



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, Pa. 17120

May 13, 1983

IN REPLY PLEASE  
REFER TO OUR FILE

C-80041953

Edward Leymarie, Jr., Solicitor  
Borough of Ellwood City  
525 Lawrence Avenue  
Ellwood City, PA 16117

Ralph B. Pratt, State Representative

v.

The Baltimore and Ohio Railroad Company, Department of Transportation of the Commonwealth of Pennsylvania, Borough of Ellwood City, Lawrence County, Pennsylvania Power Company, Western Pennsylvania Water Company, Columbia Gas of Pennsylvania, Inc., The Bell Telephone Company of Pennsylvania and The Pittsburgh & Lake Erie Railroad Company.

To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission in public meeting on April 29, 1983 in the above entitled proceeding.

A copy of this Order has been enclosed for your records.

Very truly yours,

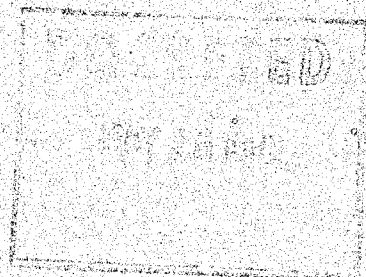
Jerry Rich, Secretary

fao  
Encls.

Cert. Mail

Copy of order to: Refer to letter dated October 27, 1982.

Bureau of Rail Transportation  
Law Bureau



PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120

Public Meeting held April 29, 1983

Commissioners Present:

Linda C. Taliaferro, Chairman  
Michael Johnson  
James H. Cawley

Ralph B. Pratt, State Representative

C-80041953

v.

The Baltimore and Ohio Railroad Company,  
Department of Transportation of the Common-  
wealth of Pennsylvania, Borough of Ellwood  
City, Lawrence County, Pennsylvania Power  
Company, Western Pennsylvania Water Company,  
Columbia Gas of Pennsylvania, Inc., The  
Bell Telephone Company of Pennsylvania and  
The Pittsburgh & Lake Erie Railroad  
Company.

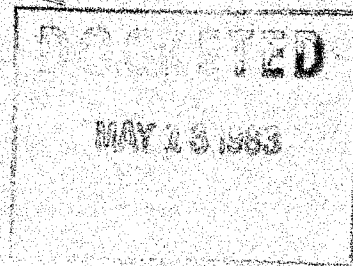
O R D E R

BY THE COMMISSION:

This matter is before us by reason of a petition filed June 8, 1982, by Borough of Ellwood City, requesting an extension of the time specified in the order adopted January 8, 1982, for submission of plans and completion of work to improve the curbs and sidewalk railings for the approaches to the Second Street overpass structure.

In its petition, the borough states it has not yet completed the work; however, it intends to do so. It avers the reasons for the delay are (a) that a five (5) week labor strike by borough employees has placed much of the work in the borough behind schedule and (b) it is necessary for the weather to be in the present condition so that a proper review of the curbs and railings may take place.

Proof of service of the instant petition on all parties has been received. More than twenty (20) days have elapsed since the petition was filed, and none of the parties advised that it has any objection to the granting of the petition as presented or desires to be heard in this matter.



First, we find that the petitioner erred when referring to the order entered January 8, 1982, stating that the reference order directed "Borough of Ellwood City to improve curbs, sidewalk railings, for the approaches of the Second Street Overpass". Actually, the latest order directing Borough of Ellwood City to perform work on the approaches to the Second Street overpass was adopted on November 6, 1981 and entered November 23, 1981.

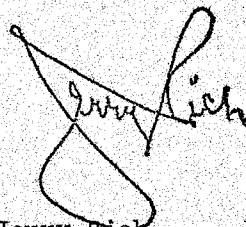
We also find that The Baltimore and Ohio Railroad Company was directed in the same order to "complete plans to repair, strengthen or replace the curbs, sidewalks and sidewalk railings on the Second Street overpass within 90 days after entry of this Opinion and Order". The time allotted for the railroad company to complete plans was identical to the time allotted for the borough to complete plans.

Since The Baltimore and Ohio Railroad Company has only recently submitted the plans which it was ordered to prepare, we determine it is not only reasonable, but advisable that the Borough of Ellwood City be granted an extension of time to prepare its plans to repair, strengthen or replace the curbs, sidewalks and sidewalk railings on the approaches. The work which both parties have been ordered to perform should be coordinated, thus granting the borough an extension of time will permit it to coordinate its proposed work with that proposed by the railroad company; THEREFORE,

IT IS ORDERED:

1. That the petition of Borough of Ellwood City requesting an extension of time for submission of plans be and is hereby granted.
2. That Borough of Ellwood City, at its sole cost and expense, provide to the Commission complete plans to repair, strengthen or replace the curbs, sidewalks and sidewalk railings on the approaches to the Second Street overpass within 90 days after this order is entered.
3. That in all respects not inconsistent herewith, our order adopted November 6, 1981 and entered November 23, 1981, remain in full force and effect.

