

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG

In re Complaint of
Township of Upper Chichester
vs.

Baltimore and Ohio Railroad Company,
Department of Highways of the Common-
wealth of Pennsylvania and the County
of Delaware

Complaint Docket

No. 14290.....

1947..

TO

E. H. Burgess, Esquire
Vice President and General Counsel
Baltimore and Ohio Railroad Company
Baltimore 1, Maryland

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission.

You are hereby required to satisfy the said complaint or to answer the same in writing, duly verified by affidavit, within.....TEN.....days from the date hereof.

In Witness Whereof, PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused its seal to be hereunto attached, duly attested by its Secretary, this.....TWENTIETH.....day of.....NOVEMBER....., 1947.

ATTEST:

RECORD
FOLDER

J. A. WALTER, Acting Secretary

NOTE:—Attention is called to Rule.....of the RULES OF PRACTICE before the Pennsylvania Public Utility Commission, reprinted on the reverse hereof.

Enclosure

Registered Mail
Receipt Requested

CAS:11

DOCKETED
COMPLAINT FILED
DEC 1 1947

SIMILAR NOTICES: E. L. Schmidt, Chief Engineer, Dept. of Highways
Commissioners of Delaware County, Courthouse, Media, Penna.

(OVER)

RULE

Complaints—Form

(a) All complaints must be by petition sworn to by the complainant. If complainant is a corporation or association, a duly authorized officer may execute the complaint. No particular form is required; the Commission will, upon request, furnish blank forms.

Contents

(b) The complaint must set forth the name and address of the complainant, and of his attorney, if any, the name and address of the public utility complained against, and the nature and character of its business; a concise statement of all the material facts upon which the complaint is founded; if a violation of any statute or ruling or order of the Commission is complained of, a reference to the section of the statute or particular ruling or order of the Commission must appear.

Additional Copies

(c) In addition to the original verified complaint three copies thereof shall be furnished and in case more than one public utility is named as respondent, an additional copy for each additional respondent.

Service

(d) A copy of the complaint will be forwarded by the Commission to each of the public utilities complained against, accompanied by a notice from the Commission calling upon each such utility to satisfy the complaint or answer the same, in writing under oath, within such time as may be specified in said notice.

Answer

(e) The answer, duly verified, must specifically admit or deny the material allegations of the complaint, and must clearly set forth the facts upon which respondent relies. Three copies of the answer shall be filed with the original, and one copy served by the respondent on the adverse party personally or by registered mail and due proof of such service filed with the Commission.

Demurrer

(f) Any respondent deeming the complaint insufficient to show a breach of legal duty or desiring to set up the absence of power or authority in the Commission to determine such complaint may, instead of answering, serve on the complainant as answers are required to be served and file with the Commission, within the time specified in the notice to satisfy or answer, its claim of insufficiency or absence of such power or authority and, for the purpose of disposing of the questions thereby raised, the facts stated in the complaint will be deemed to be admitted. Proof of service of the demurrer upon the complainant shall be filed with the Commission.

Hearings

(g) If, from a consideration of the complaint and answer, or otherwise, the Commission determines that reasonable ground exists for investigating the complaint and that a hearing is necessary, a time and place for hearing will be fixed and notice thereof given to the complainant and the respondent.

Evidence

(h) The complainant must establish by evidence the facts alleged in the petition unless the respondent admits the same, except where the burden of proof is imposed by law upon the public utility complained against. Verified copies of all documents may be substituted for originals which have been offered in evidence.

Parties

Whenever complaint is made that any grade crossing is dangerous and should be abolished, or that any overhead crossing, subway or underpass is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, any township, borough, city or county concerned shall be named as a party and shall be given due notice by the Secretary of all hearings of such complaint.

RECEIVED
MAY 20 1947

COMPLAINT

NOV 19 PM 4 14

BEFORE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

STATE PUBLIC UTILITY COM.

Township of Upper Chichester

vs.

Baltimore & Ohio Railroad Company, Department of Highways of the Commonwealth of Pennsylvania, and the County of Delaware

COMPLAINT DOCKET

No. 14290

PENNSYLVANIA PUBLIC UTILITY COMMISSION:

- 1. The name and address of complainant are Township of Upper Chichester, Boothwyn, Delaware County, Pennsylvania.
2. The name and address of complainant's attorney are Albert E. Smith, Esquire, 29 East Fifth Street, Chester, Pennsylvania.
3. Respondent utility is Baltimore & Ohio Railroad Company, operating through the Township of Upper Chichester.

4. (This paragraph to contain a succinct statement of the subject matter of the complaint).

State Highway Route #599 extends in a Southerly direction through the Township of Upper Chichester to a point of connection with State Application Route #1136 at the center line between tracks of the Baltimore & Ohio Railroad Company in Boothwyn, Delaware County, Pennsylvania, where the highways cross over the grade of the tracks of the Railroad. State Application Route #1136 extends in a general Southeasterly direction from this point of connection with State Highway Route #599 to Marcus Hook. There is constructed on the said Route #599 and State Application Route #1136, across the tracks of the Railroad aforesaid, a concrete bridge with a sidewalk, or footway, constructed on the Westerly side thereof. There is no sidewalk, or footway, constructed on the Easterly side thereof. Since the time of the construction of the bridge, the Township of Upper Chichester has become more fully populated, with an increase especially in the number of homes North of the Railroad tracks. There is necessarily an increase of foot traffic and vehicular traffic across the said bridge. Since there is but one sidewalk across the bridge, pedestrians are put in great danger in passing over the bridge and crossing across the highway to use the sidewalk.

WHEREFORE, it is submitted that the facilities offered pedestrians for crossing the bridge are dangerous and inadequate.

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REC-...
COPIES...
APPEAL...
RECEIVED...

REC-2-1941

5. (This paragraph to contain a succinct statement of the relief sought).

The Pennsylvania Public Utility Commission is requested to direct the erection of a sidewalk on the Easterly side of the said bridge crossing the tracks of the Baltimore and Ohio Railroad Company as aforesaid, for the service, accommodation, convenience and safety of the public.

...the said bridge crossing the tracks of the Baltimore and Ohio Railroad Company as aforesaid, for the service, accommodation, convenience and safety of the public.

POOR ORIGINAL

...Wherefore, complainant prays that respondent may be required to answer the above allegations and that upon a final hearing the Commission will make such order in the premises as may seem meet.

