

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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RE: RAIL CROSSINGS :
INVESTIGATION OF STATE : NO: I-2019-3012769
ROUTE SR0268 & SR0068 :

* * *

RECEIVED

JAN 16 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Further Telephonic Hearing

Pages 46 through 82

December 30, 2020
Commencing at 10:00 a.m.

BEFORE:

Mary Long, Administrative Law Judge

REPORTED BY:

LISA M. COOPER, COURT REPORTER
APPEARING REMOTELY FROM DEPTFORD, NEW JERSEY

* * *

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REMOTE APPEARANCES:

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* * *

ALSO PRESENT:

Ronald Hull
William and Kay Barnhart
Ann Marie Sherwin
Frederick DiCriscio

1 REPORTED REMOTELY FROM GLOUCESTER COUNTY, NEW JERSEY

2 * * *

3 JUDGE LONG: We are now on the record.
4 This proceeding today is date set by the
5 commission for a further prehearing
6 conference regarding the investigation upon
7 the Commission's motion into matters
8 pertaining to the safety of the traveling
9 public and disposition of the crossing where
10 State Route SR0268 crosses over a railroad
11 tunnel formally used by Bessemer and Lake
12 Erie Railroad in Fairview Township, Butler
13 County and where State Route SR0068 formally
14 crosses below grade, the track of Bessemer
15 and Lake Erie Rairoad in Bradys Bend
16 Township, Armstrong County, docketed at
17 Commission Docket number I-2019-312769.

18 I'm Administrative Law Judge Mary Long
19 and I've been assigned to preside over this
20 matter and render a recommended decision.
21 Today is Wednesday, December 30th, 2020.
22 This conference is being conducted remotely.
23 I want to remind everyone who is on the line
24 to please identify yourself before speaking
25 so that the court reporter can properly

1 identify you for the transcript.

2 I'm now going to ask lead council for
3 each party to introduce themselves and to
4 spell their name and to also introduce any
5 co-counsel, counsel or any other
6 representatives who are with them today.

7 With that I'm going to begin with Ms. Rost at
8 the Bureau of Investigation and Enforcement.

9 MS. ROST: Good morning, Your Honor. My
10 name is Kayla Rost, R-O-S-T, as in Tom, with
11 the Bureau of Investigation and Enforcement.
12 I have on the line with me today Ron Hull.
13 I'm not sure if that most recent buzz in was
14 Scott DiCriscio as well, but I'll let Mr.
15 Hull spell his last name.

16 JUDGE LONG: All right. Go ahead, Mr.
17 Hull.

18 MR. HULL: It's Ronald J. Hull, H-U-L-L.

19 JUDGE LONG: Thank you. And Mr.
20 Dicriscio, do we have you with us?

21 MR. DICRISCIO: Yes, Your Honor. My
22 name is Frederick DiCriscio. That is
23 F-R-E-D-E-R-I-C-K. Last D-I, capital
24 C-,R-I-S-C-I-O.

25 JUDGE LONG: Thank you. And for the

1 Department of Pennsylvania Department of
2 Transportation, Ms. Brown-Sweeney.

3 MS. BROWN-SWEENEY: Good morning.
4 Jennifer Brown-Sweeney. Brown, like the
5 color, hyphen S-W-E-E-N-E-Y. I also have
6 with me an attorney in our office, who is
7 joining us today just in a learning capacity.
8 And his name is Stephen Howard. Stephen, if
9 you want to spell your last name.

10 MR. HOWARD: It's H-O-W-A-R-D.

11 JUDGE LONG: Thank you. And Mr. Steidle
12 for the Railroad.

13 MR. STEIDLE: Good morning, Your Honor.
14 John, Middle initial M, as in Michael,
15 Steidle, S-T-E-I-D-L-E, on behalf of Bessemer
16 Lake Erie Railroad.

17 JUDGE LONG: Thank you. And Mr.
18 Marshall.

19 MR. MARSHALL: Good morning. This is
20 Matthew Marshall. M-A-T-T-H-E-W. Marshall
21 is spelled M-A-R-S-H-A-L-L. I am counsel for
22 Fairview Township. And I have nobody with me
23 this morning.