BY THE COMMISSION,



Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: April 29, 1983

ORDER ENTERED: MAY 13 1983

ORIGINAL



Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101  
216 623 2200  
2441

May 20, 1983

Jerry Rich, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pennsylvania 17120

RECEIVED

MAY 26 1983

Dear Mr. Rich:

SECRETARY'S OFFICE  
Public Utility Commission

Re: Ralph D. Pratt, State Representative  
v. The Baltimore and Ohio Railroad  
Company, et al. -- Docket No. C-80041953

Enclosed for filing with the Commission in this matter are the original and three copies of the Application of The Baltimore and Ohio Railroad Company for Rehearing. Please return a file-stamped copy in the self-addressed envelope I have provided.

I hereby certify that I have served a copy of the Application upon all parties of record by regular United States Mail.

Respectfully,

Rachel E. Geiersbach

REG:cc  
Encls.

cc: Richard A. Porach, Esq., w/encl.  
The P & LE Railroad Company  
Commerce Court, 4 Sta. Sq.  
Pittsburgh, Pennsylvania 15219

DOCUMENT  
FOLDER



cc: (Cont'd.)

Edward Leymarie, Jr., Esq., w/encl.  
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Harrisburg, Pennsylvania 17120

Stephen Dittmann, Esq., w/encl.  
Assistant Counsel  
Department of Transportation  
Commonwealth of Pennsylvania  
521 Transportation & Safety Building  
Harrisburg, Pennsylvania 17120

RECEIVED

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAY 26 1983

RALPH D. PRATT, STATE REPRESENTATIVE :

SECRETARY'S OFFICE  
Public Utility Commission

-vs-

COMPLAINT DOCKET

THE BALTIMORE AND OHIO RAILROAD  
COMPANY, DEPARTMENT OF TRANSPORTA-  
TION OF THE COMMONWEALTH OF PENNSYL-  
VANIA, BOROUGH OF ELLWOOD CITY,  
LAWRENCE COUNTY, PENNSYLVANIA POWER  
COMPANY, WESTERN PENNSYLVANIA WATER  
COMPANY, COLUMBIA GAS OF PENNSYLVANIA,  
INC., AND THE BELL TELEPHONE COMPANY  
OF PENNSYLVANIA :

NO. 80041953

**DOCKETED**  
**JUN 1 1983**

APPLICATION OF THE BALTIMORE AND  
OHIO RAILROAD COMPANY FOR REHEARING

TO Pennsylvania Public Utility Commission:

Comes now The Baltimore and Ohio Railroad Company (B&O) and by and through its counsel respectfully petitions that the opinion and order of the Pennsylvania Public Utility Commission herein, entered on May 11, 1983, be set aside and vacated, and that an order granting a rehearing of all issues of fact and law involved in said proceeding be made therein. In support of this application, applicant respectfully represents that said opinion and order are erroneous for the following reasons:

1. The original Complaint in this matter alleged that "paint or other protective coating on the steel structure is eroded causing possible corrosion to structure thereby creating a hazard to vehicular and pedestrian traffic." The evidence adduced by the B&O and the other parties at the original hearing addressed that allegation only. With respect to the Fifth Street underpass, the evidence dealt only with the issue of the structural integrity of the structure. None of the evidence concerned motorist visibility

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or safety hazards posed by lack of paint on the concrete surfaces. The traffic counts and accident statistics introduced at that hearing related only to the allegation of surface water accumulation in the underpass. These statistics did not indicate that the lack of painting resulted in a hazardous condition to motorists.

2. At the hearing for enforcement, there was no evidence bearing on how painting would make the underpass safer for the motoring public. The only evidence upon which the order could be based was four photographic exhibits taken during daylight hours which depicted the underpass in its painted condition. There was no comparison with photographs of the bridge in its unpainted condition. There was no evidence that a hazardous condition exists so that remedial measures are warranted and no evidence of alternative measures that might be less costly and more effective.

3. The opinion and order are not supported by the evidence that was presented to the Commission in this matter.

WHEREFORE, applicant, The Baltimore and Ohio Railroad Company respectfully requests that the opinion and order entered on May 11, 1983, in the above-entitled matter be set aside and vacated; that applicant be granted a rehearing of all issues of fact and law therein; that at said rehearing, applicant be permitted to present new and additional evidence; and that thereafter, upon the submission of said cause, the Commission issue its opinion and order based on such new and additional information.


Respectfully submitted,

  
RACHEL E. GEIERSBACH  
Attorney for The Baltimore and  
Ohio Railroad Company  
Terminal Tower, P.O. Box 6419  
Cleveland, Ohio 44101  
(216) 623-2441

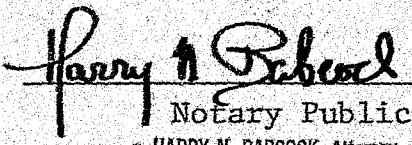
STATE OF OHIO )  
                  ) SS:  
CUYAHOGA COUNTY)

AFFIDAVIT

RACHEL E. GEIERSBACH, being duly sworn according to law, deposes and says that she is attorney of The Baltimore and Ohio Railroad Company; that she is authorized to and does make this affidavit for it; and that the facts set forth above are true and correct to the best of her knowledge, information and belief and she expects the said The Baltimore and Ohio Railroad Company to be able to prove the same at the hearing hereof.

  
RACHEL E. GEIERSBACH

SWORN AND SUBSCRIBED before me this 20th day of May, 1983.

  
Notary Public  
HARRY N. BABCOCK, Attorney  
NOTARY PUBLIC - STATE OF OHIO  
My Commission has no expiration date  
Section 147.03 R. C.