Paul C. Eckert
Signature of Complainant

AFFIDAVIT (Natural Person)

COMMONWEALTH OF PENNSYLVANIA }
..... County } ss:

....., being duly sworn (affirmed) according to law, deposes and says that the facts set forth (are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects to be able to prove the same at the hearing hereof).

.....
Signature of Affiant

Sworn and subscribed before me this
..... day of 19.....

My Commission Expires

.....
Signature of Official Administering Oath

AFFIDAVIT (Corporation)

COMMONWEALTH OF PENNSYLVANIA }
..... Delaware County } ss:

..... Paul C. Eckert being duly sworn (affirmed) according to law, deposes and says that he is President of Township of Upper Chichester Board of Commissioners; that he is authorized to and does make this affidavit for it; and that the facts set forth above (are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects the said Township of Upper Chichester to be able to prove the same at the hearing hereof).

.....
Signature of Affiant

Sworn and subscribed before me this
..... 10 day of November 1947

My Commission Expires Jan - 2 - 49

NOTARY PUBLIC

My Commission Expires Dec. 31 1948

.....
Signature of Official Administering Oath

1951-2 334

296106 MON.

RULES

The Rules of Practice contain the following provisions:

FORMAL COMPLAINTS (Rules 25 to 29 Inclusive)

(A) **CONTENT**:—Each formal complaint shall be divided into numbered paragraphs and shall set forth (1) Name and address of the complainant and the name and address of complainant's attorney, if any; (2) Name and address of the respondent complained against and the nature and character of its business; (3) The interest of the complainant in the subject matter; (4) The act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission, with specific reference to the section of the statute or particular regulation or order of the Commission involved; (5) A clear statement of the relief sought.

(B) **EXECUTION; JOINDER OF CAUSES AND PARTIES**:—Each formal complaint shall be in writing and shall be subscribed and verified; (1) By the party filing such complaint or by one of the parties if there be more than one; (2) By an authorized officer of the party filing the complaint if the party be a corporation or association. The form of the affidavit shall be as prescribed in Rule 7 of these rules. Complaints against rates and service shall not be included in the same document. Two or more grounds of complaint involving the same purpose, subject or state of facts may be included in one complaint, but shall be separately stated, and numbered. Two or more complainants may join in one complaint if their causes of complaint are against the same respondent, involve substantially the same purposes and subjects and are predicated upon like sets of facts.

(C) **FILING; SERVICE**:—An original and three copies of each complaint shall be filed and, in case more than one respondent is named, an additional copy shall be filed for each additional respondent. The Commission will serve a copy of the complaint upon each respondent together with a notice to satisfy the complaint or answer the same in writing, within ten (10) days after such service.

Complaints by a public utility or other person or corporation subject to the public utility law against any regulation or order of the Commission, which the complainant is or has been required to observe or carry into effect, shall be substantially in the form above described and reference shall be made to the particular regulation or order or part thereof complained against and shall quote the pertinent portions thereof.

ANSWERS TO COMPLAINTS (Rule 34 to 36 Inclusive)

(D) **FORM AND EXECUTION; CONTENT; FILING AND SERVICE**:—Every answer shall be in writing and shall be subscribed and verified in the form stated in Rule 7 by the party filing such answer or by one of the parties if there is more than one or if the party is a partnership, or by an authorized officer of the party filing the answer if the party be a corporation or association. The answer shall set forth in paragraphs numbered to correspond with the complaint, the facts upon which respondent relies and shall specifically admit or deny the material allegations of the complaint. An original and two copies of each answer shall be filed. Proof of service of one copy of each answer upon each complainant or his attorney shall be attached to such answer.

MOTIONS TO STRIKE OR DISMISS OR FOR AMPLIFICATION (Rule 37 to 39 inclusive)

(E) Any party deeming a pleading insufficient in form may file with the Commission a motion to strike. Any party deeming a pleading insufficient in substance, or desiring to question the jurisdiction of the Commission, may file with the Commission a motion to dismiss. Any party deeming the allegations of fact in any pleading to be so insufficiently averred that adequate answer to the pleading is impossible, may file with the Commission a motion for amplification of the specific allegations deemed insufficient. An original and two copies of each motion to strike or dismiss or for amplification shall be filed. Proof of service of a copy of the motion upon each party of record shall be attached to such motion.

HEARINGS (Rule 40 to 45 Inclusive)

(F) **PRELIMINARY STATEMENTS; EVIDENCE; CONTINUANCE, CORRECTIONS OF TRANSCRIPT**:—At any initial hearing all persons entering an appearance shall state for the record (before any testimony shall be received) their names, addresses, and for whom they appear. The presiding official may require or allow a factual statement of the scope of any pleading or the position of any party in the case.

All written pleadings and all Commission orders in a case shall constitute a part of the record without formal offer. Facts admitted by the adverse party of record or by testimony, exhibits or in writing need not be proved. Copies of each exhibit shall be submitted in sufficient number to provide one copy for each party and three copies for Commission use.

Only under exceptional circumstances will requests for continuance of a hearing be considered unless submitted at least five (5) days prior to the hearing date.

No correction of any transcript of testimony shall be made except upon: (a) written request within fifteen (15) days after the transcript has been filed with the Commission, such request being accompanied by proof of service upon all parties of record; or (b) upon written stipulation by all parties of record filed within twenty (20) days after the transcript has been filed with the Commission.

Proof of Publication of Notice in Chester Times -14290

Under Newspaper Advertising Act No. 587, Approved May 16, 1929

State of Pennsylvania, }
 County of Delaware, } 88.

Mary J. F. Kough, designated agent of the Chester Times Publishing Company, being duly sworn, deposes and says that the Chester Times, a daily newspaper of general circulation as defined in the above mentioned Act, and published at 18-26 East Eighth Street, in the City of Chester, Delaware County, Pennsylvania, was established September 7, 1876, and issued and published continuously thereafter for a period of over 65 years, in said city and county and for a period of more than six months immediately prior hereto; and further says that the printed notice or publication attached hereto is an exact copy of a notice or publication printed and published in the regular edition and issues of the Chester Times on the following dates, viz. May 25 and June 1st, A. D. 1948, and that said advertising was inserted in all respects as ordered.

