Before
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: C-80041953 - Ralph D. Pratt, State Representative vs. 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. and The Bell Telephone Company of Pennsylvania - Alleging that respondent's Second Street and Sixth Street crossings are in a state of disrepair and that the Fifth Street crossing has poor surface water drainage and corroding bridge paint or coating are creating hazards to vehicular traffic, in the Borough of Ellwood City, Lawrence County.

Hearing.

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Stenographic report of hearing held in Municipal Building, 525 Lawrence Avenue, Ellwood City, Pennsylvania,

Thursday,
August 14, 1980,
at 10:00 o'clock a.m.

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BEFORE: ADMINISTRATIVE LAW JUDGE JOHN K. CLEMENTS

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APPEARANCES:

RALPH D. PRATT, ESQ.
602 Capitol Bldg.
Harrisburg, Pa. 17120
For - Complainant.

BENJAMIN B. WECHSLER, ESQ.
1209 State Office Bldg.
Pittsburgh, Pa. 15222
For - PennDOT.

EDWARD LEYMARIE, JR., ESQ.
432 Fountain Ave.
Ellwood City, Pa. 16117
For - Borough of Ellwood City.

RICHARD A. PORACH, ESQ.
324 P & L E Terminal Bldg.
Pittsburgh, Pa. 15219
For - Pittsburgh and Lake Erie Railroad Co.

STEVEN B. GARFUNKEL, ESQ.
Box 6419, Terminal Tower
Cleveland, Ohio 44111
For - Baltimore and Ohio Railroad Co.

STEPHEN L. FELD, ESQ.
1 East Washington
New Castle, Pa. 16103
For - Pennsylvania Power Co.

RICHARD A. HARPER, ESQ.
Courthouse
New Castle, Pa. 16101
For - Lawrence County.

JOHN J. GALLAGHER, ESQ.
631 North Office Bldg.
Harrisburg, Pa. 17120
For - P.U.C. Trial Staff.

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THE ADMINISTRATIVE LAW JUDGE: This is the time scheduled for the hearing in the matter of Ralph D. Pratt, State Representative vs. 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. and The Bell Telephone Company of Pennsylvania. It is designated by the Commission at Docket C-80041953.

At this time, I would like counsel present to identify themselves for the court reporter, starting with Mr. Pratt.

MR. PRATT: I am Ralph Pratt, State Representative and also an attorney-at-law.

THE ADMINISTRATIVE LAW JUDGE: By the way I should state, just to make it a little bit more informal, I'm not going to require people to stand when they are addressed.

MR. WECHSLER: Benjamin Wechsler, Pennsylvania Department of Transportation.

MR. GALLAGHER: John Gallagher, P.U.C. Trial Staff.

MR. PORACH: Richard Porach, Pittsburgh and Lake Erie Railroad.

MR. LEYMARIE: Edward Leymarie, Borough

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of Ellwood City.

MR. GARFUNKEL: Steven Garfunkel, B & O.

MR. FELD: Stephen L. Feld, Pennsylvania Power Company.

MR. HARPER: Richard A. Harper, Lawrence County.

THE ADMINISTRATIVE LAW JUDGE: What I think I'll do just to simplify things, I'm going to ask Mr. Pratt to make an opening statement, and then ask anyone present from a utility who feels their interest is very limited or tangential to this proceeding, to make a statement for the record to that effect, and then, while I cannot dismiss them from the proceeding, I can excuse them from attending further hearings, pending developments which might change the extent of their interest.

Mr. Pratt, would you like to make a statement?

MR. PRATT: Your Honor, I don't have any witnesses or other evidentiary matters to present before the proceedings per se; however, after my statement I would then defer to those parties who are requested to present testimony per Mr. William Shane's directive of June 24, 1980, to all parties, William Shane being the Chief Administrative Law Judge of the P.U.C., and also reserve the right again to be able to be heard after that testimony and evidence is

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brought before this proceeding.

As the parties are aware, I filed a formal complaint on April 1, 1980, complaining that certain railroad crossings were in deplorable shape and needed maintenance and improvements because the crossings created a hazard not only to the vehicular traffic using the crossings, but also to the pedestrian traffic in some cases.

The reason for filing the formal complaint, it was my understanding that these particular problems could be settled amicably between the P.U.C. officials, pertinent officials and also the railroad officials, and in some cases with PennDOT, the Department of Transportation of the Commonwealth of Pennsylvania. Unfortunately, through a formal meeting which was held on March 19, 1979 no progress was made for some months thereafter, approximately one year, and therefore, I took it upon myself to file the formal complaint.

Secondly, what I'm alleging, Your Honor, is that three crossings involving basically two railroad transportation companies, the B & O Railroad and P & LE -- Pennsylvania and Lake Erie -- are in such condition that these conditions create a hazard to the public. The Second Street overpass, which is above grade, the cartway is in a deplorable condition, the medial strip is in bad condition, the concrete supports are cracked and create a hazard, and I

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believe that the responsible parties should be ordered to make certain improvements. In addition, there are certain cast iron railings on that particular crossing that should also be improved, and I believe that the testimony which will be offered by the various parties will show this.

The Fifth Street underpass, which is below grade, there are basically two hazards there as I see it. Surface water drainage is being allowed to seep on to the sidewalk, thereby causing a pedestrian hazard, forming ice in the wintertime and is also causing damage to the sidewalk and curb. Also, the steel substructure of the crossing I believe has not been maintained for some years and I believe that it is causing the substructure to corrode and thereby creating perhaps not a present danger to the public, but possible danger.

The last crossing would be the Sixth Street crossing, which is at grade, and for anyone who traverses that particular crossing in an automobile, you will know that you can't drive at any speed above five miles per hour. If you do, you assume the risk of damage not only to your automobile, but to your person. The railroad tracks are a conglomeration of peaks and valleys and I believe that it's a matter of public knowledge that B & O Railroad has commenced some improvements, which in my estimation is an admission that improvements should be made. Also, there are,

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I believe, three sets of tracks which are owned and maintained by the Pittsburgh and Lake Erie Railroad, which are also in the same condition as the B & O Railroad tracks. These tracks at this crossing, the condition thereof, I believe creates a hazard to the public using the crossing with vehicles.

I feel that the responsible parties should make improvements to these crossings as soon as is reasonable in the opinion of the Administrative Law Judge, and although I realize that the financial condition of certain parties may be such that improvements immediately may not be possible, I believe over a reasonable time these improvements must be and should be made.

At this particular time, I will now yield to the various parties in the order that the Administrative Law Judge prefers, subject to my right to assume the stand and make further statements.

THE ADMINISTRATIVE LAW JUDGE: Before we proceed, there's a couple minor administrative things I think should be handled.

First of all, my name is John Clements. The letter scheduling this proceeding states that Judge Michael Nemec would be in charge. I should state for the record that the proceeding was originally assigned to Judge Matuschak, who, because of his expertise in rate matters, was

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taken off the proceeding and assigned to the Met Ed rate proceeding. Judge Nemec was then assigned the proceeding, but those assigning it were unaware that he was in Harrisburg for these two weeks for hearings on West Penn Power. While there was no hearing scheduled for today, it was inconvenient for him to return to this part of the state for a one-day hearing, so I'm handling it on behalf of Judge Nemec. It has not been officially assigned to me, and unless it is, I think it will be assumed that Judge Nemec will handle any further hearings and will write the decision.

Secondly, Mr. Pratt, I believe we should put something on the record about the confusion concerning the advertisement at this time.

MR. PRATT: I will not attempt to pass the buck. I am guilty. I neglected, per the instructions of, again, William Shane, Chief Administrative Law Judge, to make the necessary advertisement in a newspaper of general circulation for the weeks of July 28 and August 4. It was a pure oversight on my part -- it was not intentional. At the time I realized what had happened, it was too late; however, to alleviate some of the problems, there was a general news release in the local daily newspaper on August 13, which was yesterday, stating the time, date and place of this hearing this morning, and there was a previous similar article which appeared in the Ellwood City Ledger during the

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month of July. I cannot at this time give you the exact date -- I could get that for you from the offices of the Ellwood City Ledger.

I realize that this may cause some inconvenience and there may be a need for a further public hearing on this matter, and I apologize to everyone who is present here today and I apologize to the Judge. It was not intentional, it was a negligent oversight on my part.

THE ADMINISTRATIVE LAW JUDGE: I think I'll leave it to Judge Nemec to decide whether or not the notice to the public would have been substantial and in compliance with the regulations. It would be my guess at this point that the Commission would prefer that we have an additional hearing which is properly advertised to enable more of the public to come and have an opportunity to present their views on the matter.

I think the best way to proceed today is to present as much testimony as possible and develop as much of a record as is possible, and then later determine as to the absolute necessity for another hearing. It could develop that another day of hearing would be necessary in any event.

MR. PRATT: Thank you.

THE ADMINISTRATIVE LAW JUDGE: Very well. Let's, first of all, go through the utilities to see

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who is here and represented by counsel.

Is there anyone here from The Bell Telephone Company of Pennsylvania?

RESPONSE: Yes, we are not represented by counsel.

THE ADMINISTRATIVE LAW JUDGE: Could you give your name?

MR. BERNEBURG: David O. Berneburg, Assistant Manager.

THE ADMINISTRATIVE LAW JUDGE: You're not under oath, but do you mind if I ask you a couple questions preliminarily?

MR. BERNEBURG: No.

THE ADMINISTRATIVE LAW JUDGE: Are you familiar with the crossings in question?

MR. BERNEBURG: Yes, I am.

THE ADMINISTRATIVE LAW JUDGE: Are you familiar with The Bell Telephone facilities in the vicinity of the crossings in question?

MR. BERNEBURG: Yes, I am.

THE ADMINISTRATIVE LAW JUDGE: I assume from the fact that there's no counsel, Bell Telephone does not wish to participate actively in the proceeding?

MR. BERNEBURG: You are correct. The telephone facilities in the area of the crossings we feel

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are not involved with the information we have at this time. If there are any future plans or something that might come up, we might be, but presently we feel that we are out of the jurisdiction of the crossing areas in all cases.

THE ADMINISTRATIVE LAW JUDGE: Very well. Let me ask informally those engineers present, do any of you have any knowledge or information to the effect that Bell Telephone facilities might be affected by any conceivable reconstruction?

MR. ZAHN: PennDOT says none.

THE ADMINISTRATIVE LAW JUDGE: I think we'll excuse you from the proceedings. You will not be dismissed from the proceedings probably until the final Order because of the possibility something may develop, but as far as I'm concerned, you may be excused from this proceeding.

MR. PRATT: Your Honor, off the record.

. . . OFF RECORD DISCUSSION . . .

THE ADMINISTRATIVE LAW JUDGE: Western Pennsylvania Water Company?

RESPONSE: Clyde Albert, District Manager, Western Pennsylvania Water Company.

THE ADMINISTRATIVE LAW JUDGE: I'll ask you the same questions.

Are you familiar with the crossings?

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MR. ALBERT: Yes, we are.

THE ADMINISTRATIVE LAW JUDGE: Are you familiar with the facilities of Western Pennsylvania Water Company in the vicinity of the crossings?

MR. ALBERT: Yes, I am familiar with the facilities.

THE ADMINISTRATIVE LAW JUDGE: Are you in a position to state whether any reconstruction or alteration of the different crossings would affect any of the facilities of Western Pennsylvania Water Company?

MR. ALBERT: To our knowledge, all of the information that we have, the construction will not affect any of our facilities, although we do have facilities located within all three areas in question.

THE ADMINISTRATIVE LAW JUDGE: Let me ask again informally, do any of the engineers have any information to the effect that facilities of Western Pennsylvania Water Company could be affected by any proposed alteration of the crossing areas?

MR. WECHSLER: At this point, the Department of Transportation does not.

THE ADMINISTRATIVE LAW JUDGE: Anyone else?

MR. ZAHN: I think it would be wise to state for the record where his facilities are.