24 JUDGE LONG: Okay. Thank you. Ms.
25 Sherwin.

1 MS. SHERWIN: Ann Marie Sherwin,
2 S-H-E-R-W-I-N. And I'm a landowner.

3 JUDGE LONG: Thank you. And Mr. and
4 Mrs. Barnhart.

5 MS. BARNHART: Yes. William,
6 W-I-L-L-I-A-M, and Kay, K-A-Y, Barnhart,
7 B-A-R-N-H-A-R-T. Landowners.

8 JUDGE LONG: Okay. And is there anybody
9 else on the line who has not yet been
10 identified? Okay. No one. All right. When
11 last we spoke we started talking about
12 whether the parties would be able to reach
13 some sort of an agreement. Our primary focus
14 is on the crossing that involves the tunnel
15 in Fairview Township, Butler County.

16 Ms. Rost, have the parties had any sort
17 of discussion and reached any kind of an
18 agreement for an engineering study at that
19 tunnel?

20 MS. ROST: Your Honor, this is Kayla
21 Rost. The attorneys had a telephonic meeting
22 on December 15th. While we did have a very,
23 I would say, well, long hearing, the only
24 agreement was that the parties have access
25 to Microsoft Teams to have an evidentiary

1 hearing, but we could not reach an agreement
2 on who should conduct and/or pay for the
3 engineering study.

4 JUDGE LONG: Okay. All right. So
5 Mr. Steidle, I take it that the Railroad,
6 based on the attachments you sent in an
7 e-mail, is taking the position it's not
8 a concerned party. Is that fair to say?

9 MR. STEIDLE: That's accurate, Your
10 Honor. But I would like to continue -- I
11 didn't identify myself. John Steidle on
12 behalf of the Railroad, just for the court
13 reporter. Can I make an additional
14 statement?

15 JUDGE LONG: Go right ahead.

16 MR. STEIDLE: So, just briefly, it's
17 been said on the record, but I want to make
18 a record. From a service standpoint, by
19 order dated January 9th, 2001 and January
20 12th, 2001, the B & LE received permission
21 from the Surface Transportation Board as to
22 discontinuing and abandoning service. And
23 shortly thereafter, in May of 2001, B & LE
24 made an application to the PUC for approval
25 to abolish 28 crossings in the subject

1 tunnel. That's why we're here today.

2 The tunnel is located at MPWA42.09 and
3 it's located at State Route 268. Now, by
4 order dated April 30th, 2002, the PUC
5 approved the abolishment of the 27 crossings,
6 but left the status of the tunnel for future
7 secretarial letters. And, again -- or formal
8 hearing. And I just want to make a point
9 that, you know, at that point in time, as
10 early as 2001, that B & LE did not have --
11 did not require, nor did they have any
12 service through the tunnel.

13 Now, from an ownership standpoint, by
14 Quickclaim Deed dated October 24th, 2002,
15 the B & LE sold a total of 394 acres to the
16 West Allegheny Landowners Association. And
17 that Deed was sent to everybody as Exhibit A.
18 And of course the tunnel at issue is included
19 in that parcel.

20 Now, subsequently it appears that the
21 WALA, the Western Allegheny Landowners
22 Association, subdivided the 394 acre parcel
23 into smaller parcels and then they sold those
24 parcels to various individual landowners.
25 Now, from an ownership standpoint, in

1 summary, the B & LE had not had service
2 through the tunnel in over 20 years and then
3 two parties moved from ownership for the past
4 18 years.

5 Now, notwithstanding the PUC's broad
6 discretion, we submit that the code requires,
7 and you just mentioned earlier, that the
8 determination of concerned party status be
9 prior to the assessment of any cost. Now, at
10 the same time, without waiving any rights or
11 status in that regard, I would like to take
12 this opportunity just to make a few quick
13 points.

14 I direct your attention to Exhibits C
15 and D, and that includes an overview of the
16 parcels that contain the tunnel. C is an
17 outline of the individual parcels. And D is
18 a photograph of the collapsed portion of
19 tunnel D -- Exhibit-D, excuse me. Now, it's
20 clear, at least from my perspective, or our
21 perspective, that the area of concern where
22 there was a collapse was like 380 feet from
23 the road.