Affiant further deposes that he is the proper person duly authorized by the CHESTER TIMES PUBLISHING COMPANY, publisher of said CHESTER TIMES, a newspaper of general circulation, to verify the foregoing statement under oath, and that affiant is not interested in the subject matter of the aforesaid notice or advertisement, and that all allegations in the foregoing statements as to time, place and character of publication are true.

Mary J. F. Kough
 Sworn to and subscribed before me this 1st day of June, 1948.
R. A. [Signature]
 NOTARY PUBLIC
 My Commission Expires January 7, 1951

Copy of Notice or Publication

IN RE: Dangerous condition existing at bridge carrying State Highway Traffic Route 161 over the tracks of the Baltimore and Ohio Railroad Company at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County.

NOTICE is hereby given that a complaint having been filed with the Pennsylvania Public Utility Commission for the proposed alteration of a bridge carrying State Highway Traffic Route 161 over the tracks of The Baltimore and Ohio Railroad Company at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County, which proceeding is entitled "Township of Upper Chichester versus Baltimore and Ohio Railroad Company, Department of Highways of the Commonwealth of Pennsylvania and the County of Delaware" (C. 14290), the Commission has fixed Tuesday, June 8, 1948, in the Court House at Media, Pennsylvania, at 10:00 A.M. (Daylight Saving Time, at the time and place for hearing. All parties interested, including the owners of adjacent property, may appear and be heard in person or by counsel.

ALBERT E. SMITH,
 Attorney for Complaint.

Statement of Advertising Costs

Albert E. Smith, Esquire,
 29 East 5th Street,
 Chester, Pennsylvania.

To CHESTER TIMES, Dr.	
For publishing the notice or publication attached hereto on the above stated dates	\$ 9.25
Probating same	\$ 1.00 (2)
Total	\$10.25

Publisher's Receipt for Advertising Costs

THE CHESTER TIMES PUBLISHING COMPANY, publisher of the CHESTER TIMES, a newspaper of general circulation, hereby acknowledges receipt of the aforesaid notice and publication costs and certifies that the same have been duly paid.

RECEIVED
 JUN 21 1948
 COUNTY No. _____

CHESTER TIMES PUBLISHING COMPANY
 Publisher of Chester Times

By *Mary J. F. Kough*

Free

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY
PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DEC 1 AM 9 52

RECEIVED

In re:
TOWNSHIP OF UPPER CHICHESTER

v.

Complaint Docket
No. 14290
1947

THE BALTIMORE AND OHIO RAILROAD COMPANY,
DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH
OF PENNSYLVANIA, and the COUNTY OF DELAWARE :

ANSWER

of

THE BALTIMORE AND OHIO RAILROAD COMPANY

To The PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Comes now The Baltimore and Ohio Railroad Company, respondent, and respectfully files this its Answer to the Complaint in the above proceeding:

1. The averments of Paragraphs 1, 2 and 3 of the Complaint are admitted.
2. The averments of Paragraph 4 of the Complaint, other than the averments as to the location, structure and highways carried by the bridge involved, are denied, and respondent denies that the facilities offered pedestrians for crossing said bridge are dangerous and inadequate.
3. Respondent avers that the bridge complained of was constructed or reconstructed pursuant to Order of your Commission dated August 28, 1940, in Complaint Docket No. 11400, and by order dated November 13, 1942, your Commission stated that such improvement was completed in compliance with said Order of August 28, 1940, and in accordance with the approved plans.

DOCKET

DEC 2 1947

WHEREFORE, respondent submits that the public service, accommodation, convenience and safety do not require the erection of a sidewalk along the easterly side of the bridge involved, as prayed for in the complaint, and respondent requests the entry of an order dismissing the complaint.

Respectfully submitted,

THE BALTIMORE AND OHIO RAILROAD COMPANY

By C. W. Van Horn
(s) C. W. Van Horn, Vice President

Dated at Baltimore, Maryland,
this 29th day of November, 1947.

E. H. BURGESS,
GEORGE C. DOERING,
301 B. & O. Building,
Baltimore 1, Maryland
Counsel for
The Baltimore and Ohio Railroad Company

AFFIDAVIT

STATE OF MARYLAND:

: ss.

CITY OF BALTIMORE:

Personally appeared before me, a notary public in and for said state and city, C. W. Van Horn, who, being duly sworn according to law, deposes and says that he is Vice President of The Baltimore and Ohio Railroad Company; that he is authorized to make and file the within Answer on behalf of this Company, and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

C. W. Van Horn
(s) C. W. Van Horn, Vice President

Subscribed and sworn to before me
this 29th day of November, 1947.

Rowland Gosnell
(s) Rowland Gosnell, Notary Public

My commission expires May 2, 1949.

RECEIVED

Before the

1947 DEC 15 AM 10 12
PUBLIC UTILITY COMMISSION OF THE
COMMONWEALTH OF PENNSYLVANIA

SECRETARY'S OFFICE

PUBLIC UTILITY COM.

TOWNSHIP OF UPPER CHICHESTER :

:

vs. :

:

COMPLAINT DOCKET

BALTIMORE AND OHIO RAILROAD COMPANY, :

NO. 14290

DEPARTMENT OF HIGHWAYS OF THE COMMON-

1947

WEALTH OF PENNSYLVANIA and the COUNTY :

OF DELAWARE. :

ANSWER OF THE DEPARTMENT OF HIGHWAYS
OF THE COMMONWEALTH OF PENNSYLVANIA.

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The answer of the Department of Highways to the complaint filed by the Township of Upper Chichester in the above captioned matter respectfully represents:

1. The averments contained in Paragraphs 1, 2 and 3 of said complaint are admitted.

2. In answer to the averments contained in the 4th Paragraph of said complaint, the Department of Highways admits that no sidewalk has been constructed on the easterly side of the bridge which is the subject of this complaint; however, said Department neither admits nor denies that a necessity for the same exists or that its absence renders the bridge either dangerous or inadequate.