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MR. ALBERT: At the Sixth Street crossing, we have a 4" cast iron line under the railroad tracks approximately 50' deep. Under the Fifth Street viaduct, we have a 4" water line located within the road right-of-way approximately 4' deep. At the Second Street bridge crossing, we have a 10" water line between the tracks and the south abutment.

THE ADMINISTRATIVE LAW JUDGE: Anything further, Mr. Zahn?

MR. ZAHN: I think he's got facilities within the area.

THE ADMINISTRATIVE LAW JUDGE: Very well. I think what I'll do, I will excuse you from the proceeding. I just should advise you that by being excused from the proceeding, you waive any right for cross-examination, and further it is possible, although it hasn't been historical too often, it is possible that the Commission may require you to move or alter your facilities at the company's own expense. With that caveat, as far as I'm concerned, you may be excused from the proceeding.

MR. ALBERT: Thank you.

THE ADMINISTRATIVE LAW JUDGE: Columbia Gas?

RESPONSE: My name is John P. Coulter, District Manager for the Pittsburgh District.

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THE ADMINISTRATIVE LAW JUDGE: Very well, I'll ask you the same questions.

Are you familiar with the crossings in question?

MR. COULTER: Yes, I am.

THE ADMINISTRATIVE LAW JUDGE: Are you familiar with the facilities of Columbia Gas in the vicinity of the crossings?

MR. COULTER: We have a 10" high pressure gas line along Sixth Street that crosses underneath the tracks of that crossing, and that's the only one where we have facilities.

THE ADMINISTRATIVE LAW JUDGE: I'll have to ask you an additional question then.

What type of safety considerations would have to be present and taken care of prior to commencement of work in that crossing?

MR. COULTER: We would be unable to determine that until we could see construction plans for that crossing. The only way we would become involved in this would be if construction plans involved some type of drainage or some type of excavation beyond correcting the elevation of the track.

THE ADMINISTRATIVE LAW JUDGE: There's a matter of safety involved and I'm kind of reluctant to

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excuse you from the proceedings.

Mr. Zahn, you've been doing this perhaps a few more years longer than I have, do you have any suggestions as to whether --

MR. ZAHN: I think he's correct that they can't determine whether their facilities are going to be affected until there's some sort of a decision, and I don't know why he couldn't be excused as the other utilities are. As long as we know that he's got facilities there, if any construction is to be done, the parties are aware of it.

THE ADMINISTRATIVE LAW JUDGE: I think we'll excuse you on the same terms and conditions as Western Pennsylvania Water Company, and I'll make a note for the record now that whatever parties are required to commence the alterations would have to get in touch and provide plans to the gas company prior to commencing any construction, and by the same terms, as I said, it's possible that the Commission might require alteration of your facilities at your expense, although historically that has not been done.

MR. COULTER: We might not agree to do that but we understand the Commission's position on that.

THE ADMINISTRATIVE LAW JUDGE: Thank you very much. Mr. Feld?

MR. FELD: I'm Stephen Feld for Pennsylvania Power Company. On April 24, 1980, the Company filed

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a motion for amplification of the complaint. Since that motion hasn't been ruled upon, we haven't filed an answer to the complaint. I recognize what Mr. Pratt said earlier and we are willing in the spirit of co-operation to present some testimony. We do have some facilities on two of the three crossings; however, we do want to have the right to file an answer to the complaint upon such time as the motion for amplification of the complaint is ruled upon.

THE ADMINISTRATIVE LAW JUDGE: I should state for the record I did see the motion for amplification and I suspect because the matter has been tossed around between three ALJs is the reason there hasn't been a ruling on it. At this point, since you're present, I would appreciate it if you would just participate in the hearing and present testimony of your witness.

MR. FELD: I do have a witness available; however, similar to the other utilities, we believe our involvement is somewhat minimal, but we do have utilities there on two of the three crossings. I have Company prints where these facilities are located which I could make available to the other parties and our witness would not say much more than is already set forth in the prints. I can give copies of the prints to the various parties and if there are questions, we can answer the question, either on an informal basis or at another hearing.

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THE ADMINISTRATIVE LAW JUDGE: What I think we'll do, we have one more counsel that does not have a witness, who, I believe, wishes to make a statement and be excused. I think we'll deal with him and then ask that you distribute your prints and see if counsel wishes to cross-examine your witness, and then if all feel that your interests are somewhat limited, perhaps your witness could just swear to what you've said and you could be excused from the proceeding then, too. Any objection to that course of action?

MR. ZAHN: No. I would suggest his exhibits be made part of the record.

THE ADMINISTRATIVE LAW JUDGE: By all means.

MR. FELD: I'm perfectly willing to do that.

THE ADMINISTRATIVE LAW JUDGE: Very well. Are there any other utilities, first of all? (No response) I believe counsel for the County wishes to make a statement.

MR. HARPER: Yes, Your Honor. I'm Richard Harper, Solicitor for Lawrence County, and I'm here under the circumstances indicated by Mr. Pratt in his statement which we appreciated. The County has no involvement anywhere in the area of these crossings. The County main-

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tains no roads and for that reason we would likewise respectfully request to be excused. For the record I would like to state, the County also filed a motion for amplification of the complaint and I understand what has been said with respect to that, but we would request to be excused on the basis of what I have stated.

THE ADMINISTRATIVE LAW JUDGE: First of all, I should state for the record that historically the Commission has, when a matter of safety involving a crossing in any county has occurred, involved automatically the county in the proceedings and the local municipalities and in the past has assessed costs. Historically, the railroads and PennDOT have argued that the county should be responsible for a percentage of the cost of improvements due to the fact that county residents would be using the facilities.

Let me ask, do any counsel present object to the County of Lawrence being not dismissed as a party, but excused from participation?

MR. WECHSLER: Your Honor, the Department of Transportation feels that the County of Lawrence should remain involved in this matter. County residents use these crossings, the County receives payments from the liquid fuel tax and should be a party to these proceedings due to the safety involved.

THE ADMINISTRATIVE LAW JUDGE: Any

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other counsel have any comments?

MR. PORACH: Pittsburgh and Lake Erie Railroad feels they should remain a party for the same reasons just stated.

MR. HARPER: Are these comments directed toward the County remaining a party or remaining present at these proceedings?

MR. WECHSLER: I would like for him to be a party but he can leave.

MR. PORACH: I would like him to be a party but I would say it would be up to him if he'd like to leave.

THE ADMINISTRATIVE LAW JUDGE: Very well. As I said to the other utilities and as I stated earlier, you may be excused from the proceeding. I should note that you do so at your own risk. The Commission has in the past assessed a percentage of the cost of improvements upon local municipal county governments, and by leaving the proceeding, you, of course, waive any right for cross-examination, but beyond that you may be excused as far as I'm concerned.

I think before we get to the nitty-gritty, we should wrap up the matter with Pennsylvania Power Company and ask that the exhibits be distributed at this time. Let's take a short recess and give everybody an opportunity to look at the exhibits.

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. . . . RECESS . . . .

THE ADMINISTRATIVE LAW JUDGE: Mr. Feld, since there are exhibits, I think I'll ask that your witness be sworn and identify the exhibits, and then if anyone has any questions, they can go ahead and ask them.

RALPH BROWN, called as a witness on behalf of County of Lawrence, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FELD:

Q Would you please state your name for the record?

A Ralph Brown.

Q And what is your business address, please?

A 1 East Washington Street, New Castle, Pa.

Q And what is your position at this time?

A I'm an engineering technician.

Q And who is your employer?

A Pennsylvania Power Company.

Q Are you familiar with the railroad crossings at Second, Fifth and Sixth Streets in Ellwood City?

A Yes, sir, I am.

Q Does Pennsylvania Power Company have facili-

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ties at the Second Street crossing?

A Yes, sir.

Q Could you briefly describe these facilities?

A We have an overhead distribution power line, wood pole line, 2400 volts at Second Street.

Q Are there any other utilities attached to these facilities?

A At Second Strret, there's Armstrong Utilities and Ellwood City Borough.

Q Are these facilities accurately reflected in Pennsylvania Power Company's Drawing No. 2205-E?

A Yes, sir.

MR. FELD: At this time, I would offer Pennsylvania Power Company's Drawing No. 2205-E to be designated as Pennsylvania Power Company Exhibit No. 1.

THE ADMINISTRATIVE LAW JUDGE: It will be so identified.

(Pennsylvania Power Company's Exhibit No. 1, being Drawing No. 2205-E, was produced and marked for identification)

MR. FELD: I should note that rather than having Pennsylvania Power Company in the head of the legend of the drawing, it has Penn-Ohio System. This is a predecessor holding company of Pennsylvania Power Company.

Q Does Pennsylvania Power Company have any facilities at the Fifth Street crossing?

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A No, sir.

Q Does Pennsylvania Power Company have any facilities at the Sixth Street crossing?

A Yes, sir.

Q Could you briefly describe those facilities?

A We have an overhead distribution wood pole line, 4160 volts.

Q And are there any other utilities attached to these facilities?

A The Borough of Ellwood City.

Q Are these facilities accurately reflected in Pennsylvania Power Company's Drawing No. 4457-E?

A Yes, sir.

MR. FELD: At this time I would ask that Pennsylvania Power Company's Drawing No. 4457-E be designated Pennsylvania Power Company's Exhibit No. 2.

THE ADMINISTRATIVE LAW JUDGE: Without objection, it is so identified.

(Pennsylvania Power Company's Exhibit No. 2, being Drawing No. 4457-E, was produced and marked for identification)

MR. FELD: The witness is available for cross-examination.

THE ADMINISTRATIVE LAW JUDGE: Any questions of this witness? I think we should follow cross-examination in the order of the Questions and Procedure.

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Does counsel for Ellwood City have any questions?

MR. LEYMARIE: We have no questions.

THE ADMINISTRATIVE LAW JUDGE: PennDOT?

CROSS-EXAMINATION

BY MR. WECHSLER:

Q Mr. Brown, at Second Street you said in addition to your cables, there's also Ellwood City and what was the other?

A Armstrong Utilities.

Q And what are they?

A Cable television.

Q With reference to the Second Street crossing, Mr. Brown, by what permission are you on that crossing -- do you have a permit from the Department of Transportation?

A I cannot answer that.

MR. WECHSLER: Nothing further, Your Honor.

MR. GARFUNKEL: B & O has no questions.

THE ADMINISTRATIVE LAW JUDGE: Does Staff have any questions?

MR. GALLAGHER: No questions.

THE ADMINISTRATIVE LAW JUDGE: Mr. Porach?

MR. PORACH: Pittsburgh and Lake Erie has no questions.

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THE ADMINISTRATIVE LAW JUDGE: Any redirect?

MR. FELD: No redirect.

THE ADMINISTRATIVE LAW JUDGE: Very well. Mr. Feld, do you wish to continue to participate actively in the hearings or --

MR. FELD: At this time I don't see any reason for Pennsylvania Power Company to participate actively in the proceedings. Certainly we don't feel, of course, that we should have to bear any cost of any relocations that would come out of these proceedings. We have not contributed to any deterioration or safety existing at the crossings we have facilities at, so on that basis we would ask to be excused as were the other utilities. We would offer our Exhibits No. 1 and 2 into evidence.

THE ADMINISTRATIVE LAW JUDGE: Pennsylvania Power Company's Exhibits 1 and 2 will be admitted into evidence if there's no objection. Very well, you're excused with the same caveat that you, of course, waive the right to cross-examination and note that the Commission has the authority to require alteration of your facilities at the Company's expense.

MR. WECHSLER: Your Honor, I also ask that counsel for Pennsylvania Power produce any permits they might have to have their poles and cables at that location,

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primarily at Second Street. We're not involved with Sixth Street at all.

MR. FELD: I will provide that to all parties.

THE ADMINISTRATIVE LAW JUDGE: Within 20 days?

MR. FELD: Fine.

THE ADMINISTRATIVE LAW JUDGE: Very well, anything further with the Power Company?

MR. WECHSLER: That's all we have.

THE ADMINISTRATIVE LAW JUDGE: Very well, thank you very much. Are there any other preliminary matters before we start taking the testimony as outlined in the Questions and Procedure?