24 And that the issue of public safety to
25 the traveling public of course is paramount,

1 but from our perspective, the traveling
2 public is not at risk with respect to State
3 Route 268. And we firmly believe that an
4 engineering study, with respect to that
5 issue, will be -- will quickly and
6 efficiently come to that conclusion. The
7 only indication -- at this point the only
8 indication of collapse is over private land.

9 And from the Railroad's perspective, we
10 have not owned this property for over 18
11 years, nor have we had any control of what
12 occurred aboveground during that period of
13 time. We don't know if there's been any
14 external activities above the ground on the
15 surface that have contributed to that
16 collapse.

17 Nor would we have any duty or
18 obligation to prevent it, as, again, it's
19 private land. But in the interest of
20 compromising, without waiver of any rights as
21 to the final allocation of cost, the railroad
22 is open to sharing into -- sharing into the
23 cost of an engineering study just to confirm
24 that the traveling public is not at risk with
25 respect to 68. That's all. Thank you.

1 JUDGE LONG: Okay. Thank you. Does
2 anybody else have any comments they'd like to
3 make to Mr. Steidle's argument? Who's going
4 first? Ms. Rost?

5 MS. ROST: Sure, I'll go. Your Honor,
6 the railroad is an interested party, because
7 from the Commission's perspective, the
8 Railroad had maintenance responsibilities of
9 the tunnel from that prior case that
10 Mr. Steidle just discussed. Furthermore, I
11 think if you look at case Docket A-00116297,
12 a similar situation, where a tunnel was
13 impacted potentially collapsed, but the
14 Railroad sold the property thereafter saying
15 hey, you know, we don't have any interest or
16 any rights and the Commission said, no, it's
17 still your tunnel. You're still responsible
18 for it.

19 And so afterwards it does not impact
20 your Commission ordered ability, or I guess
21 say directive, to maintain and deal with the
22 tunnel. From the Commission's standpoint,
23 the tunnel is still the Railroad's
24 responsibility in accordance with that order.
25 The April 30th, 2002 order that Mr. Steidle

1 previously mentioned. Thank you.

2 JUDGE LONG: Thank you. Ms.

3 Brown-Sweeney, you had a comment?

4 MS. BROWN-SWEENEY: I think Ms. Rost
5 basically summarized my comments as well. So
6 I would concur with her assessment.

7 JUDGE LONG: Okay. Mr. Marshall, did
8 you have anything to add?

9 MR. MARSHALL: Nothing to add, Your
10 Honor.

11 JUDGE LONG: All right. Thank you. All
12 right. Well, from our perspective, the
13 Commission's order instituting the
14 investigation made the Railroad a party to
15 the case. And I understand that the Railroad
16 wants to be able to make an argument that it
17 shouldn't be held responsible, and it is --
18 it's welcome to do that. For the time being
19 the Railroad remains a party to the case
20 until I get a Motion to Dismiss saying that
21 it should not be a party to the case. And,
22 of course, any motion should include an
23 analysis of case law.

24 As I said, I appreciate the Railroad's
25 willingness to at least participate in some

1 kind of a study to determine the safety and
2 condition of the tunnel. And I guess it's
3 fair to say the Railroad reserves the right
4 to argue about who should bear the cost
5 incurred at a later date. Is that fair to
6 say, Mr. Steidle?

7 MR. STEIDLE: That's fair, Your Honor,
8 yes. Can I make one -- ask one last question
9 at this time, or do you want me to wait?

10 JUDGE LONG: Go ahead. Ask your
11 question.

12 MR. STEIDLE: Kayla mentioned a previous
13 case number. Can you repeat that for me?

14 MS. ROST:

15 JUDGE LONG: Ms. Rost, could you please
16 provide the docket number for the case you
17 were referring to?

18 MS. ROST: The Docket for the case is
19 A-00116297.

20 MR. STEIDLE: Thank you.

21 MS. ROST: It's under a separate docket.
22 There's two dockets. That's the main one.
23 The other one is C-00981956.

24 MR. STEIDLE: Thank you very kindly.

25 JUDGE LONG: All right. Okay. Here is

1 what I would like to suggest. I am going to
2 take a page out of Judge Thunderdale's book
3 in a -- an investigation she handled a couple
4 years ago. And what she ordered is that
5 PennDOT, I & E and the Railroad are to
6 schedule a mutually agreeable date when all
7 three parties can be present with their
8 engineers and at which time the tunnel can be
9 inspected simultaneously.