In further answer to said complaint, the Department of Highways submits that should the necessity for a sidewalk be shown, the responsibility for constructing and maintaining the same should be placed on a party or

SECRET
DEC 15 1947
ENTRY No. 14290

RECORDED
INDEXED

THE BALTIMORE AND OHIO RAILROAD COMPANY

LAW DEPARTMENT

BALTIMORE, 1, MARYLAND

EDWIN H. BURGESS
VICE PRESIDENT AND GENERAL COUNSEL
F. E. BAUKHAGES
GENERAL SOLICITOR
FRANCIS R. CROSS
GEORGE C. DOERING
JAMES F. WRIGHT
GENERAL ATTORNEYS

RECEIVED
November 29, 1947

File L-2011-387
1947 DEC 1 AM 9 52

ANTHONY P. DONADIO
KENNETH H. EKIN
FREDERICK W. DOOLITTLE, JR.
ASSISTANT GENERAL COUNSEL
ROBERT J. WILDE
SYDNEY R. PRINCE, JR.
ASSISTANT GENERAL SOLICITORS
L. JAMES HUEGEL
ASSISTANT GENERAL ATTORNEY

SECRETARY'S OFFICE
In re Township of Upper Chichester v. The Baltimore and Ohio
Railroad Company, Department of Highways of the Common-
wealth of Pennsylvania, and the County of Delaware.
Pa.P.U.C. Complaint Docket No. 14290

Mr. J. A. Walter, Acting Secretary,
Pennsylvania Public Utility Commission,
Harrisburg, Pennsylvania

Dear Sir:

Enclosed herewith for filing with the Commission
in the above proceeding are original and two copies of Answer
of The Baltimore and Ohio Railroad Company respondent to the
captioned complaint of the Township of Upper Chichester.

Copies of this answer are being forwarded today,
properly addressed by registered first class mail, to the other
parties involved as indicated below.

Very truly yours,

E. H. Burgess
Vice President

Copies to:

Albert E. Smith, Esq., 29 E. 5th Street, Chester, Pa.
Mr. E. L. Schmidt, Chf. Engineer, Department of Highways, Harrisburg, Pa.
Mr. Clarence Conner, Chairman, Board of Commissioners of Delaware
County, Court House, Media, Pa.

with copy of Answer to each.



DEC 1 1947

Harrisburg, December 1, 1947

C. 14290

Township of Upper Chichester

v.

The Baltimore and Ohio Railroad Company,
Department of Highways of the Commonwealth
of Pennsylvania and the County of Delaware.

E. H. Burgess, Vice President
The Baltimore and Ohio Railroad Company
Baltimore 1, Maryland

Dear Sir:

This will acknowledge receipt of your letter dated November 29, 1947, enclosing original and two copies of answer of The Baltimore and Ohio Railroad Company to the above entitled complaint, together with certificate of service of a copy of the answer upon each of the other parties involved.

The answer will receive the Commission's attention and you will be advised with respect to further procedure.

Very truly yours,

for J. A. WALTER
Acting Secretary

cc: Bureau of Transportation - With copy of answer.

CAS:11

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HIGHWAYS
HARRISBURG

Subject: Delaware - 599
Boothwyn

December 12, 1947

To: Robertson C. Cameron, Secretary
Pennsylvania Public Utility Commission

From: Thomas C. Evans, Senior Counsel

Re: Township of Upper Chichester vs. Baltimore
and Ohio Railroad Company, Department of
Highways of the Commonwealth of Pennsylvania
and the County of Delaware.
Complaint Docket #14290

Enclosed are the original and three copies of the
Answer of the Department of Highways to the complaint filed
by the Township of Upper Chichester in the above captioned
matter.

Copies of this Answer have today been mailed to the
other parties to the proceeding as follows:

Commissioners of Delaware County
Media, Pennsylvania

Township of Upper Chichester
% Albert E. Smith, Esquire
29 East Fifth Street
Chester, Pennsylvania

A. C. Clark, Chief Engineer
Baltimore & Ohio Railroad Company
Baltimore, Maryland.

Att.

Thomas

Evans

SECRETARY'S OFFICE
PUBLIC UTILITY COM.
DEC 15 1947
FILE

DEC 15 AM 10 12

RECEIVED

Harrisburg, December 16, 1947

C. 14290

Township of Upper Chichester

v.

The Baltimore and Ohio Railroad Company,
Department of Highways of the Commonwealth
of Pennsylvania and the County of Delaware

Thomas C. Evans, Senior Counsel
Department of Highways
Harrisburg, Pennsylvania

Dear Sir:

This will acknowledge receipt of your memorandum dated December 12, 1947, enclosing original and three copies of the Answer of the Department of Highways to the above entitled complaint.

We note that copies of the Answer have been mailed to the other parties to the proceeding.

The answer will receive the Commission's attention and you will be duly advised with respect to further procedure.

Very truly yours,

for J. A. WALTER
Acting Secretary

cc: Bureau of Transportation - With copy of answer.

CAS:11



LAW OFFICES
DIGGINS AND SMITH
CLYDE BUILDING - 29 EAST FIFTH STREET
CHESTER, PA.
TELEPHONE 2-2208

RECEIVED
FEB 16 AM 10 04
SECRETARY'S OFFICE
PUBLIC UTILITY COM.

JOHN V. DIGGINS
ALBERT E. SMITH

February 12, 1948

Robertson C. Cameron, Secretary
Pennsylvania Public Utility Commission
Harrisburg, Pennsylvania

In re Township of Upper Chichester v. The B & O RR,
Department of Highways of the Commonwealth of
Pennsylvania, and the County of Delaware.
Pa. P.U.C. Complaint Docket No. 14290

Dear Sir:

Will you kindly advise me when a date for hearing in the
above matter is fixed, so that I may inform the Township of Upper
Chichester in this regard?

Yours very truly,

Albert E. Smith

Albert E. Smith, Solicitor

Handwritten notes:
Twp of Chichester
File of Complaint

aes:as

Handwritten:
File
OK

RECEIVED
FILE ROOM
FEB 18 1948
P. U. C.
OK - FILE - HEB:K

Harrisburg
March 9, 1948

C. 14290

E. L. Schmidt, Chief Engineer
Department of Highways of the
Commonwealth of Pennsylvania

Guy R. Johnson, Director
Bureau of Transportation
Public Utility Commission

In re:

Township of Upper Chichester

v.

The Baltimore and Ohio Railroad Company,
Department of Highways of the Commonwealth
of Pennsylvania and the County of Delaware

This is to advise that a conference will be held at the site of the existing crossing, above grade, at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County, where State Highway Traffic Route 161 crosses the tracks of The Baltimore and Ohio Railroad Company on Thursday, March 25, 1948 at 1 p.m., for the purpose of discussing the matters involved in the above entitled complaint.