MR. HARPER: Your Honor, might I have permission to call one witness for one or two brief questions?

THE ADMINISTRATIVE LAW JUDGE: Do any counsel have any objection to Lawrence County calling a witness out of order? (No response) Without objection, it will be permitted. Let me ask first, that all those who intend to testify to stand and be sworn at once. (Witnesses sworn in a group)

JAMES J. GAGLIANO, JR., called as a witness on behalf of the County of Lawrence, having been

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first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARPER:

Q Mr. Gagliano, would you state your full name for the record?

A James J. Gagliano, Jr.

Q Where do you reside?

A 57 Old Hickory Road, New Castle.

Q By whom are you employed?

A Lawrence County.

Q In what capacity?

A I'm a community planner for the Lawrence County Planning Commission.

Q In that capacity are you familiar with the areas which are the subject ot these proceedings?

A Yes, sir.

Q Have you inspected the areas?

A I have not inspected the areas. I am familiar with the areas -- I have not inspected them per se.

Q In your capacity as a planner for Lawrence County, do you have any knowledge as to whether or not the County maintains any roads in any of these areas?

A The County of Lawrence maintains no facilities in these areas, to my knowledge.

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Q In your capacity as planner for Lawrence County, have you ever been called upon to make any investigation as far as the County's involvement in these areas?

A No, sir.

MR. HARPER: Cross-examine.

CROSS-EXAMINATION

BY MR. LEYMARIE:

Q Do you know what the source of your funding is for your particular division, Community Planning -- where does your funding coming from?

A Directly from the County.

Q Is part of your funding a result of liquid fuel funds?

A No, sir.

MR. LEYMARIE: I have no further questions.

BY MR. WECHSLER:

Q Would you explain the organization within the County you work for -- how it's budgeted?

A Lawrence County Planning Commission is budgeted through the County's budget.

Q Do you do all the road construction and maintenance in the County?

A No, we are the Planning Commission. The

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County maintains no roads.

Q The County maintains no roads in Lawrence County?

A No, the County itself.

Q Does the County itself get any proceeds from the liquid fuel taxes?

A Yes, it does.

Q And do the County residents use the crossings involved in this matter?

A Yes.

MR. WECHSLER: That's all we have.

MR. GARFUNKEL: No questions.

MR. PORACH: No questions.

THE ADMINISTRATIVE LAW JUDGE: Let me clarify a point if I could. The County obtains liquid fuel tax funds, but as I understand it, the County does not own or maintain a single mile of highway in the County?

THE WITNESS: That's correct.

THE ADMINISTRATIVE LAW JUDGE: Are the funds just passed through --

THE WITNESS: They're distributed to the local municipalities.

THE ADMINISTRATIVE LAW JUDGE: Do you know on what kind of basis -- mileage, population --

THE WITNESS: Population.

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THE ADMINISTRATIVE LAW JUDGE: Any further questions?

BY MR. GALLAGHER:

Q Mr. Gagliano, is it your opinion that the involved crossings are necessary for the accommodation and convenience to the County residents?

A To the County residents, yes, to a portion of them.

Q But to County residents nonetheless?

A Yes.

MR. GALLAGHER:: No further questions.

REDIRECT EXAMINATION

BY MR. HARPER:

Q To clarify one point, Mr. Gagliano, you have said on several occasions the County maintains no roads. It's a fact the County has no roads, is that correct?

A That's correct.

Q There are no County roads in Lawrence County?

A No, sir.

Q All the roads in Lawrence County are either owned or maintained by other municipalities?

A That's correct.

Q And to the best of your knowledge, the liquid fuel money that's received by the County is distributed to

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those municipalities according to the County Code and the applicable laws?

A That's correct.

MR. HARPER: Thank you.

THE ADMINISTRATIVE LAW JUDGE: Anything further of this witness?

RECROSS-EXAMINATION

BY MR. WECHSLER:

Q With respect to the distribution of the liquid fuel tax monies, how is that done?

A I am not aware of the allocation procedure.

Q Do you know if any money is held back for special projects, emergency projects?

A I am not aware.

MR. WECHSLER: I have no further questions. I would like the County of Lawrence to supply its means of distribution and whether or not 100 percent of the funds are distributed or only a portion thereof to the municipalities, or whether some are held back by the County for emergency repairs, or projects such as this.

MR. LEYMARIE: The Borough of Ellwood City would join in that request and ask that a general statement of all the funds received by the County and how they were distributed to the municipalities be made for the last

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couple of years.

THE ADMINISTRATIVE LAW JUDGE: Let me ask, is counsel for the County familiar enough with that to make a statement for the record, or would that information have to be provided later?

MR. HARPER: That information would have to be provided. My statement would be conjectural.

THE ADMINISTRATIVE LAW JUDGE: Do you have any objection to providing the information?

MR. HARPER: None at all.

THE ADMINISTRATIVE LAW JUDGE: Very well, I ask that you provide the same to the Commission with a copy to parties of record within 20 days of this date.

MR. HARPER: That will be fine.

THE ADMINISTRATIVE LAW JUDGE: Any further questions of this witness? (No response) Thank you very much, sir.

MR. HARPER: Your Honor, having placed that testimony on the record and acknowledging that I'm waiving the right of cross-examination, may we be excused?

THE ADMINISTRATIVE LAW JUDGE: Any objection?

MR. WECHSLER: No objection.

MR. LEYMARIE: I have no objection.

THE ADMINISTRATIVE LAW JUDGE: Very

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well, you may be excused. Anyone else have time constraints, or are we ready to proceed in order with the Questions and Procedure?

MR. LEYMARIE: Yes, we have a witness who is just a resident of the Borough of Ellwood City and a member of the public and who probably wouldn't want to sit through the whole proceedings, and he could describe an incident that happened to him.

THE ADMINISTRATIVE LAW JUDGE: The usual procedure is to go through the testimony and then ask the public if they wish to add anything. You may certainly introduce him as a witness for Ellwood City.

MR. LEYMARIE: I would like him to testify as a member of the public.

THE ADMINISTRATIVE LAW JUDGE: Sir, are you in any particular hurry that you'd like to testify now?

RESPONSE: No.

THE ADMINISTRATIVE LAW JUDGE: Thank you. Is Ellwood City prepared to proceed?

MR. LEYMARIE: As Ellwood City's first witness, I'd like to call its Borough Manager, Gregory Ferrese.

GREGORY FERRESE, called as a witness on behalf of the Borough of Ellwood City, having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. LEYMARIE:

Q Mr. Ferrese, would you state your complete name, please?

A Gregory Ferrese.

Q And what is your position with the Borough of Ellwood City?

A Borough Manager of Ellwood City.

Q Would you describe your duties, generally, as Borough Manager?

A As Borough Manager, I am in charge of all departments excluding the Police Department; responsible for working on state and federal grants; responsible for the annual budget for the Borough of Ellwood City; responsible for overseeing approximately 66 Borough employees, numerous SETA employees; in charge of the zoning officers of the Borough of Ellwood City; liaison between the Borough Council and the Planning Commission, Zoning Board, Recreation Board, Library Board.

Q Are you familiar with the crossings in question in this proceeding, being the Second Street crossing, Fifth Street crossing and the Sixth Street crossing?

A Yes, sir.

Q Are you able to describe those crossings?

A Yes, sir.

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Q Would you do so?

A The Second Street crossing, the approaches are state highways -- approached by state roads; the Fifth Street crossing, the approaches are by state road; and the Sixth Street crossing, approaches are on Borough roads.

Q The Second Street crossing is located between what streets in Ellwood?

A It's located between Pittsburgh Circle and Crescent Avenue.

Q Do you know what ward that is in the Borough?

A The Second Ward.

Q And the Fifth Street crossing is located between what streets in the Borough of Ellwood City?

A Between Lawrence Avenue and Spring Avenue.

Q And what ward is that located in?

A Third Ward.

Q And the Sixth Street crossing is located between what streets?

A Lawrence Avenue and Spring Avenue, Third Ward.

Q Focusing on Second Street, would you describe what sidewalks exist on Second Street?

A We have cement sidewalks on the approaches and what really concerns us on Second Street is the decking, which was prepared by the Chessie System, of blacktop material,

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and not cement sidewalk material. I do not know how they got away with it being that we have a sidewalk ordinance. We have holes in the blacktop material. The Public Works Director last year actually put steel plates over top of the decking where the holes were. The blacktop material is crumbling, cracking and we have numerous school children using that facility.

Q Do you have a copy of that ordinance with you?

A Yes, sir.

MR. LEYMARIE: May we have that marked as Borough of Ellwood City's Exhibit A.

THE ADMINISTRATIVE LAW JUDGE: So marked.

(Borough of Ellwood City Exhibit A, being copy of an ordinance, was produced and marked for identification)

Q Did one of the railroad systems involved in this proceeding make some repairs or have some construction going on on the Second Street crossing?

A We did bring it to the attention of the railroad company.

Q Which railroad company?

A The Chessie System, and they did make some repairs -- they filled the holes up with blacktop material.

Q In the ordinance involved here in the Borough concerning sidewalks, what are the requirements in connection

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with placing a sidewalk?

A May I read the section?

Q Yes.

A Section 71 deals with property owner responsible for construction and reconstruction of sidewalks and curbs. "Every owner of property in the Borough of Ellwood City shall, on thirty (30) days' notice from the Borough Council, construct or reconstruct a sidewalk and/or curb, which shall conform to all the requirements of this ordinance" and then it goes on to state that the material under Section 74, "All sidewalks and curbs shall be constructed, or reconstructed and repaired of cement concrete only, according to specifications determined from time to time by the Borough Manager".

Q Were you consulted when these sidewalks were replaced?

A I was not. The sidewalks that were replaced with blacktop material were replaced, I'd say, at least 10 to 15 years ago.

Q Has the Borough of Ellwood City made any complaint to the Chessie System concerning the replacement of these sidewalks?

A All we did was notify the Chessie System that there were holes in the sidewalk and would they make the necessary repairs and they came back and repaired it with

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blacktop material.

Q Is it your opinion that the repairs that were done at that time met specifications and requirements that the Borough of Ellwood City had?

A It's my opinion that the sidewalk was not put in correctly in the beginning -- it should have been a cement sidewalk.

Q When the repairs were made?

A When the sidewalk was put in. I think the Chessie System had no other alternative but to just come back in and patch it up with blacktop because I doubt if they wanted to go into the expense at that time to repair the sidewalks completely with cement.

Q The roadway that exists in that area is not a roadway that is maintained by the Borough of Ellwood City, is that correct?

A It's maintained by the state Department of Transportation.

Q Do you do any maintenance on that road?

A We enter into a contract with PennDOT for snow and ice removal on that road only. As far as blacktopping and patching it or any maintenance work, it is done by PennDOT. All we do is remove the snow and we enter into a contract agreement with PennDOT during the winter months to do so.

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Q Are you able to give any testimony concerning the condition of the railings or the other facilities adjacent to the sidewalk on the Second Street overpass?

A From my visual inspection, the railings are rusted and the cement underneath the decking is cracking, and I think we have pictures later on that will justify that.

Q Focusing on the Fifth Street overpass, are there sidewalks in the area of the overpass?

A Yes, both sides.

Q And this area is located in the business district of Ellwood City, is it not?

A Yes, we have commercial establishments on both sides.

Q And this area is heavily trafficed by both pedestrians as well as motor vehicles, is that correct?

A Yes, sir.

Q Have there been complaints from Borough residents concerning the condition of the sidewalks and possible drainage problems that exist in that area?

A Yes.

Q Could you identify --

A Complaints from Borough residents and also business establishments in that particular area deal with the drainage problem where the water after rains, there's numerous puddles on the east side of the subway there, and

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from what we can see, the drainage problems are coming from overhead, coming down the sides of the walls; also, we have pictures showing it's coming up underneath the sidewalk area and some of the drain pipes are leaking. Also, we brought to the attention of the Chessie System approximately two and a half years ago a request to paint the subway area and at this time that has not been done either.

