 time limit established by the Public Utility Commission?

23 A No, it will not.

24 Q And, why is that?

25 A Just the time that's required to complete the --

1 the work would be -- We would have had to get -- gotten
2 started in -- in May of this year to complete by the end
3 of December of this year.

4 Q Um-hmm. And will you run into problems if there's
5 any delay because of winter weather and difficulty of
6 construction?

7 A Well, now we'd be, even be pushed back into the
8 winter, which takes longer to do this type of work, yes.

9 Q Okay.

10 MR. STEIN: I have no further questions on direct.

11 JUDGE MATUSCHAK: Mr. Herskovitz?

12 CROSS EXAMINATION

13 BY MR. HERSKOVITZ:

14 Q The completion date now is, according to the former
15 -- present PUC Order, is to be in December of 1987?

16 A That's correct.

17 Q And, what date do you think it should be extended to
18 for completion because of this problem?

19 A That would depend on when we get started.

20 Q Okay. Let's -- Let's -- Let's say an Order is
21 issued appropriating this temporary easement September 1st.
22 When would you need -- What completion date would you like
23 to see in the Order for the project.

24 A I would think for us to get geared up again and
25 considering the winter months, that we would probably

1 require a year from the date when we would receive an Order
2 to go ahead, which would put us at the end of August.

3 Q Now, if it wasn't for this problem that we're here
4 today for, Conrail would have already been in the process
5 of reconstructing --

6 A That's correct.

7 Q -- this bridge? And Conrail has not started yet;
8 is that correct?

9 A We have relocated some of the signals with our own
10 forces that was required preparatory to the contractor
11 demolishing the bridge.

12 Q And I believe you stated that you had no other
13 access problems; is that correct?

14 A That's correct.

15 Q There's no other property that has to be
16 appropriated other than this one?

17 A That's correct.

18 Q And the property description that is in your
19 Petition, is that the -- the description of the property
20 you're asking the Commission to appropriate as a temporary
21 easement?

22 A That's correct.

23 MR. HERSKOVITZ: That's all I have.

24 JUDGE MATUSCHAK: May I -- May I direct a question
25 to counsel for Conrail? Has the property owner been

1 notified of this hearing?

2 MR. STEIN: Your Honor...

3 MR. BERGER: I'm Mrs. Berger's son, sir.

4 JUDGE MATUSCHAK: I beg your pardon?

5 MR. BERGER: I'm Mrs. Berger's son.

6 JUDGE MATUSCHAK: I see. All right.

7 MR. STEIN: I guess the answer is yes.

8 JUDGE MATUSCHAK: Mr. Zahn?

9 MR. ZAHN: No questions.

10 MR. BERGER: Pardon me, sir. Is there a couple
11 questions I could ask?

12 JUDGE MATUSCHAK: Mr. Gropp?

13 MR. BERGER: No. I'm Mr. Berger. I'm
14 Mrs. Berger's son.

15 JUDGE MATUSCHAK: Is Mr. Gropp here?

16 MR. STEIN: I think he wants Mr. Gropp to go first.

17 JUDGE MATUSCHAK: Do you have any questions, sir?

18 BY MR. GROPP:

19 Q I think we have to get some contractors straightened
20 out. If you start the contract, how soon after you start
21 are you going to need the thirty-day vacation? Or, how
22 long of a vacation period of the house are you going to
23 need?

24 A The length of it, I had indicated as one month. I
25 think that is an outside period of time.

1 Q You think that is an enlarged period of time? You
2 actually will not need one month?

3 A That's correct. It probably would take somewhere
4 around two weeks.

5 Q Once you start -- know when you can start your
6 contract, how soon will you know when that two week to
7 thirty-day period would have to start?

8 A After we have given a contractor a notice to
9 proceed, we would probably be able to tie that down within
10 about a week or so after the notice to proceed was given.

11 Q There have been easements signed by other
12 individuals, which I believe go into June 1st, 1988? Would
13 those easements be sufficient for you to complete your work
14 in that area, or are you going to need new easements from
15 the other property owners?