Please arrange to have a representative attend the conference.

JEW awb

cc: F. D. Cooner, Senior Grade Crossing Engineer
Department of Highways of the
Commonwealth of Pennsylvania

MAR 9 - 1948

Harrisburg
March 9, 1948

C. 14290

E. L. Schmidt, Chief Engineer
Department of Highways of the
Commonwealth of Pennsylvania

Guy R. Johnson, Director
Bureau of Transportation
Public Utility Commission

In re:

Township of Upper Chichester

v.

The Baltimore and Ohio Railroad Company,
Department of Highways of the Commonwealth
of Pennsylvania and the County of Delaware

This is to advise that a conference will be held at the site of the existing crossing, above grade, at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County, where State Highway Traffic Route 161 crosses the tracks of The Baltimore and Ohio Railroad Company on Thursday, March 25, 1948 at 1 p.m., for the purpose of discussing the matters involved in the above entitled complaint.

Please arrange to have a representative attend the conference.

JKW aws

cc: F. D. Cooner, Senior Grade Crossing Engineer
Department of Highways of the
Commonwealth of Pennsylvania

MAR 9 - 1948



March 9, 1948

In re:

C. 14290

Township of Upper Chichester

v.

The Baltimore and Ohio Railroad Company,
Department of Highways of the Commonwealth
of Pennsylvania and the County of Delaware

Paul C. Eckert, President
Board of Township Commissioners
Upper Chichester Township
Boothwyn, Pennsylvania

Dear Sir:

This is to advise that a conference will be held at the site of the existing crossing, above grade, at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County, where State Highway Traffic Route 161 crosses the tracks of The Baltimore and Ohio Railroad Company on Thursday, March 25, 1948 at 1 p.m., for the purpose of discussing the matters involved in the above entitled complaint.

Please arrange to have a representative attend the conference.

Very truly yours,

J. E. Wells
Bridge Engineer

JEW awa

cc: James C. Stewart, Senior, Secretary
Board of Township Commissioners
Upper Chichester Township
Boothwyn, Pennsylvania

Albert E. Smith, Esquire
29 East Fifth Street
Chester, Pennsylvania



March 9, 1948

In re:

C. 14290

Township of Upper Chichester

v.

The Baltimore and Ohio Railroad Company,
Department of Highways of the Commonwealth
of Pennsylvania and the County of Delaware

Commissioners of Delaware County
Court House
Media, Pennsylvania

Gentlemen:

This is to advise that a conference will be held at the site of the existing crossing, above grade, at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County, where State Highway Traffic Route 161 crosses the tracks of The Baltimore and Ohio Railroad Company on Thursday, March 25, 1948 at 1 p.m., for the purpose of discussing the matters involved in the above entitled complaint.

Please arrange to have a representative attend the conference.

Very truly yours,

J. E. Wells
Bridge Engineer

JEW aws

March 9, 1948

In re:

C. 14290

Township of Upper Chichester

v.

The Baltimore and Ohio Railroad Company,
Department of Highways of the Commonwealth
of Pennsylvania and the County of Delaware

Ralph J. Howard, Secretary
First District Fire Chief's Cabinet of
The Delaware County Firemen's Association
Mill Road, Boothwyn, Pennsylvania

Dear Sir:

This is to advise that a conference will be held at the site of the existing crossing, above grade, at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County, where State Highway Traffic Route 161 crosses the tracks of The Baltimore and Ohio Railroad Company on Thursday, March 25, 1948 at 1 p.m., for the purpose of discussing the matters involved in the above entitled complaint.

Please arrange to have a representative attend the conference.

Very truly yours,

J. E. Wells
Bridge Engineer

JEW awa



March 9, 1948

In re:

C. 14290

Township of Upper Chichester

v.

The Baltimore and Ohio Railroad Company,
Department of Highways of the Commonwealth
of Pennsylvania and the County of Delaware

J. W. Jones, Regional Engineer
The Baltimore and Ohio Railroad Company
Baltimore 1, Maryland

Dear Sir:

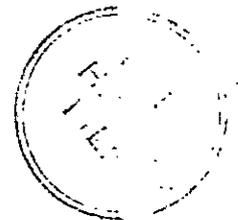
This is to advise that a conference will be held at the site of the existing crossing, above grade, at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County, where State Highway Traffic Route 161 crosses the tracks of The Baltimore and Ohio Railroad Company on Thursday, March 25, 1948 at 1 p.m., for the purpose of discussing the matters involved in the above entitled complaint.

Please arrange to have a representative attend the conference.

Very truly yours,

J. E. Wells
Bridge Engineer

JEW awg



Wells

THE BALTIMORE AND OHIO RAILROAD COMPANY
ENGINEERING DEPARTMENT
ANNEX BUILDING
BALTIMORE, 1, MD.

JOB. W. JONES
REGIONAL ENGINEER

April 1, 1948.

Boothwyn, Pa. - Bridge No. 75-A.

Mr. J. E. Wells, Bridge Engineer,
Public Utility Commission,
Harrisburg, Pennsylvania.

Dear Sir:

In accordance with your letter of March 9th in re: C. 14290, Township of Upper Chichester v. The Baltimore and Ohio Railroad Company, Department of Highways of the Commonwealth of Pennsylvania and the County of Delaware, having reference to proposed additional sidewalk on our Bridge No. 75-A at Boothwyn, Pennsylvania.

We had a representative attend the conference on the ground on March 25th at which time an informal request was made that The Baltimore and Ohio Railroad Company, without prejudice, prepare the necessary general plan and estimate for this proposed sidewalk.