Q There are businesses in the Borough of Ellwood City located on either side of this overpass?

A Yes, sir.

Q It was your statement that requests have been made for improvements in those conditions?

A Yes, sir.

Q Could you describe what the general appearance of this Fifth Street overpass is as far as corroding and paint being necessary there?

A It's in the main business district of the Borough; it is an eyesore, and we asked, like I said, two and a half years ago if they would please remove the rust and paint it, and there's rust underneath the top of the subway, and you can see it visually if you go down there, and cement area we asked that they paint it white or whatever color, and they stated two and a half years ago it would have to be in their capital improvement program on a priority list and we have not heard since then whether it's two, three or

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whatever -- I guess they have a certain system whereby they place it in a category and as it comes up top, they do it.

Q Are you able to say who maintains the roadway passing through that area?

A It's a state highway, it's maintained by PennDOT, and we enter into a contract agreement in the winter to remove the snow.

Q As to the Sixth Street crossing, this is a Borough right-of-way, is that correct?

A Yes, sir.

Q A Borough maintained street, is that correct?

A Yes, sir.

Q This is, I believe, a crossing that is on the roadway, is that correct?

A Yes, sir.

Q Have you had occasion to inspect that area?

A Yes, sir.

Q What is the method provided by the Borough or the railroad systems as far as for pedestrian crossing -- is there any sidewalk?

A There are sidewalks leading up to the tracks.

Q Are you able to describe the condition crossing that roadway?

A Yes, we brought it to the attention of the Chessie System and asked the crossing be repaired due to the

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fact we have had numerous residents lose mufflers and exhaust systems on that particular track. The tracks are bumpy, in my terms. The Chessie System thought maybe there was a storm sewer underneath that could be causing settling. We contacted our engineer of Chester Engineers and they walked through that storm sewer and we do not have any problems at all -- our storm sewer is wide open, no drainage problem whatsoever.

Approximately a month ago, the Chessie System did start to make repairs to that railroad crossing and they were down for approximately one week, they left, and the crossing is no better than what it was originally, and it was brought to the attention of the Chessie System and they have guaranteed me in a letter back to me that during the month of September they will come back in with a crew and make the necessary additional repairs due to the fact they did not complete the job at that time -- it was only a temporary measure -- and they would come back and make the final repairs.

Q Can you describe what type of warning system is at Sixth Street?

A They have gates.

Q Gates that come down when a train crosses that area?

A Yes.

Q To yourknowledge, have there ever been any

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accidents in that area?

A Yes, approximately two years ago there was a serious accident where the gates were not functioning properly -- an automible went across and a train hit it. There were no deaths in that accident, although it was a very serious accident and carried the car approximately 30'.

Q You have a report with you from the Chief of Police of the Borough of Ellwood City, is that correct?

A Yes, sir.

MR. LEYMARIE: This report I'd like to have marked as Borough of Ellwood City's Exhibit B.

(Borough of Ellwood City's Exhibit B, being a copy of a report from the Chief of Police of the Borough, was produced and marked for identification)

Q Would you describe this report, please?

A Yes, it's a report from the Police Department in regard to the letter that was sent to us by Mr. Shane -- the letter that Mr. Pratt referred to earlier in the meeting -- requesting the Borough answer certain questions.

It deals, basically, with traffic counts and the number of accidents within the last five years at the three crossings in question, and that's about what the report consists of.

Q This report has accident reports at or near these crossings, is that correct?

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A Yes, the report was prepared by our traffic lieutenant, Lt. Gilchrist, and also submitted to me by the Chief of Police.

MR. PORACH: At this point, I'd like to object to this exhibit as hearsay. Taking a quick glance at it, it appears to contain opinions and other various testimony that I think is clear hearsay and I would object to any further introduction.

THE ADMINISTRATIVE LAW JUDGE: Anyone join in that objection?

MR. WECHSLER: Your Honor, in a limited way, at the third page, he makes some comments as to his opinions as to the method of correction of the Second Street Bridge --

MR. LEYMARIE: I would have no objection to any opinions that are expressed by the party making the report being eliminated as part of the report. I think all that we would like in this is the accidents, possibly pedestrian counts and the traffic counts that were made by the police officers. That's all we're trying to admit for purposes of this testimony.

MR. PORACH: Your Honor, if I may then, perhaps this witness could testify and put in the record what the traffic counts were and the accident totals without the necessity of admitting this as an exhibit as part of

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the record.

MR. LEYMARIE: I have no objection.

THE ADMINISTRATIVE LAW JUDGE: The exhibit does appear to contain a lot of opinion that should probably be testified to in person and subject to cross-examination. I'm willing to either accept the report and exclude the paragraphs with the opinions, or simply just ask the witness to read the accident counts and the traffic counts.

MR. GALLAGHER: Your Honor, it might help if we looked at Question No. 8 and No. 10 on these questions. He might just answer those as to the approximate daily vehicular and pedestrian traffic at these crossings, and then No. 10, the number, cause, location and frequency of any accidents, and just stick with that.

THE ADMINISTRATIVE LAW JUDGE: Very well. Let's ask the witness to answer the questions, and than at a later date, if there's a witness available to testify as to the reasons for the accidents, then maybe the entire exhibit will be admitted.

Q Are you able to identify the number of accidents that occurred at the Sixth Street crossing during the last five years?

A Yes, by the Police Chief's report dated July 20, 1980.

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Q And would you state the number of accidents at the Sixth Street crossing, please?

A For the year 1975 - 0; for the year 1976 - 1; for the year 1977 - 2; for the year 1978 - 0; for the year 1979 - 1.

Q Will you do this for the Fifth Street crossing?

A For the Fifth Street crossing, for the year 1975 - 1; for the year 1976 - 0; for the year 1977 - 0; for the year 1978 - 0; for the year 1979 - 0.

For Second Street, for the year 1975 - 3; for the year 1976 - 0; for the year 1977 - 2; for the year 1978 - 0; for the year 1979 - 2.

Q Do you know if a traffic count was performed by the Borough of Ellwood City at each of these areas during the period of one day?

A Yes.

Q Could you testify as to the number of cars in each of the areas that were counted at these particular crossings during a one-day period?

A Traffic count on Fifth Street from July 16 to July 17 was 13,295; traffic count on Second Street from July 15 to July 16, 8,242; traffic count on Sixth Street from the 17th of July to the 18th of July, 5,129.

Q And as to the number of pedestrians crossing

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this area in a 24-hour period, could you testify to that, please -- I believe this was a one-hour count?

THE ADMINISTRATIVE LAW JUDGE: The pedestrian count is somewhat neutral with respect to giving opinions. Do counsel have any objections to reading into the record the time it was taken, etc.?

MR. PORACH: No.

MR. ZAHN: No.

A On July 24, 1980, between the hours of 1200 and 1300, a pedestrian count was held, the results are as follows:

Northbound on the west side of Second Street, 2 pedestrians; northbound on the east side of Second Street, 2 pedestrians; southbound on the west side of Second Street, 0 pedestrians; southbound on the east side of Second Street, 1 pedestrian.

From 1200 hours to 1300 hours on Wednesday, the 23rd day of July 1980, a count of pedestrians at Fifth Street near Beaver Avenue was conducted by the undersigned officer -- that would be Patrolman Thomas M. Bucci -- the results of that count is as follows:

Traveling north on the west side of Fifth Street, 30 pedestrians were counted; traveling north on the east side of Fifth Street, a count of 16 pedestrians; there were 26 pedestrians headed south on the west side of Fifth

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Street; the count of pedestrians traveling south on the east side of Fifth Street were 16.

A count taken between the hours of 1500 and 1530 and again between 1610 and 1630 on July 18, 1980 in regard to the Sixth Street crossing?

West side, northbound - 2; west side, southbound - 0; east side, northbound - 6; east side, southbound - 1; for a total of 9.

Q These counts were taken during the summer when school was not in session, is that correct?

A Correct.

Q Would you describe where this Fifth Street overpass is located in relation to the high school?

A People from the north side of town use that to get to the high school, and also people from the north side of town use both of the other two crossings -- Second Street and Sixth Street -- to get to the high school. All three crossings are used moreso during the school year. I would say Fifth Street and Second Street are more used than Sixth Street.

Q We have an elementary school located near the Fourth Street crossing?

A That is another crossing that is not brought up today. We do have one there.

Q And on Fifth Street, the high school is

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located approximately two blocks away, is that correct?

A Yes.

Q Do you know whether we have any weight limit posted on the Second Street crossing?

A I would say you should ask the Public Works Director that question. I can't answer it.

Q Are you able to say what the Borough of Ellwood City's present obligation is with respect to the maintenance of the existing crossings and the highway approaches on Second Street, Fifth Street and Sixth Street?

A All we do on Sixth Street, maintenance of the road as far as the railroad crossing there we are not responsible at all.

On Fifth Street, we are responsible for the snow and ice removal during the winter months. The state Department of Transportation maintains the highway there. We do sweep the puddles off the sidewalk every time it rains so we do not receive complaints from the commercial establishments in that particular area. We do maintain the sidewalks in that area, too, as far as any capital improvements that have to be done.

On Second Street, I am positive that we are responsible for the approaches only, and also we remove the snow and ice on the road area during the winter months and the state maintains the cartways.

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Q Question 14, I'll ask you to answer that on behalf of the Borough of Ellwood City. The question is: State whether the involved crossings are necessary for the service, accommodation and convenience to the traveling public, or whether any of the crossings can be abolished and the highway closed to all traffic in the vicinity of said crossing.

A No, all three crossings are vital to us.

Q Could you be more specific as to why --

A All three crossings separate both parts of town -- it's right in the heart of the middle of town -- and to get to one side of town you have to use Fifth Street, Sixth Street or Second Street, so all three are vital. We can close them for repairs but not permanent.

Q All these streets are access to the business district, is that correct?

A Yes, sir.

Q And all of them are located immediately adjacent to the business district, if not within it, is that correct?

A Yes, sir.

Q In fact on the Fifth Street crossing, there are businesses located immediately on the north or south side of the crossing, is that correct?

A Yes, sir.

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MR. LEYMARIE: I have no further questions of this witness. You may cross-examine.

THE ADMINISTRATIVE LAW JUDGE: Very well. Mr. Wechsler, would you care to cross-examine?

CROSS-EXAMINATION

BY MR. WECHSLER:

Q Would you just quickly go over your educational background?

A I have a Bachelor of Science Degree in Business Administration.

Q You have no engineering background?

A No, sir, I'm sorry I'm neither an engineer or a lawyer.

Q With respect to your comments as to the condition of the bridges in general, I presume that this is just your own observations as someone not trained in engineering, would that be correct?

A My only answer to that question was that I noticed on the bridge at Second Street there was a crack, which any lay person would know by looking at it, and I stated that there would be other justification by pictures that we have. I did not state I was an engineer -- all I stated was there was a crack in the bridge area.

Q With respect to the accident counts you gave,

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I presume that while you gave a number figure as to the accidents, you have no information as to the cause of the accident, the nature of the accident, where with respect to each crossing the accident occurred?

A Yes, we have where the accident occurred on which crossing -- I gave that.

Q At each crossing you don't know where on the crossing it occurred?

A I could not answer that, but when the accident happened, we will have an accident report on file with the Police Department, so the Police Chief could probably give that information to you.

Q Do you know how the traffic counts were taken?

A The traffic counts were taken by a traffic counter that we purchased through the Highway Safety Commission.

MR. WECHSLER: I have no further questions.

BY MR. GARFUNKEL:

Q Mr. Ferrese, I was a little confused by your testimony concerning Second Street.

You indicated that at one time there was some problem with blacktopping?

A Yes, sir.

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Q On the sidewalk?

A On the deck itself.

Q When was that?

A Approximately two and a half to three years ago.

Q And you indicated you requested that repairs be made?

A Yes, sir.

Q In conformity with Section 71 of the ordinance?