16 A Again, that would depend on when we get started. If
17 we could get started in the -- in the time frame that had
18 been indicated a few minutes ago, I think we could be out
19 of that area by the -- by June of 1988.

20 Q If I understand your testimony, then, the
21 encroachment that exists on the right of way, Conrail has
22 no intentions of requiring it to be removed?

23 A No, we do not.

24 Q Can you provide us a copy of your contract and a
25 copy of the specifications that have been previously read?

1 MR. STEIN: I can answer. I'm not sure why that's
2 -- I think we've gotten on the record everything that's
3 relevant. I don't see why that would be required.

4 MR. GROPP: I'd like to have it in case I have to
5 fight about damages somewhere later on on behalf of the two
6 boroughs. I want to know what you have in your contract.
7 The things that you've sent me so far have never included
8 those provisions. I'm told they exist, but I'd like to
9 have them in writing.

10 MR. STEIN: I think we can send you that part of
11 the contract. I don't know why I would be required to send
12 you the entire thing. We would be happy to send you the
13 bits that he's read into the record which deal with that
14 question.

15 BY MR. GROPP:

16 Q You indicate this bridge has no benefit whatsoever
17 to Conrail; is that correct?

18 A That's correct.

19 Q Is this not your main line tracks going between the
20 east coast and Chicago, going underneath this bridge?

21 A One of them, yes.

22 Q Pardon?

23 A One of them, yes.

24 Q So, by not having to have a grade crossing -- not
25 having to stop the train, brake the train and so forth,

1 this doesn't bestow a benefit upon your main line traffic?

2 A If there was a grade crossing there.

3 Q So, elimination of a grade crossing does help the
4 flow of your traffic, does it not?

5 A Not the flow of traffic. We would -- It would
6 benefit us from not having to maintain a grade crossing.

7 Q So it would benefit you?

8 JUDGE MATUSCHAK: Well, I don't know whether that
9 inquiry is relevant at this time. I think we're way past
10 that.

11 MR. GROPP: I think we are too, but he brought it
12 up in the hearing. I just wanted to make sure that it's
13 clear that this is not to the sole benefit of the boroughs.

14 MR. STEIN: The -- Excuse me, if I may? The point
15 of my question was dealing with the reconstruction of the
16 project, not the existence of a grade separation, period,
17 and I think that's what his answers were directed to.

18 MR. GROPP: I'm sorry. I misunderstood you.

19 MR. STEIN: That's okay.

20 JUDGE MATUSCHAK: I think -- I think that -- Does
21 that conclude your...

22 MR. GROPP: That's all the questions I have.

23 JUDGE MATUSCHAK: Is the property owner present?

24 MR. BERGER: I'm the son of the property owner,
25 sir.

1 JUDGE MATUSCHAK: Will you give us your name and
2 address, sir?

3 MR. BERGER: Thomas Berger, 1518 Fourth Avenue...

4 JUDGE MATUSCHAK: Maybe you better pull that chair
5 down and come here closer. Pull the chair with you here.
6 Now, what is your name?

7 MR. BERGER: Thomas Berger.

8 JUDGE MATUSCHAK: And, are you representing the
9 property owner?

10 MR. BERGER: I'm just her son. She has no legal
11 representation at this time.

12 JUDGE MATUSCHAK: And you're the son of the
13 property owner?

14 MR. BERGER: Yes.

15 JUDGE MATUSCHAK: And who is the property owner?

16 MR. BERGER: My mother, Mrs. Ann Berger.

17 JUDGE MATUSCHAK: Do you have any cross examination
18 of this witness?

19 MR. BERGER: Well...

20 JUDGE MATUSCHAK: Any questions that you would
21 inquire?

22 MR. BERGER: Yes. Yes, sir.

23 JUDGE MATUSCHAK: All right. You may ask them.

24 BY MR. BERGER:

25 Q On this temporary easement, on this one-month, it

1 says for one month. Now, it doesn't say anything --
2 anything about any longer, and I'm sure we're all aware
3 that when people start building bridges the trouble they
4 run into with weather and everything else. Now, the
5 extension, past the one month, there's nothing in this
6 easement that says if my mother will be reimbursed for
7 having to move out of their house whatsoever.