10 Each engineer shall prepare a report
11 regarding the current condition of the
12 structure and include an engineer's
13 professional opinion about the current
14 integrity of the bridge structure. At that
15 point she scheduled a further status
16 conference.

17 Now, I could certainly -- I'm inclined
18 to enter a similar order, which would have
19 your engineer studies done somewhere about
20 April 12th, which would permit us to maintain
21 the litigation schedule that I & E had
22 suggested in a prior -- prior prehearing
23 conference memo, which would have direct
24 testimony by May 3rd.

25 Rebuttal on June 3rd. And then

1 evidentiary hearing in June. So I guess my
2 question is, does it make sense to go ahead
3 with the litigation schedule and the
4 deadlines for the concurrent engineering
5 reports, or would it make more sense to have
6 a further prehearing conference when those
7 reports are finished? Ms. Rost, we'll start
8 with you.

9 MS. ROST: Sure. This is Kayla Rost.
10 From I & E's perspective, Mr. Hull, who would
11 be the engineer completing the suggested
12 study, or report, is not in the best, I want
13 to say, capacity as a bridge inspector, or I
14 should say as a bridge engineer to review
15 a tunnel. Furthermore, he -- he would not be
16 able to safely access the tunnel since we
17 don't know the condition of it.

18 And I do not believe that the Rail
19 safety section of tests would be in the best
20 position to complete said report and provide
21 an engineering certified opinion on the
22 tunnel. With that said, I honestly cannot
23 provide a really good response to keeping the
24 litigation schedule. I do think it would
25 probably be beneficial for all the parties if

1 we did postpone it by a month or two, just so
2 we can figure out the engineering report
3 issue. Thank you.

4 JUDGE LONG: Okay. Does anybody else
5 have any other comments?

6 MS. BROWN-SWEENEY: Yes. This is Jen
7 Brown-Sweeney with PennDOT. We have a
8 similar situation. Part of the reason that
9 we have not agreed to take on this study,
10 even at our initial cost and expense and
11 fight about cost later, is because we don't
12 have the expertise in house for a tunnel. So
13 we would actually have to hire a consultant
14 to even attend this meeting to do a study.

15 And I guess that's -- that's our issue
16 with the study in general, is that we just
17 don't have anybody that -- that could conduct
18 the study. And, you know, however long it
19 would take to hire a consultant to have that
20 consultant, you know, work us into their
21 schedule before we could do it. And
22 especially not knowing the condition to
23 enter. I don't know if there's going to need
24 to be a study on the structural component to
25 even do the engineering study in the first

1 place. So that's our concern as well.

2 JUDGE LONG: Well, have you done
3 anything to at least do some preliminary name
4 gathering? I mean, I can -- if the Railroad
5 does a report on the tunnel, and from what
6 you're saying you don't even have anybody
7 that's qualified to review that report, so
8 how am I supposed to make a record with that?

9 MS. BROWN-SWEENEY: I actually -- I have
10 -- I've had multiple conversations with our
11 district staff at all different levels.
12 They've gone out, they've taken pictures for
13 me so that I could, you know, have a better
14 idea of what we were dealing with. We kind
15 of brainstormed different ways to handle it.

16 We can't hire -- we can't even hire a
17 consultant without an order from the
18 Commission, because it's outside of our
19 normal course of action. So without an order
20 from the PUC, we can't even hire a consultant
21 to go take a look. The guys that have gone
22 out there to look have admitted that they
23 just don't have the type of expertise. They
24 don't even know what it is that they're
25 looking at and they feel unsafe to enter.

1 JUDGE LONG: Okay. I have to say I'm a
2 little astonished that we have State agencies
3 that are responsible for tunnels but they
4 don't have any personnel who know anything
5 about tunnels. But we'll set that issue
6 aside for a minute. Mr. Steidle, what --
7 what is the railroad willing and able to do
8 to -- I mean, we have to start somewhere.

9 MR. STEIDLE: I understand. I wanted to
10 make a statement. Or ask a question,
11 actually. And if -- this is just my own
12 opinions with talking with my client and when
13 we -- I think we actually addressed this in
14 our -- I addressed this in our conversation
15 last week amongst counsel. And I'm not
16 trying to split hairs, because I'm just
17 trying to put everything on the table so
18 everybody has a perspective so we can get to
19 an engineering study.