A No, sir, I didn't say in regard to Section 71. The material put down was blacktop material --

Q Which was the original sidewalk material?

A Yes, it was blacktop material. Since that time, it's cracked and crumbled and there were holes -- you could just look and see the tracks underneath. School children use that. What I requested from the Chessie System was that they make the necessary repairs because what we instructed our Public Works Director to do was to put something over top -- a steel plate -- on a temporary measure. All I asked the Chessie System to do was come in and make the necessary repairs. I did not refer to Section 71 because it was all blacktop and there were potholes in it and I just told them to make the necessary repairs.

Q Did the Chessie System make the necessary repairs?

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A Yes, but not immediately -- I would say eight to ten months later.

Q What is the current condition of the sidewalk on the Second Street overpass?

A It's blacktop material and the potholes were repaired.

Q Did you ever bring to the Chessie's attention the requirements of Section 74 concerning cement concrete requirements?

A No, I did not.

Q Concerning the Fifth Street bridge, you indicated that you have seen puddles on the east side of the sidewalk -- the subway?

A Yes, sir.

Q Do you know how those puddles originate?

A Yes, sir, during a rain I was there. I can tell you they are coming down the side of the wall and you can see by the marks on the side of the cement wall. I can tell you I saw they are coming from the drain pipes that were repaired by the Chessie System.

Q You're saying the water is coming before or after the repairs?

A They're still leaking.

Q They're still leaking?

A Yes, on the top you can see all the rust

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marks where it's dripping.

Q When was this that you were out there?

A Only after a rain. I can't give you a definite time, but I have pictures to show if our counsel would like to present them right now or to you.

Q What is the grade of the approaches?

A There is a grade but I cannot tell you what the grade is.

Q A significant grade, is there not?

A Yes, sir.

Q Do you notice surface run-off water coming from both approaches?

A We do have a storm catch basin at the top of the road in question, which is Beaver Avenue, to catch some of the water. We don't have a curb there. Maybe it might be an inch thickness but there's not really what you'd call a curb there.

Q What area are we talking about?

A I would say the south side of the east side of the sidewalk in question.

Q It could be less than an inch?

A It could be maybe an inch or less. I would think less. I did instruct the Public Works Director to take pictures after a rain and after the puddles were swept and then wait numerous hours to see if there was any water. We

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do have pictures that we are going to show where the water seeped up from the side of the wall.

Q You indicated that two and a half years ago you asked the Chessie System to paint the Fifth Street Bridge, is that correct?

A Yes, I had a meeting with the Chessie System. They came down and also a member from the P.U.C. was here approximately two, two and a half years ago, and we looked at all sites. I would say the man that was down here then was Mr. W. W. Sprauls. Since that time he's retired -- I'm pretty sure that was his last name -- and we brought this all to the attention of the Chessie System.

Q The basic Borough complaint was that the bridge in its present condition was an eyesore?

A The basic complaint was the puddles; we asked that the bridge be painted; we asked that --

Q You asked that the bridge be painted because, in your opinion, it was an eyesore?

A Not only my opinion but the downtown business district's Merchants Association and residents.

Q Everyone's opinion is that an unpainted bridge is an eyesore, is that correct?

A It is an eyesore, that's our opinion.

Q Concerning the Sixth Street crossing, you indicated that some of the work has been performed pursuant

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to your request, is that correct?

A Yes, sir.

Q And you've been assured that the remaining work will be completed by September, is that correct?

A Yes, sir.

Q You indicated before that the Second, Fifth and Sixth Street crossings are the only crossings in Ellwood City?

A No, those are the crossings in question today. We also have the Fourth Street crossing. It's not in question -- the Second, Fifth and Sixth Streets are in question.

Q As I read your traffic statistics, I see only one accident in 1975 in the area of the Fifth Street crossing, is that correct?

A Yes, sir.

Q And that crossing has a traffic count of 13,295?

A Yes, sir.

MR. GARFUNKEL: No further questions.

BY MR. PORACH:

Q Mr. Ferrese, the Second Street crossing I believe you said the holes that you were complaining about are now presently repaired, is that correct?

A Yes, sir.

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Q Do you have any idea when the ordinance that you've introduced as your first exhibit was passed?

A 1956.

Q Do you have any idea when that bridge at Second Street was constructed?

A You may be able to ask that question of the Public Works Director -- I was not here at that time. As far as when the sidewalk was made blacktop, is that what the question was?

Q No, I asked if you knew when the bridge was constructed.

A No, I do not know but I can tell you the sidewalk has been worked on since that time -- since the bridge was constructed.

Q And are you aware that there is a Public Utility Commission Order covering the Second Street crossing in Ellwood City?

A I was shown that by members of the P.U.C., but I was told that the responsibility of the sidewalks was of the railroad's nature.

Q But you are aware that there was an Order and proceedings governing the construction and maintenance, etc. of that Second Street Bridge?

A I would agree with you, yes.

Q Are you aware that under the law in Pennsyl-

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vania that the Public Utility Commission has jurisdiction over railroad-highway crossings and their construction, maintenance, etc.?

A Yes.

Q The Fifth Street crossing, you mentioned the problem with drainage.

Who has responsibility for the drainage on the highway?

A The Borough of Ellwood City.

Q And you mentioned the painting problem and that it was an eyesore.

You're not testifying here that the lack of paint affects the structural strength of that bridge?

A No, I'm not testifying that -- I'm just saying it's all peeled and there's erosion marks.

Q You also mentioned rust?

A Yes, there's rust underneath.

Q And I take it you're not testifying that has anything to do with dangerous conditions?

A No, I'm not testifying to that nature.

Q Sixth Street crossing, you mentioned there are gates.

Are there not flashing lights there, also?

A Yes.

MR. PORACH: That's all the questions

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I have.

BY MR. GALLAGHER:

Q Mr. Ferrese, I'd like to clear up one point about the accident report.

These accidents were reported at or near these crossings, is that your testimony?

A Yes. We asked the question on the accidents on Sixth Street, Fifth Street and Second Street, and this is what I was presented.

Q Are you sure these accidents occurred on the crossings or on the approaches?

A I would rather you ask the Police Chief that question.

MR. LEYMARIE: I'll ask the Chief of Police to supply us with a copy of the accident report which we can make part of this record.

MR. GALLAGHER: Because I think it's important that we determine where the accidents were, whether or not they were on the approaches or the crossings themselves, as opposed to someone near the crossing.

THE WITNESS: We should be able to get that today.

MR. GALLAGHER: Your Honor, I have no further questions.

THE ADMINISTRATIVE LAW JUDGE: Any

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other questions of this witness?

MR. LEYMARIE: I have no further questions. I would move Exhibit A, being the sidewalk ordinance, into evidence, and I would move those portions of the report -- traffic count, pedestrian count and accident count -- into evidence, other than any matter that would be a personal opinion of the individuals and ask that those be excluded from the record, if there's no objection.

THE ADMINISTRATIVE LAW JUDGE: First of all, any objection to Ellwood City's Exhibit A?

MR. WECHSLER: Yes, Your Honor, I believe these crossings are in the exclusive jurisdiction of the P.U.C., which supersedes the authority of the Borough of Ellwood City to have an ordinance affect these crossings. I don't think the ordinance has any bearing whatsoever on these proceedings.

THE ADMINISTRATIVE LAW JUDGE: I will concede that the ordinance has somewhat questionable relevance, but it raises a legal question which really can't be considered unless the ordinance is part of the record, so I'm going to overrule your objection and let the ordinance be admitted, and ask that Judge Nemec and the Commission give whatever weight to it that they see fit.

With respect to Ellwood City's Exhibit B --

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MR. PORACH: Your Honor, I think the relevant data has already been placed in the record by the witness' testimony.

THE ADMINISTRATIVE LAW JUDGE: I think it would probably clutter the record if the exhibit were admitted since everything has already been testified to, so if you will, consider that motion to be withdrawn. You're going to present another witness?

MR. LEYMARIE: Yes.

THE ADMINISTRATIVE LAW JUDGE: Very well. No other questions of this witness? (No response) Thank you very much. Let's take about a 15-minute recess.

. . . . RECESS . . .

MR. LEYMARIE: I would like to call George Hulick, Jr., Public Works Director for Ellwood City.

GEORGE HULICK, JR., called as a witness on behalf of the Borough of Ellwood City, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEYMARIE:

Q Would you state your name?

A George Hulick, Jr.

Q Your position with the Borough of Ellwood

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City?

A Director of Public Works.

Q What are your duties as Director of Public Works?

A I supervise approximately 25 men for the maintenance of streets, roads, sewers, recreation parks and refuse pickup.

Q How long have you been in that position?

A 20 years; employed 27 with the Borough.

Q Mr. Hulick, have you examined the general conditions of the Second Street, Fifth Street and Sixth Street crossings?

A I have.

Q In regard to Second Street, were you present when various pictures were taken by an Ellwood patrolman?

A I was.

Q And do these pictures reflect various conditions at these crossings?

A They do.

(Borough of Ellwood City Exhibit C, being a photograph, was produced and marked for identification)

Q I have before me what is marked Borough of Ellwood City Exhibit C.

Would you identify the picture and describe what it shows, please?

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A It shows a concave or a dip in the road that I've been getting complaints from the public on and an officer was measuring it with a rule with a string line.

(Borough of Ellwood City Exhibit D, being a photograph, was produced and marked for identification)

Q I show you what I have marked as Exhibit D. Would you identify this picture and demonstrate what it shows?

A Almost the same thing. We're taking a picture with a rule with a string line just to get an idea of the size of the dip that is there.

Q What kind of a dip is that?

A What do you mean?

Q You said there was a dip in the road. Describe it.

A It's a low spot in the road due to whatever has caused it.

Q You said you've had various complaints from the public concerning this condition?

A Yes, I have.

(Borough of Ellwood City Exhibit E, being a photograph, was produced and marked for identification)

Q I show you Borough of Ellwood City's Exhibit E. Would you describe what this photograph shows, please?

A Just the deterioration of the center medial

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strip that there seems to be some spalling concrete laying out on the road with the hazard reflector signs.

Q This shows some of the railing, is that correct, and part of the median strip?

A Yes.

Q Do you know who put up this median strip there?

A No, I don't.

Q Do you know who put up the reflector signs?

A No, I don't.

(Borough of Ellwood City Exhibit F, being a photograph, was produced and marked for identification)

Q Borough of Ellwood City Exhibit F, again is a picture of the Second Street Bridge.

Would you describe what it shows?

A This is part of the railing. It shows some of the concrete spalling that attaches to it. It shows a bolt that seems to be loose or in an awkward position that's possibly used to hold down the railing.

Q Have you examined this railing yourself?

A I have.

Q And did you notice any problems or defects or any condition of it?

A I'm not an engineer on the railings --

MR. WECHSLER: Your Honor, if he's not

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an engineer --

THE ADMINISTRATIVE LAW JUDGE: I'll let the witness testify as to what he personally observed.

A I had shaken the railing from one end to the other to see if anything was bad that a pedestrian could fall through in the immediate future. When I looked at it, it seemed to be substantial then but it was very wobbly in places, and several places where I did wobble it, I did see some more concrete sort of spall out underneath some of these places.

(Borough of Ellwood City Exhibit G, being a photograph, was produced and marked for identification)

Q Are you able to identify Borough of Ellwood City Exhibit G, please?

A Yes, this is the understructure. Again, it shows some concrete either spalling or deteriorating that we felt could be causing a problem somewhere in the near future.

Q You're not testifying that there is a problem -- only as to the conditions you were able to observe upon inspection?

A Visually that I was able to see. I had the patrolman take pictures of the places I looked at that could possibly be a problem in the near future.

(Borough of Ellwood City Exhibit H, being a photograph, was produced and marked for identification)

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Q Again, we have a picture of the Second Street viaduct, which is marked Borough of Ellwood City Exhibit H.

Would you describe what this picture shows, please?

A Again, it's a picture of an area that doesn't look like -- again, it seems like the concrete is either cracking or spalling. We feel that the condition of it could be bad in the near future. Most of these pictures were taken that we're looking at were where it didn't look reasonably safe and we had the patrolman take a picture of it.