8 It just says one month. It doesn't say anything
9 about, "or longer." You did mention something about it
10 would take less time, but I'm sure you people run into
11 problems and it could take more time.

12 JUDGE MATUSCHAK: Sir, you have a copy -- you have
13 a copy of the easement -- a copy of the easement that
14 apparently has been submitted to the property owner; is
15 that correct, attached to the Petition?

16 MR. BERGER: That's correct.

17 JUDGE MATUSCHAK: And, paragraph four states, "It
18 is agreed and understood that I will vacate and not live in
19 my residence on said lands for a period of one month due to
20 safety reasons and for my personal comfort, e.g., to avoid
21 discomfort from noise, vibrations and dust which may, and
22 probably will, be produced and caused during the course of
23 demolition and removal of the existing viaduct bridge
24 presently adjacent to my residence and the reconstruction
25 or construction of the new viaduct-bridge in place thereof.

1 Said one month period of my vacating and not living in my
2 residence shall commence thirty days after receipt of
3 written notice by the undersigned from Conrail or a
4 subcontractor that is necessary for the undersigned to
5 vacate my residence. A copy of said written notice shall
6 also be provided David L..."

7 MR. STEIN: Gropp.

8 JUDGE MATUSCHAK: Craig, was that right?

9 MR. STEIN: Gropp.

10 JUDGE MATUSCHAK: Gropp? G-r-o-o-p? G-r-o-p-p?

11 MR. GROPP: That's correct.

12 JUDGE MATUSCHAK: All right. "This agreement to
13 vacate my residence is predicated and granted upon
14 conditions of the contract by and between Conrail and its
15 contractor shall include," and so forth. Now, the question
16 that's raised by the property owner is, that would Conrail
17 -- would Conrail be willing to amend this easement to
18 provide for the eventuality that the -- the construction
19 in the area of the residence will be concluded within one
20 calendar month. In the event that for some reason the --
21 the demolition or construction there would -- would not be
22 concluded within one calendar month, I imagine when they
23 say one month, they mean one calendar month?

24 MR. STEIN: Right.

25 JUDGE MATUSCHAK: In other words, it's a calendar

1 month?

2 MR. STEIN: That's correct.

3 JUDGE MATUSCHAK: So, in -- in the inquiry seems
4 to some from the property owner is, if the work isn't
5 completed within one calendar month...

6 THE WITNESS: Well, it -- it is our intent to --
7 We're only talking about the -- the demolition in this
8 area. We're not talking about demolition down there.
9 We're not talking about any of the reconstruction. It's
10 our estimate that the demolition of the entire structure
11 will take somewhere around two months.

12 JUDGE MATUSCHAK: Two -- How long?

13 THE WITNESS: Two months.

14 JUDGE MATUSCHAK: Two months?

15 MR. STEIN: For the entire project.

16 THE WITNESS: For the entire demolition, and we're
17 only talking a -- oh, possibly fifteen percent of the
18 demolition in this area, so we felt that one month, as I --
19 as I stated before, was an outside duration to start with.

20 JUDGE MATUSCHAK: Well, suppose -- suppose for
21 un-- some unforeseen reason you can't go -- complete that
22 demolition in the vicinity of the home within -- within
23 one calendar month, or thirty or thirty-one days, the
24 second degree, then, what is the recourse of the property
25 owner? What recourse do you provide in your easement to

1 the property owner? Maybe I ought to direct that to
2 counsel.

3 Are you willing to -- Is -- Is Conrail willing to
4 provide for the eventuality that that demolition in and
5 around their house, for some unforeseen reason, or -- or
6 due to weather or due to act of God, or some other reason
7 that the work isn't completed?