20 But the tunnel itself, it looks to me,
21 by my calculations, you know, 700 feet long.
22 And the issue with respect to the traveling
23 public, and, again, I'm not trying to split
24 hairs or cause issues right now, but is that
25 only over 268? You know, what -- what the

1 status -- what the status of the tunnel is
2 with respect to 268 is a lot -- is a lot
3 smaller than what the status of the tunnel is
4 over the 700 foot area.

5 If there was an issue with the -- again,
6 this is just a non engineer professional
7 speaking. If there is an issue with respect
8 to the risk to the traveling public on --
9 with respect to 268, then the six is a lot
10 smaller than the six to fill the whole
11 tunnel. That's probably not the right
12 terminology.

13 JUDGE LONG: Right.

14 MR. STEIDLE: But, like, it -- is the --
15 does the investigation only concern the risk
16 to the traveling public with respect to 268,
17 or does the investigation concern the whole
18 -- the entire 700 foot of that tunnel?
19 Because it looks like there's an issue with
20 respect to a collapse over private land
21 that's not impacting 268. And when I spoke
22 to my client with respect to like an
23 engineering study, I asked, you know, is that
24 something that we do internally if needed.
25 Or forward or whatever.

1 And I was told that we would probably
2 hire -- we would probably hire an outside
3 engineer. Only because that's what you do in
4 that -- you know, you want to get an outside
5 opinion. Because one of the other things
6 that I brought up in our discussion earlier
7 where -- if 268 was impacted, okay, then, you
8 know -- and this is, again, a non engineering
9 opinion, you know, you block off both ends
10 and then you fill in the tunnel underneath
11 the road.

12 Well, doing that for 50 foot is
13 different than doing it for 700 foot. So any
14 investigation with respect to hiring an
15 engineer, you know, what is the scope of
16 that -- that engineer, if we hired somebody
17 and we then split the cost, the engineer
18 would want to know what the scope of his
19 investigation is and what he needed to report
20 on. And I'm -- I'm unclear on that right
21 now.

22 JUDGE LONG: Well, and I may be
23 perfectly honest with you. I think that
24 those are all good questions that need to be
25 answered. You know, the Commission's order,

1 in terms of the scope of the investigation is
2 pretty broad. I'm just trying to come up
3 with a sensible schedule for getting done
4 what needs to be done in order to answer the
5 questions and figured, you know, eventually
6 we're going to get to who's going to pay
7 for it.

8 But, you know, I'm having a hard time
9 figuring out where we should even start. And
10 it seems to me like a good place to start is
11 for at least you folks to -- to at least do
12 enough of an investigation to identify where
13 -- where work needs to start. And -- you
14 know.

15 And I think at least that level of
16 report we -- we can order that now and, you
17 know, where you're going to go out, you're
18 going to -- maybe you don't need to go in the
19 tunnel. I don't know. That's an engineering
20 question. But I think we need to determine
21 the integrity of Route 268.

22 We need to determine, you know, what is
23 the crossing and what is not the crossing.
24 So what gets abolished, what doesn't get
25 abolished. You know, are we talking about

1 filling in potentially 700 feet of tunnel, or
2 do we only need to concern ourselves with a
3 portion of the tunnel that's underneath Route
4 268? I don't know the answer to any of those
5 questions.

6 But it seems like we need to at least
7 start -- we need to at least start there.

8 So --

9 MS. SHERWIN: Your Honor.

10 JUDGE LONG: Yes.

11 MS. SHERWIN: This is Ann Marie Sherwin.
12 Landowner. Whenever we were purchasing the
13 property off of Bessemer, at those meetings
14 they had stated to us that the overpass and
15 the tunnel was their responsibility. They
16 were to take down the overpasses and then
17 also fill in the tunnel so that there was no
18 problem. The other concern of mine is, if it
19 collapses on the majority of my property, it
20 will also take 268.