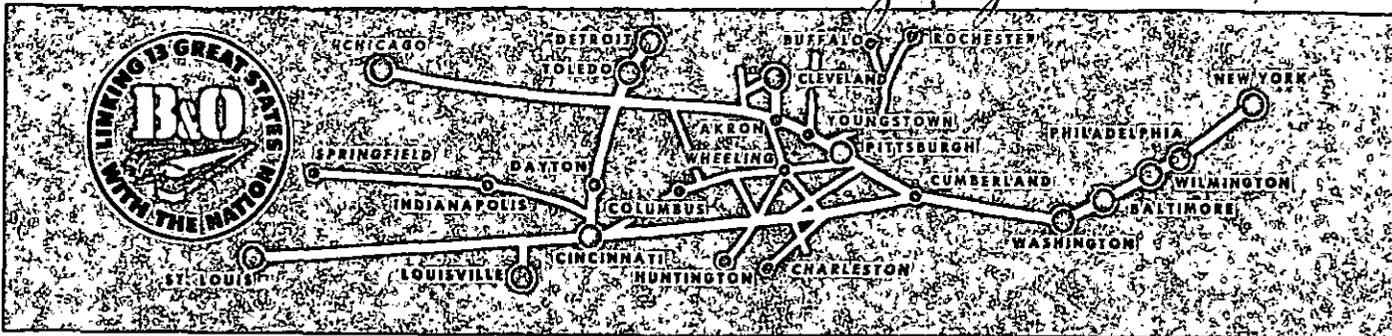
The Department of Highways of the Commonwealth of Pennsylvania, in its formal answer to the complaint, stated the responsibility for constructing and maintaining this additional sidewalk should be placed on a party or parties other than the Department of Highways.

The Baltimore and Ohio Railroad Company, in its formal answer to the complaint, denied the necessity for this additional sidewalk and requested an entry be made by the Commission dismissing the complaint. Under the circumstances it is our opinion that we could not comply with your request without jeopardizing our case.

Very truly yours,

Job. W. Jones

APR 7
P. U. C.
OK - FILE - H.B.M.



April 28, 1948

In re:

C. 14290

Township of Upper Chichester

v.

The Baltimore and Ohio Railroad Company,
Department of Highways of the Commonwealth
of Pennsylvania and the County of Delaware

Albert E. Smith, Esquire
29 East Fifth Street
Chester, Pennsylvania

Dear Sir:

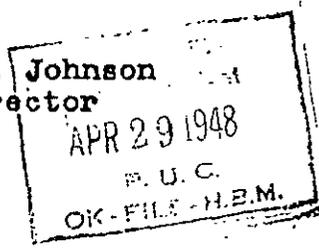
At the informal field conference held on March 25, 1948, at the site of the crossing, above grade, involved in the above entitled proceeding, Mr. Mitchell of The Baltimore and Ohio Railroad Company, agreed that he would recommend to his central office that The Baltimore and Ohio Railroad Company prepare a preliminary plan and estimate of cost of constructing an additional sidewalk on the existing bridge.

J. W. Jones, Regional Engineer of the railroad company, has advised that in view of the contentions of the railroad company that a sidewalk is not necessary on the existing bridge, the railroad company would not agree to prepare the said plan and estimate prior to the hearing to be held in this proceeding.

Accordingly, it appears that it will be necessary to proceed with the hearing in this complaint without the plan and estimate. However, in event the complaint is sustained, the Commission may direct the railroad company or any of the parties in interest to prepare the said plan and estimate. The Secretary will notify you as well as other parties in interest of the date and place of the hearing to be held in this proceeding in the near future.

Very truly yours,

Guy R. Johnson
Director



JEW aws

QUESTIONS AND PROCEDURE

C. 14290

May 3, 1948

- ✓ 1. Complainant submit testimony as to the name and location of the existing crossing, above grade, involved in this proceeding.
- ✓ 2. Complainant submit testimony as to the width of vehicular roadway and the number and width of sidewalks on the existing bridge, and the approximate width and grade of the highway approaches thereto.
- ✓ 3. Complainant submit of record the results of a recent traffic survey at the site of the existing crossing, above grade; said survey to show the volume of vehicular and pedestrian traffic using the bridge during the period of the survey.
- ✓ 4. Complainant submit testimony describing fully the general conditions presently existing at this location which, in its opinion, tend to render the crossing, above grade, inadequate and dangerous.
- ✓ 5. Complainant submit testimony as to the general nature and extent of all work which, in its opinion, will be required to eliminate the alleged hazardous condition and to provide an adequate and safe crossing at this location.
- ✓ 6. Complainant submit testimony as to its present obligation in respect to the maintenance and reconstruction of the existing bridge and the highway approaches thereto and state what portion, if any, of the actual construction and damage costs of reconstructing the crossing, above grade, in accordance with its recommendations it will agree to bear in event the complaint is sustained.
- ✓ 7. Department of Highways submit testimony describing accurately the location of the involved crossing, above grade, with respect to other principal state highways and local streets.
- ✓ 8. Department of Highways submit testimony as to the date of construction of the existing crossing, above grade, the purpose of its construction and the party or parties responsible for its construction and maintenance.
- ✓ 9. Department of Highways submit testimony describing in detail the type, number of spans, principal dimensions and general physical condition of the substructure and superstructure of the existing crossing, above grade.
- ✓ 10. Department of Highways submit testimony as to the type and width of pavement, alignment, grade and general physical condition of the highway approaches to the existing crossing, above grade.

- ✓ 21. The Baltimore and Ohio Railroad Company submit testimony as to the complete corporate name and termini of the line of railroad involved in this proceeding; the number of tracks located at the site of the existing crossing, above grade, and the volume, class and approximate speed of trains operated daily over these tracks.
- ✓ 22. The Baltimore and Ohio Railroad Company submit testimony as to the complete corporate name of the company presently operating the line of railroad involved in this proceeding.
- ✓ 23. The Baltimore and Ohio Railroad Company state for the record whether it agrees with the testimony of the complainant in regard to the alleged hazardous and unsatisfactory condition presently existing at the site of the crossing, above grade.
- ✓ 24. The Baltimore and Ohio Railroad Company state for the record whether it agrees with the testimony of the complainant in regard to the nature and extent of all work required to provide a safe and adequate crossing at this location.
- ✓ 25. The Baltimore and Ohio Railroad Company submit testimony as to its present obligation in respect to the maintenance and reconstruction of the existing crossing, above grade, and the highway approaches thereto, and state what portion of the actual construction costs and damages of the improvement it will agree to bear in event the complaint is sustained.
- ✓ 26. The Baltimore and Ohio Railroad Company state whether the construction of the improvement as suggested by the complainant will necessitate any alteration of its facilities and, if so, submit testimony describing the general nature, extent and approximate cost of such work.
- ↙ 27. Query whether any of the interested parties will agree to prepare the necessary construction plans and detailed estimates of cost in event the complaint is sustained.
- ✓ 28. Query whether the proceeding docketed at C. 11400 should be made a part of this record by reference.
- ↙ 29. Query whether any of the interested parties desire to submit any additional relevant testimony.