8 MR. STEIN: I would have no objection to it, and I
9 don't see why we couldn't -- The -- This agreement was
10 drafted by Mr. Gropp, and if he will agree, I have no
11 objection, from Conrail's point of view, of adding that if
12 there is any reason that the vacation of the premises must
13 exist -- or, must continue for more than one month, that
14 the -- whatever agreement is worked out with the homeowner
15 will just continue for that additional period.

16 JUDGE MATUSCHAK: You -- You would be willing to
17 try to negotiate some amendment to the proposed easement to
18 take care of that eventuality?

19 MR. STEIN: I have no objection to it.

20 JUDGE MATUSCHAK: Do you have any other questions,
21 sir?

22 MR. BERGER: You said that the de-- demolition
23 would be about fifteen percent on my mother's property.
24 Well...

25 MR. STEIN: Excuse me?

1 MR. BERGER: Fifteen percent, he said, about the
2 demolition of the bridge is only fif-- my mother's
3 property is only fifteen percent of that. Well, about
4 forty, fifty feet down below my mother's house, there's
5 garage there. That's very close to the bridge too.

6 My mother's property probably takes about half of
7 that -- half of that prop-- half of the bridge, from the
8 start of the bridge -- I don't know what he's talking
9 about, fifteen percent.

10 JUDGE MATUSCHAK: Well, let me ask the witness
11 here. On the pictures you have presented here, there does
12 seem to be another building adjacent -- adjacent to the
13 dwelling.

14 THE WITNESS: This is a garage.

15 JUDGE MATUSCHAK: That's a garage?

16 THE WITNESS: That's correct.

17 JUDGE MATUSCHAK: The inquiry that the -- that the
18 -- that the son of the property owner has is, what
19 protection are you going to offer that garage?

20 THE WITNESS: We would offer the same protection
21 that we would the house. However, to our knowledge, no one
22 lives in the garage.

23 BY MR. BERGER:

24 Q Well, if something falls on it, you still have to
25 fix it, I mean, just like you do the house.

1 A Which we're willing to do.

2 Q But you said fifteen percent. That's...

3 A I meant in the area that would require the house to
4 be vacated, where someone is actually inhabiting a house is
5 only two spans.

6 Q Okay.

7 JUDGE MATUSCHAK: Anything further? Any other
8 questions you have?

9 MR. BERGER: Well, I have only one -- one other
10 question.

11 JUDGE MATUSCHAK: We'll allow -- We'll allow you
12 to make a statement.

13 MR. BERGER: I just have one question.

14 JUDGE MATUSCHAK: All right.

15 BY MR. BERGER:

16 Q Since Conrail's so adamant in not buying the
17 property, which my mother would really like to do, she
18 would like to sell the property, I would like to ask the
19 safety precautions that you're building, the structure, so
20 to speak, up over the house and up over the railroad, do
21 you have any idea of the estimated cost of that? By not
22 buying the property, you have to build these safety
23 precautions, and by buying the property -- Is there -- Is
24 there a money value there that I can put my finger on, or
25 I'm sure you have a -- You stated that you had all the --

1 You drew up all the plans and give out all the bids?

2 A I don't have a -- a -- a number that I could give
3 you for the safety precautions there. I only have a number
4 for the entire demolition.

5 Q It's total project you have?

6 A Well, I -- For the demolition phase, I have a
7 number, and I also have a number for the entire project,
8 but not for building a shield over.

9 Q That's not broken down in the demolition --

10 A No, it's not.

11 Q -- contract?

12 MR. BERGER: That's all the questions.

13 JUDGE MATUSCHAK: Thank you.

14 MR. STEIN: Excuse me. May I ask a couple
15 questions --

16 JUDGE MATUSCHAK: Yes.

17 MR. STEIN: -- on redirect? No, no, to
18 Mr. Kaufmann.

19 REDIRECT EXAMINATION

20 BY MR. STEIN:

21 Q Can you explain why it would be inadvisable for
22 Conrail to begin this project before all the right of way
23 is -- or, access is granted? Have you ever had problems
24 on previous jobs where a contractor has started because --
25 and part of it is clear, but there are still some holdouts?