21 JUDGE LONG: Okay.

22 MS. SHERWIN: Will probably even take my
23 house in the process.

24 JUDGE LONG: Okay.

25 MS. ROST: Your Honor, if I may.

1 JUDGE LONG: Ms. Rost or --

2 MS. ROST: Yes. This is Kayla Rost. I
3 don't have the docket with me right now, but
4 there is case precedent where prior
5 investigations where the Commission ordered
6 investigation of tunnels, the Commission has
7 taken authority from end to end, the whole
8 length of the tunnel, not just the part over
9 the overpass.

10 There are bridge cases where the
11 Commission will take jurisdiction over the
12 whole bridge and not just the section of
13 bridge which encompasses the tracks. The
14 Commission generally takes more, I don't want
15 to say more, because it is the whole -- the
16 whole tunnel is a crossing. And the -- the
17 issue to not only the traversing public on
18 the road, but also the public in general.
19 The Commission usually looks at the public
20 interest in general, which would include the
21 tunnel from end to tend.

22 So I & E's position is the whole tunnel
23 would be part of the investigation and it's
24 the Commission's jurisdiction. And there is
25 precedent out there to support that. I

1 apologize, I did not write the cases down,
2 but if we get to that issue I can definitely
3 provide that.

4 JUDGE LONG: Well, I'm more interested
5 in moving this litigation forward. And, you
6 know, I kind of feel like everybody has their
7 position staked out but nobody has a plan.
8 So I'm going to start with you, Ms. Rost.
9 What is your plan to move this investigation
10 forward to figure out what needs to be done
11 to make the crossing safe and to ultimately
12 abolish it?

13 MS. ROST: This is Kayla Rost. I & E's
14 best case scenario is that Your Honor would
15 order an issue on instructing either the
16 Railroad or PennDOT to obtain an independent
17 third party engineer with experience in
18 tunnels to complete the engineering study so
19 all parties could have a best case scenario.

20 And also options on what needs to happen
21 with this tunnel. Is there is a structural
22 issue, is there some signage issues, is there
23 potentially, you know, black mold. Because I
24 believe the tunnel was used to transport
25 coal. I could be incorrect.

1 But to have a third party come in and
2 complete the engineer study so that all of
3 our engineers can review and look at the
4 options and then complete the best case
5 scenario and potentially cost effective
6 scenario moving forward, I'm not sure how
7 long that would take, as Ms. Brown-Sweeney
8 suggested, but I think giving a six month
9 window to complete this study would be the
10 best case scenario.

11 JUDGE LONG: All right. Ms.
12 Brown-Sweeney, if I order, I guess it would
13 be an independent third party study at the
14 initial cost of DOT and the Railroad, is
15 six months a reasonable window of time to get
16 that down?

17 MS. BROWN-SWEENEY: I believe so. I'm
18 sorry, did you say it would be at the initial
19 cost of both PennDOT and the Railroad? I
20 just want to make sure I understood the
21 question.

22 JUDGE LONG: I -- I think that's what
23 Ms. Rost was suggesting. Is that a fair
24 summary, Ms. Rost, of what you were
25 suggesting?

1 MS. ROST: This is Ms. Rost. I kind of
2 wasn't suggesting who should pay for it. I
3 do know Your Honor was looking at those two
4 parties. From I & E's perspective, as we've
5 kind of been saying this whole time, we do
6 think the Railroad is responsible for the
7 tunnel and for its current deteriorating
8 condition, so we think the Railroad would be
9 responsible. But we'll support whatever Your
10 Honor decides.

11 JUDGE LONG: Okay. Well initial cost
12 and expense doesn't mean ultimate cost and
13 expense. I understand that. You know, I
14 just assumed somebody's got to pay for
15 something first and then reimburse each other
16 at the final disposition. Am I wrong on the
17 law there?

18 MS. ROST: This is Ms. Rost --

19 MS. BROWN-SWEENEY: This is Jennifer
20 Brown-Sweeney. I'm sorry. That is correct.
21 That's how usually, and I guess that's why I
22 wanted clarification on the question, because
23 usually they do an entire cost to one party
24 and then if it's at the initial cost and
25 expense, then we can present argument at the

1 hearing, or in the brief, as to who should
2 ultimately have to pay for that.

3 So that's how it has been done in the
4 past. I guess PennDOT's position is that
5 even if it's assigned initial cost and
6 expense, that that cost and expense should be
7 the Railroad's, since they were the party
8 responsible for the crossing and should have
9 already -- they should have continued to
10 maintain that tunnel, since it was not
11 abolished since, you know, 2002, when they
12 knew it wasn't being abolished.