Q All you're saying is, the pictures you're showing now you're not saying they're necessarily safe but they are pictures of areas that cause concern?

A Yes, visually.

(Borough of Ellwood City Exhibits I, J, K, L and M, being photographs, were produced and marked for identification)

Q Exhibit I of the Borough of Ellwood City, would you please identify?

A This is a crack in the concrete again.

Q On the Second Street crossing?

A On the Second Street crossing. Again, we feel it's something that could be unsafe and could come up in the near future, especially a crack that size.

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Q Borough of Ellwood City Exhibit J, would you identify it?

A Again, this is the Second Street crossing that shows the divider, the median strip in the middle that separates the two lanes; it shows the deterioration and part of it laying out on the road that we have swept up many times.

Q This is the median strip?

A Yes, that separates the two lanes of traffic.

Q Borough of Ellwood City Exhibit K, would you identify that, please?

A This shows the asphalt sidewalk that Manager Ferrese was referring to in his testimony.

Q Borough of Ellwood City Exhibit L, would you identify it, please?

A It's another crack in the concrete. It looks like it's shifting out a couple of inches, and again, we thought it was something that could lead to a hazardous condition somewhere in the real near future.

Q Borough of Ellwood City Exhibit M, would you identify it, please?

A This is one of the areas that have been patched that we had a hole in that I had put a steel plate over it.

Q This is the sidewalk on the crossing, is

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that correct?

A Yes.

Q And is it on the level portion of the crossing?

A It is.

Q And we performed the repairs on that sidewalk?

A No, I put a barricade on it and someone threw the barricade over the bridge, so I took and put a steel plate on it.

Q This is the existing condition of the sidewalk at the time the picture was taken as of early July or late June when you took pictures of the sidewalk, is that correct?

A Yes.

Q Do you know if any changes in the condition of that sidewalk have been made since then?

A Not to my knowledge.

(Borough of Ellwood City Exhibit N, being a photograph, was produced and marked for identification)

Q And the last exhibit concerning the Second Street crossing, Exhibit N, would you identify it?

A It shows the area that the railing is fastened to. Again, it shows some spalling and deterioration of concrete that possibly could lead to bad conditions somewhere in the near future.

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Q You do have knowledge of concrete and weathering its condition, is that correct?

A To a certain point.

Q What do you mean "to a certain point"?

A I'm not a concrete engineer -- I just have 27 years experience with the Borough in pouring it and maintaining it.

Q And did the condition of the concrete holding the railing cause you any concern in that area?

MR. GARFUNKEL: Objection.

THE ADMINISTRATIVE LAW JUDGE: The witness' testimony as to his experience, I believe, gives him the minimum qualifications to testify with respect to concrete. The weight to be given his testimony will be determined by the Commission. Objection overruled.

Q It caused you concern, is that correct?

A When I seen it cracking and spalling, I was concerned because at several places I had seen the exposed anchor bolts that was holding it, and that is one of the main areas they cross in going to school, and of course, with the pedestrian crossing, I was concerned that something would let go and have somebody fall over.

Q Does the Borough of Ellwood City maintain any storm sewers, sanitary sewers or water lines in the vicinity of the Second Street crossing?

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A Yes, we have a sanitary sewer there.

Q Could you describe where that is located?

A It's on the west wall on the south side of the approach. It runs parallel with the bridge approximately halfway and then it runs west.

Q Could you state what improvements or maintenance the Borough of Ellwood City has done to the Second Street crossing within the previous last five years?

A We have done nothing.

Q Are you able to testify as to whether there are any storm sewers, sanitary sewers, or other type of sewers or water lines in the vicinity of the Fifth Street crossing?

A Yes, we have a storm sewer and a sanitary sewer. Both of them are located right underneath the overpass.

Q Both of them are located underneath the overpass?

A Yes.

(Borough of Ellwood City Exhibits O, P, Q and R, being photographs, were produced and marked for identification)

Q I show what's marked Borough of Ellwood City Exhibit R. Can you identify what that picture shows?

A This shows our storm drain located just above the grade of the sidewalk leading to the underpass

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that we had installed there years ago.

Q This would be on the south side of the underpass?

A On the south side of the underpass, right.

Q In your opinion, would this storm sewer catch a lot of the rain water and such that would gather and collect and run on to Fifth Street?

A Yes, it catches a lot of water.

Q Are you able to give an opinion if this catches the water that would run down and lay on the Fifth Street overpass?

A During a hard rain, probably no drain will catch 100 percent of the water, but we have a 24 x 30 grating in there that catches the majority of the water laying in the valley, and we've no problems there as far as flooding goes.

Q You say there's also a storm sewer on the other side of the tracks, is that correct?

A No, underneath the crossing there's two inlets.

Q Would you describe where those inlets are in relation to the crossing?

A They're right underneath the subway itself at the lowest point to catch the water that comes down the far side of the curb or what comes down Fifth Street below

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this grating.

MR. LEMARIE: For everybody's identification, a lot of people in Ellwood City call the Fifth Street underpass the subway.

Q So they would be like in the valley --

A In the valley of the underpass.

Q Exhibit S of the Borough of Ellwood City, are you able to identify what this picture shows?

A I wasn't with the photographer when he took this one. I showedhim the condition. When we were there, it was one of the better days and there was hardly any seepage coming out of it, so I showed him where I had seen it seeping out of the wall where the sidewalk joins the wall.

Q Do you know what portion of the Fifth Street crossing this is?

A This is the east side at approximately the middle of the underpass.

Q And it shows there's seepage there?

A Yes, it does. The picture shows it's seeping out underneath.

Q This picture had been taken after the area had been swept, is that correct?

A I don't know, only at the time I showed the patrolman there the condition didn't exist -- it was in a dry spell -- but I showed him the stains that were there and

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he was to take a picture at a future date of the area that I had showed him.

Q Do you know whether Ellwood City has performed any maintenance other than snow removal or ice removal on the Fifth Street crossing?

A Very minimal. We have swept it many times and we have taken the snow and ice off of it.

Q Are you able to testify as to the problems that exist at the Fifth Street crossing in regard to drainage of water in that area?

A Just what I have seen visually. Several times it's been leaking, it's draining down not only on part of the sidewalk but also in the vehicle traffic lane because it drains on your windshield when you're driving underneath.

Q Is this drainage both on the sidewalk and on the roadway?

A Yes, it is -- it's in the lane heading north.

Q Would a pedestrian have to walk through this drainage area if he was headed either north or south on Fifth Street?

A He would on the east side of the underpass. He'd either have to walk through it or step out on the highway.

Q There's no other way to walk through that area?

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A Not unless they go across the street and go down the other sidewalk and then cross the crosswalk and go back over.

Q This area is in the center of town, is that correct?

A Yes, it is.

Q It's in the business district, is it not?

A Yes, there's businesses on both sides of this.

Q And it's heavily traveled?

A Yes.

Q Both by motor vehicles and pedestrians, is that correct?

A Yes.

Q Do you know whether the storm sewers are in good functioning condition in this area?

A They should be, only to the fact that we cleaned them originally and we clean them occasionally several times a year. If they weren't, I 'm sure with the rains we've had, vehicles wouldn't be able to get through there because it s a low part of the valley.

Q Do you know of other problems at the Fifth Street crossing other than the drainage condition there?

A No, that's the biggest, outside of the condition of the overpass itself that's it an eyesore and

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I've got calls on it and people want to know why we don't paint it, and I informed them it wasn't our responsibility to paint it.

Q Have you had occasion to examine the Sixth Street crossing?

A Yes, I have.

Q Could you explain what maintenance the Borough of Ellwood City does on the Sixth Street crossing?

A We don't do any maintenance at all, only to the approach leading to the first set of tracks on both sides.

Q So we're responsibile for the maintenance up to the track area, is that correct?

A That's my understanding, yes.

Q Is it your understanding that the railroads are responsible for the maintenance of the track area or the railroad right-of-way, is that correct?

A That's right.

Q Have you examined the condition of the railroad right-of-way in that area?

A I have.

Q Have you ridden across it in a vehicle?

A Many, many times.

Q In fact your office is located at --

A The north end of it.

Q So it's an area that you use many, many times,

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is that correct?

A Very frequently.

Q If you're operating a vehicle and you approach the Sixth Street crossing and you're going to cross it, what is necessary in order to cross it?

A You have to go very, very slow.

Q Why is that?

A It's very irregular and bumpy and I have seen several people lose their mufflers there, and of course, my department gets called if there's a muffler or exhaust pipe laying there that has been knocked off.

Q So your department does get calls that there's mufflers and tailpipes laying --

A That's the only part of the maintenance we do on it -- something that's dropped off an automobile or a truck.

Q I want to show what is marked as Borough of Ellwood City Exhibit O at the Sixth Street crossing.

Could you identify what that picture shows, please?

A It shows an area of the tracks towards the north end of the crossing. It shows the dip or sunken spot and it shows the string line that we have put there for the partolman to take a picture to get an idea of one of these low spots involved.

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Q Are you able to testify as to the depth of that particular low spot?

A Not in inches. You can't tell by the picture as far as inches.

Q Are you able to say there are many low spots?

A I would say several. I wouldn't say a lot but at least several of them.

Q Exhibit P would also show parts of the Sixth Street crossing, is that correct?

A Yes.

Q And again, it is meant to show various low spots in the area?

A Yes, we took the picture with the rule but unfortunately you can't read the depth of the rule.

Q Exhibit Q again shows the Sixth Street crossing, is that correct?

A Yes, this low spot here shows approximately between 2-1/2 and 3" low -- you can read this one on the rule.

Q When you as an individual cross the Sixth Street crossing, are you able to maintain your normal speed going through there?

A Not normal speed.

Q How far from the business district is the Sixth Street crossing?

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A A block and a half to the main district.

Q And this is an area that's heavily traveled?

A Yes, it is.

Q Is the warning protection presently provided adequate, in your opinion?

A Yes, in my own personal opinion, even with the accident that we had that was a very bad accident where the car was hit and pushed up 100 yards or so. Other than that, I've crossed it many times myself and the gates have been working and I have stopped and waited, and when the gates weren't working, there was usually a man there to flag us down and hold us back.

Q The biggest problem there is one to traffic crossing in either a northerly or southerly direction, is that correct?

A Vehicle traffic, yes.

Q Do we have any storm sewers, sanitary sewers or water lines in that area?

A Yes, we have a huge 60" storm sewer going underneath and it's approximately 20' deep.

Q Is it in functioning condition?

A Yes, we had Chester Engineers' field engineer personally walk it and make an inspection of it. One of the foremen from the railroad had got a hold of me and I met him there, and I was there when the man made the inspection, al-

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though I didn't go through with him personally, but he gave Mr. Ferrese, the Borough Manager, a report that it was a solid storm sewer and there was no sinkage or nothing in it and it was a substantial storm sewer.

Q Are you able to testify as to any corrective measures that could be performed to alleviate the problem in that area?

A No, most of my experience is with roads and not with the railroad tracks.

MR. LEYMARIE: I have no further questions.

CROSS-EXAMINATION

BY MR. WECHSLER:

Q Mr. Hulick, with reference to photograph C, which you have discussed already, would it be a correct statement that the string line at that point is being held along the sidewalk not along the street itself, is that correct?

A It's on the edge of the curb line.

Q And it appears that the curb line is actually sinking, not the street is sinking, is that correct -- the curb goes way down and all of a sudden it comes back up?

A According to the picture, they both go down.

Q Is that the same location as photograph D?

A I don't know -- I couldn't answer that.

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Q Photograph D seems to show a wider range of the scene and appears to be the same --

A Yes, these two here possibly.

Q Looking at photograph C, you see the curb, which is substantially above the cartway on the right side of the photograph dipping way down where the telephone pole is and going back up over towards the left side, is that correct?

A Yes, but the string line is down on the roadway in this picture.

THE ADMINISTRATIVE LAW JUDGE: When you say "this" picture, you're going to have to identify it.