1 A Yes, we have had problems with that. It can run
2 into a tremendously escalated cost due to the contractor
3 not having an efficient operation, getting started, having
4 to stop, equipment just sitting idle, so forth and so on.
5 We would never recommend starting a -- a project until all
6 of the right of way was clear.

7 Q And, is that because if there is a delay in working
8 out this particular question, if construction is started,
9 it could delay the entire completion of the project, which
10 would substantially add to the costs?

11 A You're correct. The -- The -- The additional
12 costs that we -- we fear are not due to just a later
13 completion date, but rather the fact you have to shut a
14 contractor down, or prevent him from working in an area.
15 He can't use the -- efficiently utilize his equipment as
16 planned, his supervision, so forth and so on.

17 Q In response to Mr. Herskovitz's question, if the
18 Order were entered in September, September 1st of '87, you
19 thought that we might be able to complete the project by
20 September 1st of '88, which means that the demolition and
21 reconstruction project would take about a year. Would your
22 answer be the same no matter what time the Order is
23 entered, or does it depend -- Say, the Order is entered in
24 the middle of, say, the winter construction -- winter
25 season in December? Would that affect the completion date?

1 A Ah...

2 Q Can you answer that question?

3 A I can -- I can only answer to some of the potential
4 problems you have. The longer we wait, we're running into
5 the possibility now of having to rebid the project. Just
6 that the contractors price will change, and also the
7 concrete work in the wintertime is a -- is a heat
8 protection and so forth is a slow operation. We can't pave
9 the bridge in the wintertime at all. The plans would be
10 shut down, so there's many factors in it.

11 Q So there are many variables, it's not clear that it
12 would take a year after the Order was entered?

13 A That's correct.

14 Q Okay. And in response to the judge's question about
15 a calendar month, I believe that what you meant is thirty
16 or thirty-one days, not necessarily like the month of April
17 or the month of June; is that correct? I mean do you --
18 did you have anything partic...

19 JUDGE MATUSCHAK: Well, I didn't mean -- I didn't
20 mean to -- from the first to the thirtieth of the month.
21 I meant --

22 MR. STEIN: A thirty day...

23 JUDGE MATUSCHAK: -- a figure of around thirty,
24 thirty-one days, whatever.

25 MR. STEIN: Consecutive period, okay. And that's

1 what you had in mind also?

2 A That's correct. It would not be a shifted between
3 -- with a gap in between them. It would be a consecutive
4 period.

5 MR. STEIN: Okay. I have no further questions.

6 JUDGE MATUSCHAK: Anything further?

7 MR. HERSKOVITZ: I -- I would just like to make a
8 short statement at this point maybe to clarify matters.
9 It's -- It's my understanding, and I think it -- it's the
10 understanding of the parties that because an agreement
11 couldn't be reached with Ann Berger, that's why we are here
12 today, so that the Commission could appropriate the
13 property, so what is in that agreement was not agreed to,
14 so they -- so --

15 JUDGE MATUSCHAK: I understand...

16 MR. HERSKOVITZ: -- Conrail had to come to the
17 Commission to get us to appropriate the property, so the
18 terms of that agreement are not binding on anybody.

19 JUDGE MATUSCHAK: I -- I understand. I understand
20 that -- that it -- it could be noted by the Commission in
21 formulating its easement to be recorded in the courthouse
22 is what the terms of that easement are, and -- and they --
23 somebody -- somebody's going to have to determine what the
24 terms are, and they proposed this to be the terms of the
25 easement so the -- so the Commission, in recording the

1 easement, would have to -- have to know what the terms
2 are, what the -- Not what the terms are, but what the
3 proposal of the easement are as proposed by Conrail with --
4 evidently this is the -- their proposal that the easement
5 contain this language and these provisions.