13 And if the Commission's jurisdiction
14 extends from end to end, then we believe the
15 study should be on the entire tunnel, which
16 is the responsibility, in our opinion, of the
17 railroad.

18 JUDGE LONG: Okay. So, Mr. Steidle,
19 what's the -- does the Railroad have anything
20 to add at this point?

21 MR. STEIDLE: Just to reiterate, Your
22 Honor, the Railroad is willing to share in
23 the cost of the initial study, without
24 waiving any rights with respect to our
25 argument of ownership interest of concerned

1 party status.

2 JUDGE LONG: Is six months a reasonable
3 time frame to get a study done?

4 MR. STEIDLE: This is John Steidle
5 again. I believe so.

6 JUDGE LONG: Okay. All right. Then
7 this is what I'm going to do. I'm going to
8 order an engineering study. I'm going to
9 order the Railroad to do it at initial cost
10 and expense by, and it sounds like everybody
11 agrees it's going to be an independent third
12 party engineer, in any event, is that fair to
13 say?

14 MR. STEIDLE: John Steidle. Yes.

15 JUDGE LONG: Okay. All right. And then
16 we can meet again when that study is
17 completed and figure out what makes sense
18 going forward as far as the litigation
19 schedule goes, in terms of a plan to actually
20 do what needs to be done and to abandon the
21 crossing ultimately.

22 Does anybody have -- does anybody
23 disagree with ordering a study due in six
24 months and then having a further prehearing
25 conference?

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(No response.)

* * *

JUDGE LONG: Okay. So last little tidbit, because this case seems to have trouble getting launched. Ms. Rost, I was reviewing the questions and procedures that (inaudible) had put together, which caused me to read the Commission's order. And it appears that the Commission's order failed to make Butler County a party to the case. Is Butler County supposed to be a party to the case?

MS. ROST: This is Kayla Rost. I'm honestly not sure. I don't get the cases until they're referred to the Office of Administrative Law Judge, so I'm not sure. I do believe that the crossing at issue, which is the tunnel, is in Butler County. So we probably should try to include them. But I would also like to ask Matt Marshall, as counsel for Fairview Township, if he's been in correspondence with Butler County before I, I guess, continue.

JUDGE LONG: Mr. Marshall.

1 MR. MARSHALL: This is Matt Marshall. I
2 have not been in correspondence with Butler
3 County in that regard.

4 JUDGE LONG: Okay.

5 MR. MARSHALL: And just while I'm on the
6 floor, Your Honor, I wanted some
7 clarification. And I apologize if this is
8 repetitive, but because there was some
9 disagreement before about the length -- or
10 the scope of the study, whether it's the
11 entire tunnel length or just the underpass
12 under 268. I assume that, based upon our
13 conversation, that the third party
14 engineering study would encompass the entire
15 length of the tunnel.

16 JUDGE LONG: Yes.

17 MR. MARSHALL: Okay. Thank you. I just
18 wanted some clarification.

19 JUDGE LONG: It will include the entire
20 length of the tunnel. Ms. Rost, I think what
21 I would like you to do is do a little bit of
22 homework. And if it's determined that Butler
23 County should be in the case, I would like
24 you to prepare a Motion to have them added as
25 a party. Mr. Marshall, I don't suppose you

1 happen to know who the solicitor for Butler
2 County is, do you?

3 MR. MARSHALL: I do know who the
4 solicitor is. It is Will White. William
5 White, who used to be in my law firm.

6 JUDGE LONG: Okay. Do you know who he's
7 with now?

8 MR. MARSHALL: He's the County
9 Solicitor. So he's actually an in-house
10 solicitor for the county.

11 JUDGE LONG: Okay. Do you -- if you
12 have a mailing address for him, would you
13 please provide it to Ms. Rost so that if she
14 determines that Butler County is supposed to
15 be in the case we can have the Motion served
16 on him. I think that's a little faster than
17 sending it over to the Commissioners.