NOTICE TO BE PUBLISHED

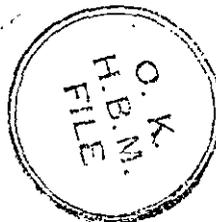
IN RE: Dangerous conditions existing at bridge carrying State Highway Traffic Route 161 over the tracks of The Baltimore and Ohio Railroad Company at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County.

NOTICE is hereby given that a complaint having been filed with the Pennsylvania Public Utility Commission for the proposed alteration of a bridge carrying State Highway Traffic Route 161 over the tracks of The Baltimore and Ohio Railroad Company at a point in the Village of Boothwyn, Upper Chichester Township, Delaware County, which proceeding is entitled "Township of Upper Chichester versus Baltimore and Ohio Railroad Company, Department of Highways of the Commonwealth of Pennsylvania and the County of Delaware" (C.14290), the Commission has fixed Tuesday, June 8, 1948, in the Courthouse at Media, Pennsylvania, at 10:00 A.M., Daylight Saving Time, as the time and place for hearing.

All parties interested, including the owners of adjacent property, may appear and be heard in person or by counsel.

/s/ Albert E. Smith
Attorney for Complainant

CAS:ll



RAV P. 2AK

THE BALTIMORE AND OHIO RAILROAD COMPANY

LAW DEPARTMENT

BALTIMORE, 1, MARYLAND

EDWIN H. BURGESS
VICE PRESIDENT AND GENERAL COUNSEL
F. E. BAUKHAGES
GENERAL SOLICITOR
FRANCIS R. CROSS
GEORGE C. DOERING
JAMES F. WRIGHT
GENERAL ATTORNEYS

ANTHONY P. DONADIO
KENNETH H. EKIN
FREDERICK W. DOOLITTLE, JR.
ASSISTANT GENERAL COUNSEL
ROBERT J. WILDE
ASSISTANT GENERAL SOLICITOR
L. JAMES HUEGEL
JOHN R. WALL
ASSISTANT GENERAL ATTORNEYS

RECEIVED
May 10, 1948

1948 MAY 11 AM 8 03

File L-2011-3879

SECRETARY'S OFFICE

Re Township of Upper Merion v. The Baltimore and Ohio
Railroad Company, et al - Pa.P.U.C. Complaint Docket No.
14290

Mr. J. A. Walter, Secretary,
Pennsylvania Public Utility Commission,
Harrisburg, Pennsylvania

Dear Sir: Attention Mr. Carl A. Strait

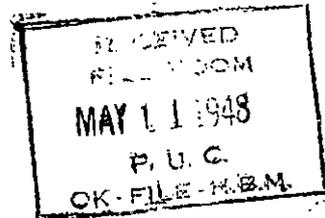
This will acknowledge receipt of your letter of
May 7 advising that hearing in the above complaint will be held
June 8 at Media, Pa., with which letter you also forwarded list
of questions indicating information which the Commission desires
at the hearing.

Very truly yours,

E. H. Burgess

Vice President

lt



C 14290

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1948 MAY 12 PM 1 02

SECRETARY'S OFFICE
PUBLIC UTILITY COM.

May 10, 1948

Chester Times
Times Building
Chester, Pennsylvania

In re: Twp. of Upper Chichester v. B & O Railroad, etc.

Gentlemen:

Will you kindly publish the enclosed notice in your paper in issues appearing on May 25th and June 1st, 1948.

Kindly forward to me the bill for such advertisement, together with proofs of publication which I must file with the Pennsylvania Public Utility Commission on or before the date of the hearing, to wit, June 8, 1948.

Yours very truly,

/s/ Albert E. Smith

Albert E. Smith

ses:as
enc. (1)

*For
cos*

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MAY 13 1948
P. U. C.
OK-FILE-H.B.M.

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FILE ROOM
MAY 13 1948
P. U. C.
OK-FILE-H.B.M.

LAW OFFICES
DIGGINS AND SMITH
CLYDE BUILDING - 29 EAST FIFTH STREET
CHESTER, PA.
TELEPHONE 8208

JOHN V. DIGGINS
ALBERT E. SMITH

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1948 MAY 12 PM 1 02

SECRETARY'S OFFICE
PUBLIC UTILITY COM.

May 10th, 1948

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Harrisburg, Pennsylvania

Attention: J. A. Walter, Secretary

In re: Twp. of Upper Chichester v. B & O Railroad Co.,
Department of Highways of the Commonwealth of
Pennsylvania and the County of Delaware-C. 14290

Dear Sir:

I wish to acknowledge receipt of your letter of May 7, 1948,
giving me notice of the scheduled hearing in the above matter to be held
on Tuesday, June 8, 1948, in the Court House, Media, Pennsylvania, together
with notice of the hearing and your instructions concerning publication.

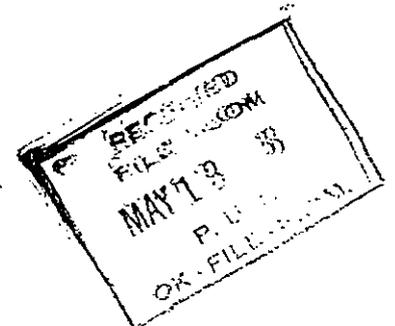
I am arranging for publication of the notice in the Chester
Times, and enclosed herewith is a copy of my letter to them.

Yours very truly,


Albert E. Smith

ses:as
enc. (1)





COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HIGHWAYS
HARRISBURG

Subject: Delaware County
C. 14290

RECEIVED
May 12, 1948

To: J. A. Walter, Secretary
Public Utility Commission

1948 MAY 13 PM 12 41

SECRETARY'S OFFICE
PUBLIC UTILITY COM.

C-14290

From: Thomas C. Evans, Senior Counsel

Re: Township of Upper Chichester v. Baltimore and Ohio
Railroad Company, Department of Highways of the
Commonwealth of Pennsylvania and the County of
Delaware.

This will acknowledge receipt of your letter of May
7, 1948, in which you advised that the Commission has
scheduled a hearing in the above entitled proceeding for
Tuesday, June 8, 1948, in the Courthouse at Media, Penn-
sylvania, at 10:00 A. M.