6 I -- I might -- I might suggest this though, that
7 if Conrail -- if Conrail having -- having heard from the
8 property owner through her -- through her son may be able
9 to negotiate an agreement. That, of course, is the purpose
10 of this proceeding would be -- would be mooted, and --
11 and in that event, Conrail should inform the Commission so
12 that -- so that an Order may not have to be issued.

13 MR. HERSKOVITZ: Yes, it maybe that an agreement
14 can be reached sooner than an Order can be entered.

15 JUDGE MATUSCHAK: Well -- Well, now that -- now
16 that Conrail has heard the expression made by the property
17 owner, they may be able to work something out. I don't
18 know, but counsel for Conrail has indicated that they may
19 be able to make some modification to the -- to the terms
20 of the easement as proposed to the property owner, which
21 may -- may or may not satisfy the property owner.

22 Will you agree, sir, that within -- We ought to
23 put a time limit within fifteen days, twenty days from the
24 date of this hearing, that you advise the Commission as to
25 whether not an agreement could be -- could be reached with

1 the property owner in regard to the temporary easement,
2 this request of this matter?

3 MR. STEIN: I don't know whether Mr. Berger has...

4 JUDGE MATUSCHAK: Mr. Berger -- Mr. Berger, would
5 you -- would you be interested in meeting with Conrail to
6 see if -- if a -- a -- a satisfactory easement could be
7 negotiated between your mother and...

8 MR. BERGER: I guess I have no problem with that,
9 sir. We were ready to meet in January of this year. We
10 never got the easement until fifteen days prior to the
11 construction there from Conrail, and we're not the one
12 dragging our feet. We're willing to try to do anything.
13 We're not trying to hold the bridge up, sir. Believe me,
14 that's not our intentions.

15 JUDGE MATUSCHAK: Well...

16 MR. BERGER: All my mother wants is what's due to
17 her. That's all she wants.

18 JUDGE MATUSCHAK: We'll -- We'll suggest that the
19 parties -- the parties report -- that Conrail report
20 whether the parties have been able to -- to modify the
21 agreement to the satisfaction of the property owner within
22 fifteen days from the date of this hearing.

23 MR. STEIN: If -- If I may, I'd like to direct
24 some questions to Mr. Berger, just to clarify some points.

25

DIRECT EXAMINATION

1
2 BY MR. STEIN:

3 Q First of all, Mr. Berger, do you have your mother's
4 authority to agree to changes in this, or...

5 JUDGE MATUSCHAK: Let me ask -- Let me ask this
6 question. Probably I should have asked it before. Are you
7 authorized by your mother to represent her at this hearing?

8 THE WITNESS: At this time, yeah. We have no legal
9 -- We have no legal -- Yes.

10 JUDGE MATUSCHAK: At appear at this hearing?

11 THE WITNESS: Yes.

12 JUDGE MATUSCHAK: Okay.

13 BY MR. STEIN:

14 Q Do you know whether she has any other objection
15 besides the question you mentioned before about what
16 happens if the vacating period is longer than one month?
17 Is that her only objection?

18 A No. Her -- Well, her first wants are, she would
19 like to sell the property. She has a daughter in
20 California.

21 JUDGE MATUSCHAK: Well, I don't think this -- I
22 don't -- I don't think we're going to get into that. You
23 -- You...

24 MR. STEIN: Right.

25 THE WITNESS: Well, you asked me, I'm telling you.

1 JUDGE MATUSCHAK: Well, I understand that, but I
2 don't think that -- I don't think the question was proper.

3 THE WITNESS: Other than that...

4 JUDGE MATUSCHAK: You -- You -- Conrail and the
5 property owner can see if they can renegotiate the terms of
6 the agreement. If they can, they can. If they can't, they
7 can't.

8 Then, if they can't, then we're -- we -- The
9 process will proceed. If they can't, then, Conrail should
10 advise the Commission within fifteen days, and then the
11 Commission can make the appropriate Order. Anything
12 further with this witness?