18 MR. MARSHALL: I would be happy to do
19 so.

20 JUDGE LONG: Wonderful. All right. So
21 I'm going to issue an order that directs a
22 study of the full length of the tunnel due in
23 approximately six months. I'm going to
24 schedule a further prehearing conference. I
25 guess that puts us into July. Does anybody

1 have any vacation plans yet that would
2 preclude a prehearing conference in July?

3 * * *

4 (No response.)

5 * * *

6 JUDGE LONG: Okay. Hearing none, let's
7 say -- what is today? The 30th. Let's --
8 actually, let's go into August to make sure
9 we have enough time. How about August 16th
10 for a further prehearing conference?

11 MR. STEIDLE: This is John Steidle. No
12 objection.

13 JUDGE LONG: Okay.

14 MR. STEIDLE: Your Honor, I do have one
15 additional point that I would like to bring
16 up.

17 JUDGE LONG: Yeah. Go ahead.

18 MR. STEIDLE: Just so there is no loose
19 ends. There was the crossing in Armstrong
20 County that was still open as well. And I
21 believe that's not an issue anymore. Maybe
22 Ms. Rost can point that out so you can issue
23 an order with respect to that crossing and
24 not leave another loose end. Put that to
25 rest.

1 JUDGE LONG: You know, I would leave
2 that to you, Ms. Rost, to work out. It seems
3 to me that crossing also needs to be
4 abandoned. I don't believe we've had app --
5 you know, a further application to abandon
6 it. It's part of this investigation. But if
7 you folks want to come up with a stipulation
8 or a plan for dealing with that, I think you
9 have plenty of time to work that out between
10 now and August.

11 MR. STEIDLE: That's fine. Thank you.

12 MS. ROST: Your Honor, this is Kayla
13 Rost. If I may suggest to the parties
14 submitting a partial joint petition settling
15 that part of the investigation, if that's
16 agreeable to Your Honor and the other
17 parties.

18 JUDGE LONG: If you -- if you want to do
19 that, I'm willing to entertain that. It's
20 basically to bifurcate the investigation. Or
21 we can at least have enough of a stipulation
22 so that when we do the ultimate order it will
23 include the crossings.

24 Regardless of what you do, if there is
25 no -- if we're not going to do testimony or

1 be having a hearing, I will need a
2 stipulation of facts or something to support
3 whatever settlement you folks are able to
4 work out with regard to the crossing in -- I
5 guess that one is in Armstrong County.

6 But, yeah, I'm willing to entertain
7 whatever procedure you folks come up with, so
8 long as it doesn't take too long, because I'm
9 not retiring with the Railroad investigation.

10 JUDGE LONG: Okay. Is there anything
11 further we need to discuss at this point?
12 Okay. Ms. Rost, obviously if Butler County
13 needs to be in this case, the sooner you can
14 make that determination and file a Motion to
15 have them added the better.

16 Again, I think we have plenty of time
17 between now and August to get that taken care
18 of. Is there anything further that anybody
19 else needs to bring to my attention at this
20 time?

21 MS. ROST: Your Honor, this is Kayla
22 Rost. It is anticipated that Mr. Ron Hull
23 may retire in April of 2021. So I would just
24 like to give notice to the parties that if
25 that does happen I will be identifying a new

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witness for I & E.

JUDGE LONG: Well, Mr. DiCriscio is leaving us at the end of the year, as I recall. Is that still true?

MS. BROWN-SWEENEY: Yes, Your Honor. That is still true.

JUDGE LONG: All right. Well, Mr. Hull, I'm sure we will be sorry to see you go. Unfortunately I will not be able to retire in 2021. We still want to keep this case moving forward. So with that I expect everyone to remain in communication with each other. I wish you all a healthy and boring 2021. And I look forward to speaking to you in August.

Obviously if something comes up between now and then, I will be happy to schedule a further conference if that seems sensible to do so. If there is nothing further, we are off the record.

* * *

(Witness excused.)

* * *

(Whereupon, the deposition was concluded at 10:43 a.m.)

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C E R T I F I C A T I O N

I, Lisa M. Cooper, a Court Reporter and Notary Public, do hereby certify the foregoing to be a true and accurate transcript of my original stenographic notes taken at the time and place hereinbefore set forth.

Witness my hand and official seal this 10th day of January A.D. 2021.



Lisa M. Cooper
Court Reporter and Notary Public

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