MR. WECHSLER: He's referring in that case to D where the string line is on the street.

Q And it shows a dip of how much there?

A About 3".

Q And in photograph C, the string line is on the edge of the curb, is that correct?

A Yes.

Q And the dip is how far there?

A Provided these two are the same areas, it's pretty close to 4-1/4.

Q Who's responsible for maintaining the sidewalks beyond the Second Street Bridge?

A The approaches, Ellwood City.

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Q So if the sidewalk is dipping, it's the responsibility of the Borough to maintain, is that correct?

A Not if it's on the approach.

Q On the approaches it's the responsibility of the Borough to maintain the sidewalks, is that correct?

A Right, but this picture isn't on the approach -- it's on the top section.

Q You're saying that photograph C here which shows the Power Company pole, is on the bridge itself?

A No, I'm not saying nothing about the pole. This is on the top part where it levels off as it crosses the tracks and we maintain up to where it levels off. The level part of it was part of the crossing and we took the approaches coming up the grade.

Q I'm going to show you what's been introduced as Exhibit 1 of Pennsylvania Power Company, which is the plan of the Second Street Bridge.

Would you point out the pole that's in that photograph?

A I don't know where the pole is.

MR. WECHSLER: The man doesn't seem to know where the photographs were taken, which makes cross-examination virtually impossible.

THE ADMINISTRATIVE LAW JUDGE: How many feet from the actual bridge itself, do you stop your main-

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tenance?

THE WITNESS: Just as it levels off. There seems to be an expansion there that is the cut-off point, if I remember right.

MR. GALLAGHER: Your Honor, there seems to be a problem as to what the witness considers to be the approaches to this crossing.

THE ADMINISTRATIVE LAW JUDGE: Are there any pictures that show the whole crossing from a distance?

MR. WECHSLER: No.

MR. LEYMARIE: What has been the customary points that determine where the access ends, where the approach ends --

THE WITNESS: That's what I'm saying. Through past managers, we have cut off right where it has leveled off..

MR. WECHSLER: Since there perhaps will be a later hearing, perhaps we can have somone present who can describe these photographs a little more accurately.

THE ADMINISTRATIVE LAW JUDGE: You were present when the photographs were taken?

THE WITNESS: Yes, I was, all three except Fifth Street.

THE ADMINISTRATIVE LAW JUDGE: The

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question we're concerned with is who is responsible for the maintenance of a certain several feet, and the question is whether or not that's an approach, and what I'd like to get from you is just a statement of where Ellwood City believes its responsibility ceases.

THE WITNESS: That's what I've stated, Your Honor. As far as my direct orders, not only from Mr. Ferrese, but from past managers, it has been the policy to stop the maintenance right at the top where it levels off.

MR. GALLAGHER: May we go off the record?

THE ADMINISTRATIVE LAW JUDGE: Off the record.

. . . OFF RECORD DISCUSSION . . .

THE ADMINISTRATIVE LAW JUDGE: There has been an off-the-record discussion and there appears to be some confusion as to the point where historically Ellwood City has terminated its maintenance. It has been suggested that perhaps cross-examination on the photographs be suspended temporarily, at least on these photographs be suspended temporarily, and if the matter cannot be resolved by the end of this afternoon, that there be further hearing and perhaps a field conference to make the matter more specific. I think it's best now to proceed with other cross-examination in hopes that we can perhaps agree on something with respect

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to the approaches.

MR. WECHSLER: That's all I have.

BY MR. GARFUNKEL:

Q Mr. Hulick, you indicated the presence of spalling in some of the photographs, specifically G, H and some others, is that correct?

A I referred to a spalling. Whether that's the professional name for it, I don't know.

Q What is spalling?

A I figure it's the unraveling of concrete due to weather.

Q That's a natural occurrence with concrete, is it not?

A Quite frequently.

Q The presence of spalling is not indicative of any structural deterioration, is it?

A No, I don't think I stated that either.

Q Oftentimes it can be spalling and yet the structure can be quite structurally sound?

A Yes.

Q So you have no opinion yourself as to the structural integrity of the Second Street overpass, do you?

A No, only a visual inspection that I had made where I had seen some type of an irregular that I had the patrolman take a picture.

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Q Matters that to you looked unsafe?

A To me and to others.

Q But you can't testify that they were unsafe?

A No.

Q What is the condition of the sidewalk on the Second Street overpass?

A The approach you're talking about?

Q On the deck.

A It's walkable on the asphalt.

Q Are there any holes or things of that nature that you would consider a hazard?

A Not to my knowledge since I inspected it the last time.

Q That would be in June?

A No, I was back once after that, sometime in the month of July.

Q Concerning the Fifth Street subway, how many catch basins are there in the subway itself?

A I believe one huge one on each side. There may be more -- either two or three. One side may have two and one side may only have one.

Q And what size catch basins are they?

A Are you talking about the outlet of the pipe itself?

Q The catch basin itself, what are the dimensions

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of the catch basin?

A I don't know offhand.

Q How about the storm sewer underneath the subway, what size storm sewer is that?

A I have no idea.

Q Do you know when it was installed?

A No, I don't.

Q Do you know the type of storm sewer it is?

A No, I don't.

Q Do you know when it was last cleaned?

A I would say approximately a year or ten months ago, give or take a few months.

Q Do you have records of that work having been done?

A Usually we do, unless it's a call we get through the middle of the day that we just radio our crew to take the sewer vactor over to clean it.

Q How about the catch basin, do you have a program of maintenance on the catch basin?

A Not a program we don't.

Q Who performs the cleaning of the catch basis -- do city workers perform that or is that contracted out?

A No, it's city workers.

Q How often is that done?

A As much as is necessary.

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Q Prior to your visit in June or July 1980, when was the last cleaning of this catch basin?

A I think approximately a year ago.

Q How are they cleaned?

A With a sewer vactor -- water pressure jet vactor truck.

Q How do you know when you should go back and clean that basin again?

A We have a one-man inspector that does a lot of odd jobs and that's one of his jobs to check our trouble sewer area, although this is not a trouble sewer area.

Q Are you indicating the subway is not a trouble sewer area?

A Not the storm sewer.

Q You indicated before that there's a creation of water in this area?

A Yes, but it has nothing to do with the storm sewer. The storm sewer itself seems to be taking the water away during any downpour.

Q But yet it was a year prior to your visit that the catch basis was cleaned, is that correct?

A Approximately, yes. I would like to add that the area that even joins this is an amesite highway, so there's really no reason for a lot of debris to be washed down that sewer that would cause us to have more maintenance than once

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a year.

Q Would you describe the subway as being in a valley in terms of the two approaches from both directions?

A Yes, it's in a valley; of course, you only have a grade on the south side of it. The north side seems pretty flat as you come out from underneath it.

Q Concerning Sixth Street, you indicated there was a 60" sewer underneath the railroad right-of-way, is that correct?

A Approximately 60" because a man can walk through it with his head --

Q How old a sewer is that?

A I have no idea.

Q Do you know when it was installed?

A I can take a rough guess at it only by memory from looking at maps when I was looking for something else, but I would say handy to 1920.

Q Do you know what type of sewer it is?

A No, I don't -- not what goes under the crossing.

Q You're aware of the fact that the axis of the sewer coincides with the dip depicted in your Exhibits O and P, does it not?

A It's underneath it -- I mean it goes down through the center of the crossing.

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Q Are you aware that the axis coincides --

A I don't know what you mean.

Q That the dip coincides with the manner in which the sewer runs underneath the property -- have you seen a map of the area?

A Yes, but I don't understand you. The sewer runs straight across the Sixth Street crossing and the dip is in the crossing. If you mean is it laying directly over the sewer, I have no way of knowing that. Only through Chester Engineers we hired an engineer to make that survey and Mr. Ferrese has his report on file.

MR. GARFUNKEL: No further questions.

BY MR. PORACH:

Q Mr. Hulick, I know we have left this approach business on Second Street, but I show you your Exhibit E and ask you -- I'll try to clarify this later -- but where I am pointing, are you stating you feel the approach goes this far on the bridge where you have maintained?

A According to the picture, it's hard for me to tell just by the picture itself.

Q How about if I would show you Exhibit K and ask if you agree that the approach goes up to this point on the bridge?

A I would say possibly, yes, only I'm answering by looking at the picture, not the visual sight over there.

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Q On Exhibit K what I'm pointing to is an expansion dam or some sort of a line between a light colored pavement down to the lower part of the picture and a dark colored paving across the bridge on the sidewalk, is that correct?

A Yes.

Q And I think you've already agreed that the Borough of Ellwood City has the responsibility for maintaining the sidewalks and the railings on the approaches, is that correct?

A The railings I don't know; the sidewalks and the curb I have been informed we have.

Q I show you Exhibit F, which I believe is Second Street, and ask you are those cars parked underneath there?

A No, not underneath it. There is a parking area there for industry.

Q But those are cars shown below the bridge?

A Yes, that's the patrolman's car that took the picture.

Q Do you know whether this is on the approach or not?

A No, because the parking lot is a couple hundred feet long.

Q But it may be on the approach?

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A It could be.

Q The complaint in this proceeding mentioned as a problem with Second Street the holes in the crossing sidewalk, and is Exhibit K a picture of one of those sidewalks?

A Yes, this is a picture of the Second Street sidewalk.

Q There are no holes in that sidewalk at that time, is that correct?

A Not at the time the picture was taken.

Q I think you also mentioned about some of the pictures showing spalling, cracks, etc., which is Exhibit L, and you are not testifying that that indicates a weakness in the structure or any problem with the structure?

A No, just a visual inspection that I had made that could be dangerous.

Q I show you Exhibit S and I believe you said that was Fifth Street?

A Yes.

Q Is that representing the water you were talking about?

A The beginning of it.

Q Is that in the sidewalk area?

A This is the sidewalk and this is the wall area here.

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Q Exhibit R I think also shows Fifth Street and I think you pointed out the one storm drain there.

Did you say the storm drain was underneath the structure itself?

A Yes, there's several, one or two on each side.

Q Do they show on this exhibit at all?

A Yes, I think this one is showed over here. I think there's another one down underneath but it isn't that clear.

THE ADMINISTRATIVE LAW JUDGE: Be a little more specific.

Q You were indicating there's a car shown in this picture. I believe you were indicating a point a little bit in front of that car over on the curb -- it looks like a little indentation in the roadway?

A Yes.

Q You're saying you believe that's one of the drains underneath the structure?

A Yes.

Q Is there another one on that side of the road down further, or is that the only one on that side?

A I believe there's another one down further underneath the underpass itself.

Q And would this handle some of the water that

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is shown in Exhibit S?

A No, this is on the east side and this is on the west side.

Q Are there similar storm drains on the east side?

A Yes.

Q Would they handle that water?

A What do you mean "would they handle" it?

Q Would they take it away?

A If it would get over to the area -- once it overflows the sidewalk, it will but before it does that, it has to be several inches deep.

Q Exhibits O, P and Q I believe you testified represent the area of the Sixth Street crossing, is that right?

A Yes.

Q Do any of those pictures show the crossing area of The Pittsburgh and Lake Erie Railroad?

A I don't know which tracks are which.

Q Did you testify before that these were Chessie tracks?

A No, just railroad tracks. I don't know whose they are because we don't do no maintenance on them.

Q You mentioned that you have to drive slowly over this crossing because of the bumpiness?

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A Yes.

Q You can drive safely over that crossing if you drive slowly, can't you?

A Very slowly.

Q As a matter of fact, it's good common sense as well as state law to slow down at grade crossings where railroad trains are, is it not?

A Yes.

MR. PORACH: Thank you.

BY MR. GALLAGHER:

Q Mr. Hulick, with regard to the crossing at Fifth Street in the subway itself, how wide is the sidewalk -- do you know the width of the sidewalk?

A Not right to the footage I don't.

Q Do the sidewalks angle toward the abutments or do they angle toward the roadway?

A A little bit of both. You might find one block leaning toward the curb and you might find one block leaning toward the wall itself.