13 MR. STEIN: I have nothing.

14 JUDGE MATUSCHAK: Thank you.

15 (Witness excused.)

16 MR. HERSKOVITZ: Your Honor, may I ask counsel for
17 Conrail, just to again clarify the record. Is Con--
18 Conrail formally requesting an extension of time of the
19 completion date of this project?

20 MR. STEIN: Yes.

21 MR. HERSKOVITZ: And...

22 MR. STEIN: However, I don't know what the period
23 of extension will be until we either work out an agreement
24 with the Bergers, or an Order is entered by the Commission.

25 JUDGE MATUSCHAK: Well, of course, the Commission

1 can't -- The Commission may want -- may want to -- may
2 want to know at the time that they make the Order in this
3 matter as to what the time extension is. Can you -- Can
4 you put it -- time extension from the time that the Order
5 is issued, or some...

6 MR. STEIN: No. That was what I was aiming at in
7 my questions of this witness was that he can't fix an exact
8 time because it will depend on the time of year that the
9 project begins. If it began in April or May, it could be
10 completed by December. If it begins in November or
11 December, it might be a longer period, and I prefer to, if
12 necessary, file a Petition for an extension after the Order
13 is entered, because at that point, we'll have a clearer
14 idea of whether the contract needs to be rebid, or whether
15 we're going to have construction problems. It -- It's
16 impossible for us to say right now.

17 MR. HERSKOVITZ: So then -- So, then, you do not
18 want the Commission to order, at this time, an extension of
19 time? It's your proposal that you will file a Petition
20 once you --

21 MR. STEIN: Yes.

22 MR. HERSKOVITZ: -- discover what scope...

23 MR. STEIN: Right. It is clear now that an
24 extension will be necessary, but I'm not formally
25 requesting it now, because I don't have the information.

1 JUDGE MATUSCHAK: Does that satisfy you, Mr. --

2 MR. HERSKOVITZ: Yes.

3 JUDGE MATUSCHAK: -- Very well. Is there any
4 other testimony to be offered? Mr. Herskovitz, do you have
5 any staff testimony to offer?

6 MR. HERSKOVITZ: No, Your Honor.

7 JUDGE MATUSCHAK: Mr. Zahn, do you have any
8 testimony to offer?

9 MR. ZAHN: No, sir.

10 JUDGE MATUSCHAK: Mr. Gropp, do you have any
11 testimony to offer?

12 MR. GROPP: None.

13 JUDGE MATUSCHAK: Any briefs to be filed in this
14 matter? Do the parties request the matter be submitted to
15 the Commission on the record?

16 MR. ZAHN: Yes.

17 MR. STEIN: With the proviso of our reporting back
18 to you in fifteen days.

19 JUDGE MATUSCHAK: Very well. The matter will be
20 submitted to the Commission on the record with the
21 understanding that -- that Conrail will inform the
22 Commission within fifteen days whether or not it has been
23 able to...

24 MR. ZAHN: Why do you need a date to complete? Why
25 not a month, or eighteen months, from the time the

1 Commission orders...

2 MR. STEIN: Does that sound right to you?

3 (Discussion between Mr. Stein and Mr. Kaufmann.)

4 MR. STEIN: I think we're just going to wait. He's
5 more comfortable with that.

6 JUDGE MATUSCHAK: Anything further?

7 MR. ZAHN: No, sir. Thank you, Your Honor.

8 JUDGE MATUSCHAK: Conrail, then -- Conrail, then,
9 inform the Commission within fifteen days from the date
10 hereof whether or not they've been able to renegotiate the
11 terms of the easement with the property owner.

12 MR. STEIN: Yes, we will, Your Honor.

13 JUDGE MATUSCHAK: So that -- So that the
14 Commission may know whether or not it's necessary to
15 proceed with this Petition. Thank you.

16 (Whereupon, at approximately 10:45 the hearing in the above
17 matter was concluded.)

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C E R T I F I C A T E

1
2 I hereby certify, as the stenographic reporter, that
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