Thomas C. Evans

*File
Cao*

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HIGHWAYS
HARRISBURG

IN REPLY REFER TO
Delaware County
Route 599
Boothwyn
O. R. 234

May 12, 1948

RECEIVED

1948 MAY 13 PM 12 41

Mr. J. A. Walter, Secretary
Public Utility Commission
Harrisburg, Pennsylvania

SECRETARY'S OFFICE
PUBLIC UTILITY COM.

C-14290

Dear Sir:

This will acknowledge receipt of your letter of May 7, 1948, File. C. 14290, relating to complaint against the B & O Railroad overhead bridge at Boothwyn, Delaware County.

We note that hearing to consider this complaint will be held Tuesday, June 8, 1948, at 10:00 a.m., in the Courthouse at Media.

Yours very truly,
E. L. Schmidt
Chief Engineer

By F. D. Cooner
Senior Grade Crossing Engineer

*File
copy*

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MAY 13 1948
P. U. C.
OK-FILE-H.S.M.

APPEARANCE SHEET

RECEIVED

Complaint Docket No. 14290

In re: Township of Upper Chichester 1948 JUN 9 AM 11 57

v.
Baltimore and Ohio Railroad Company, Department of
Highways of the Commonwealth of Pennsylvania and
the County of Delaware

Pennsylvania
Public Utility Commission
Harrisburg, Pa.

Following are the names of counsel, with their post-office address, appearing at the hearing in the above entitled proceeding, held in Media, Penna.
on June 8, 1948

NAME	ADDRESS	APPEARING FOR
<i>Thomas L. Evans</i>	<i>HARRISBURG, PA</i>	<i>Dept. of Highways</i>
<i>G. E. Daering</i>	<i>301 B & O Bldg., Baltimore</i>	<i>B & O RR.</i>
<i>J. H. Ward Hinson</i>	<i>19 W. 5th St Chester, Pa</i>	<i>B & O RR.</i>
<i>Edward H. Ironsfield</i>	<i>11 S. Olive St. Media, Pa.</i>	<i>County of Delaware</i>
<i>Abdul Elmhurst</i>	<i>29 E. 5th St. Chester - Top of Upper Chichester</i>	

Testimony taken by
Jack Cameron
Reporter

LAW OFFICES
DIGGINS AND SMITH
CLYDE BUILDING - 29 EAST FIFTH STREET
CHESTER, PA.
TELEPHONE 8208

JOHN V. DIGGINS
ALBERT E. SMITH

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1948 JUN 21 AM 8 36

SECRETARY'S OFFICE
PUBLIC UTILITY COM.

June 19, 1948

Pennsylvania Public Utility Commission
Bureau of Transportation
Harrisburg, Pennsylvania

Attention: Robertson C. Cameron, Secretary

In re: Complaint Docket No. 14290 - Twp. of Upper Chi-
Chester v. B & O RR, Dept. of Highways
of the Commonwealth of Pennsylvania,
and the County of Delaware

Dear Sir:

Enclosed herewith are two copies of each of the complainant's
exhibits in the above matter, in compliance with the Examiner's directions.

I have just received said photographs from the photographer.

Yours very truly,


Albert E. Smith

aes:as
encs. (18)



Harrisburg, June 21, 1948

C. 14290

Township of Upper Chichester
v.
The Baltimore and Ohio Railroad Company, et al.

Albert E. Smith, Esquire
Diggins and Smith
Clyde Building
29 East Fifth Street
Chester, Pennsylvania

Dear Sir:

This will acknowledge receipt of your letter dated June 19, 1948, enclosing two copies of each of the complainant's exhibits in the above entitled proceeding, submitted in compliance with the Examiner's directions.

Very truly yours,

for J. A. WALTER
Secretary

CAS:11

cc: Bureau of Transportation

Handwritten scribble

LAW OFFICES
DIGGINS AND SMITH
CLYDE BUILDING - 29 EAST FIFTH STREET
CHESTER, PA.
TELEPHONE 8208

JOHN V. DIGGINS
ALBERT E. SMITH

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SECRETARY'S OFFICE
PUBLIC UTILITY COM.

November 24, 1948

Pennsylvania Public Utility Commission
Bureau of Transportation
Harrisburg, Pennsylvania

Attention: Robertson C. Cameron, Secretary

In re: Complaint Docket No. 14290 - Twp. of Upper Chichester v. B & O RR, Dept. of Highways of the Commonwealth of Pennsylvania, and the County of Delaware

Dear Sir:

To date I have heard nothing pertaining to an order in the above matter.

Will you kindly advise me as to its present status.

Yours very truly,

Albert E. Smith
Albert E. Smith

aes:as

*Order to be
renewed in
Michigan*

Harrisburg, December 1, 1948

C. 14290

Township of Upper Chichester

v.

Baltimore & Ohio Railroad Company,
Department of Highways of the
Commonwealth of Pennsylvania and
the County of Delaware

Albert E. Smith, Esquire
Diggins and Smith
Clyde Building
29 East Fifth Street
Chester, Pennsylvania

Dear Sir:

This will acknowledge receipt of your letter dated November 24, 1948, requesting to be advised of the present status of the above entitled complaint.

This case is under active consideration by the Commission and it expects to be able to issue an order in the very near future.

Very truly yours,

for J. A. WALTER
Secretary

CAS:22

File and Docket

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harrisburg, December 31, 1948

File No.: C. 14290

Caption: Township of Upper Chichester

The Baltimore and Ohio Railroad Company,
Department of Highways of the Common-
wealth of Pennsylvania and the County of
Delaware

Attached hereto is a copy of
Commission order prepared by the
Bureau of Transportation

which has been placed on the calendar for
consideration at the executive session to
be held Monday, January 3, 1949

J. A. WALTER ~~X ROBERTSON XXXXXXXXXXX~~
Secretary

Sent to Law Bureau, Mr. Oldshue,
Director Johnson, Mr. Isenberg and
Mr. McShea

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JAN 12 1949
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To

File Room

Subject

C. 14290 - Township of Upper Chichester
v. The Baltimore and Ohio Railroad
Company, et al.

Stencil copies have been prepared
of the Order of the Commission, covering
the above
and adopted as of 1-3-49

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JAN 7 - 1949
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POOR ORIGINAL