Q At the Sixth Street crossing, is there a low spot in the vicinity of where the storm sewer crosses?

A Like I say, the low spot that we have got calls on is in the crossing itself, and the storm sewer goes down, what we figure, close to the center of the crossing. Whether it's directly over, I can't testify to that.

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Q Mr. Hulick, has the Borough performed any in-depth inspection of these bridges?

A Not to my knowledge.

Q Has it prepared any engineering studies, estimates or construction plans for any of the improvements that might occur at these crossings?

A Are you talking about the approaches that the Borough is responsible for, or the whole crossing?

Q The whole crossing.

A Not to my knowledge.

Q Will the Borough agree to perform these inspections and studies?

A I'm not in that capacity to say.

Q At the Sixth Street crossing, is the road paved through the entire crossing?

A I believe so. You're talking between the first set and last set of tracks?

Q Right.

A I believe it is.

Q Including the sidewalk area?

A No, not the sidewalk area that I know of. The north side has only one sidewalk -- there are concrete steps leading up to it; the other side, which is the west side, has a concrete sidewalk in front of the last business establishment; the other side is a service station, which I

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think has no sidewalk at all -- it's their thruway.

Q Mr. Hulick, can pedestrians cross the Sixth Street crossing without walking into the vehicular roadway?

A There's room enough.

MR. GALLAGHER: I have no further questions.

THE ADMINISTRATIVE LAW JUDGE: I want to clarify a point with respect to the complaints about Fifth Street. It's my understanding from your testimony and that of the prior witness that your complaint is not so much that water builds up and forms like a flood-like condition under it, but that the water drips from above for a period of time, is that your main complaint?

THE WITNESS: The build-up is on the sidewalk where people have to walk through the business establishments there and it does drip down on them.

MR. LEYMARIE: The water accumulates on the sidewalk in the business district and pedestrians are forced to walk through it or out on the highway.

THE WITNESS: We have no drainage problem at all on the roadway itself.

THE ADMINISTRATIVE LAW JUDGE: As you walk into the subway, as you call it, and you look up there, do you know what's up there -- pipes, concrete?

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THE WITNESS: There's pipes on one side, which is the curb side.

THE ADMINISTRATIVE LAW JUDGE: Is there any question that the leakage could be from the pipes?

THE WITNESS: In one of the spots it could.

THE ADMINISTRATIVE LAW JUDGE: And the other leakage would be from just the overpass itself, or off the sides?

THE WITNESS: It seems to be coming from where the sidewalk joins the wall, which is on the picture we have here.

THE ADMINISTRATIVE LAW JUDGE: The Commission asks that you give some type of testimony as to who should pay for any corrective measures. Are you in a position to give an opinion as to that?

THE WITNESS: No, I am the Public Works Director. It would have to be Mr. Ferrese.

THE ADMINISTRATIVE LAW JUDGE: Let's go off the record.

. . . OFF RECORD DISCUSSION . . .

THE ADMINISTRATIVE LAW JUDGE: I neglected to develop this information with the County, but with respect to Ellwood City, do either the witnesses, counsel, have an opinion as to who should bear the costs of any

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corrective action which may be found necessary by the Commission?

MR. LEYMARIE: We will submit a written report to that effect.

THE ADMINISTRATIVE LAW JUDGE: Very well. Any further questions of this witness? (No response) Let's go off the record for a second.

. . . OFF RECORD DISCUSSION . . .

THE ADMINISTRATIVE LAW JUDGE: Is there any other testimony today from the Borough of Ellwood City?

MR. LEYMARIE: We are not going to present any further testimony today.

THE ADMINISTRATIVE LAW JUDGE: And shall we suspend admission of the photographs until that one point is clarified?

MR. LEYMARIE: I think that should be done until they are clarified.

THE ADMINISTRATIVE LAW JUDGE: Very well. At the conclusion of the hearing today, if I don't forget, we will set up a way of handling any loose ends that are still in existence. Let's take about a 15-minute recess and give counsel an opportunity to read the prepared testimony of The B & O and the Pennsylvania Department of Transportation, and then when we return we'll have cross-examination of thosewitness and present the testimony.

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MR. LEYMARIE: I would like Mr. Hulick to be excused.

THE ADMINISTRATIVE LAW JUDGE: Fine.

. . . RECESS . . .

THE ADMINISTRATIVE LAW JUDGE: Before we begin, there was a discussion during the recess and the possibility came up that perhaps there's no real objection to the photographs per se, but merely an objection as to interpretation. That leaves two problems: No. 1, cross-examination has not been finished; and No. 2, I'm told that not all the photographs in the series are identical, so before we admit them, we have to sort out to see which are which.

In the meantime, as I understand it, Ellwood City has no further testimony at this time and the testimony of the two railroads and of the Department of Transportation has been presented in written form. First of all, has everyone had an opportunity to examine the testimony?

MR. LEYMARIE: I have just been examining some of it.

MR. PORACH: P & L E is only testimony in part and I would have to identify my witness at least and then put it in.

THE ADMINISTRATIVE LAW JUDGE: Let's do that, starting with PennDOT, identify the witness and

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then have the testimony put in the record.

MR. ZAHN: I call Mr. Offutt.

ROBERT B. OFFUTT, called as a witness on behalf of PennDOT, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ZAHN:

Q Will you please state your full name?

A Robert B. Offutt.

Q And your official office address?

A 1140 Liberty Street, Franklin, Pa.

Q By whom are you employed?

A Pennsylvania Department of Transportation.

Q In what capacity?

A Assistant District Engineer.

Q Are you familiar with the crossings involved in today's hearing?

A Yes.

Q And are you authorized to testify on behalf of the Department?

A Yes, I am.

Q Mr. Offutt, I show you 14 pages of typewritten questions and answers and ask whether you prepared the answers

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to the questions?

A In part.

Q If you were called on to orally testify, would your answers be exactly as contained in your prepared testimony?

A Yes, sir.

MR. ZAHN: If Your Honor please, all parties have received a copy of the prepared testimony and the stenographer, and I move that they be incorporated into the record as if orally read.

THE ADMINISTRATIVE LAW JUDGE: Any objection?

RESPONSE: No, Your Honor.

THE ADMINISTRATIVE LAW JUDGE: Without objection, it shall be so ordered.

(The following is copied into the record as the witness' direct testimony)

Q PennDOT submit testimony in regard to the general physical condition of the three involved crossings and state, in its opinion, the cause of any deficiencies thereon.

A In regard to the bridge on Second Street, the following are comments in regard to its present condition based on a recent cursory inspection.

Superstructure

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Those portions of the three plate girder above the surface of the roadway on sidewalks are in good condition. Those portions on the underside have been encased in gunite and, therefore, their condition is not discernible. This is also true of the remaining elements of the floor system. It was noted that there was considerable efflorescence in evidence forming on the underside of the superstructure.

The bituminous surface on the roadway of the bridge indicated some surface cracking, which could be corrected by a very minimal amount of crack sealing.

The surface of the sidewalks is rough and shows evidence of recent corrective patching.

The paint on the sidewalk railings is chipped and the railings are in need of cleaning and painting.

Substructure

The general condition of the abutments is fair with some minor vertical cracking and superficial spalling of surface concrete. Both pier bents show evidence of considerable surface rusting and probably should be cleaned and painted. The concrete crash walls, which also serve as foundations for the pier bents, are in good condition.

Concrete Retaining Walls

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North Approach (West Side)

There is some concrete deterioration in places, certainly not anyways near sufficient to cause concern for its structural integrity. The retaining wall at the end of the abutment wingwall has tipped outwardly an estimated 6" or 7". However, this occurred years ago and no recent movement is in evidence.

North Approach (East Side)

The end of the wingwall on the easterly side, beginning approximately 6' from the top of the wall down to the ground line, shows evidence of the corner being sheared off by forces exerted on it by the wingwall. There is no evidence of recent motion. There is only one vertical construction joint in this wall. It was also observed that there exists 6 or more vertical cracks in this retaining wall which were probably caused by internal stresses within the wall.

South Approach (East Side)

There appears to have been a movement of several inches of the top of the retaining wall with respect to the wingwall. Again, from the construction of the wrought iron fencing and the sidewalk construction details, this appears to have been built with that movement in the wall. The construction joint in the retaining wall approximately 62' south of the expansion dam has tipped out -- that is the

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wall south of this joint has tipped out approximately 8" from its original construction position. Again, the sidewalk construction and the construction details of the outlying fencing suggest that this happened at the time of construction and that it was built this way, i.e., the sidewalk, the curbing, the railing and everything else were built subsequent to the failure in the wall. There is some minor surface deterioration of the concrete in the wall.

The next construction joint has failed, i.e., the southerly portion has moved outward approximately 5" from the side of the joint immediately north of it. There is no evidence to suggest there has been recent motion at this failure in the wall. The wrought iron fencing has a bow in it at this point suggesting that it did fail subsequent to construction.

South Approach (West Side)

It was observed that at three locations on this retaining wall dislocations have occurred which are similar to those found in the east side of the south approach. These are located as follows:

1. At the construction joint between the end of the wingwall of the abutment and the beginning (or high end) of the retaining wall.

2. At a construction joint located 79' from the expansion plate on the west sidewalk.

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3. At a point approximately 64' from the low end of the wall.

There is no evidence to suggest there has been recent motion at these dislocations.

In regard to the bridge over Fifth Street, the following comments are the result of a recent cursory inspection.

Superstructure

The bridge consists of four simple stringer spans. Other than rusting on the bottom flanges of the stringers, the superstructure appears to be in good condition.

Substructure

Aside from superficial scaling of concrete on the abutments, their condition is good.

The three steel bents carrying the superstructure appear to be in good condition, except for the bearing areas resting on concrete foundations which are heavily rusted and in need of cleaning and painting.

Sidewalks

The sidewalk on the east side of the roadway appears to have sunk or was constructed improperly. In one particular area the cross slope is in the wrong direction, thus causing surface water to pond adjacent to the abutment rather than flowing toward the curb. The general physical condition appears good, although there is a longitudinal

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crack, approximately 4' from the curb, and extending the full length of the underpass area.

The westerly sidewalk is in good condition and appears to have good drainage.

Roadway

The condition of the roadway surface is very good.

Q PennDOT state whether it has performed an in-depth inspection of the involved bridges or has prepared any engineering studies, estimates or construction plans for any improvement of the highways at the involved crossings, and if so, submit copies thereof into the record and, if not, state whether it will agree to do so.

A It is the opinion of the Department that it is not its responsibility to perform in-depth inspections or prepare engineering studies, estimates or construction plans for the subject structures.

Q PennDOT state its present obligation with respect to maintenance of the existing crossings and the highway approaches thereto.

A In accordance with the order of the P.U.C. at Complaint Docket No. 17665, dated September 3, 1963, the Department is obligated to maintain the roadway paving between curbs on the existing bridges and highway approaches thereto and the concrete retaining walls located on each

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side of the highway on both approaches to the bridge on Second Street.

In regard to the structure on Fifth Street, the Department has maintained the surface of the underpassing street. This is the only element of the bridge and the approaches which the Department maintains.

Q PennDOT submit testimony in regard to the maintenance and improvement it has performed on the crossings and approaches during the preceding five years, together with the approximate dates and costs of any such work.

A Other than items of routine maintenance, the Department has performed no improvements to either the Second Street Bridge or the Fifth Street Underpass. Because these items were routine in nature, no record of approximate dates and costs is available.

Q PennDOT state which party or parties should be required to perform the actual work of any corrective measures found necessary and ordered by the Commission, and state what portion, if any, of the costs of said work that it will agree to bear and what portion, if any, should be borne by each of the other parties. (The answer shall be specific as to the reasons for its suggested allocation)

A In regard to the Second Street Bridge, it is the opinion of the Department that if corrective measures are found to be necessary to certain elements of the structure,

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those responsible parties for maintenance of those certain elements are enumerated in the order of the P.U.C. at Complaint Docket No. 17665, dated September 3, 1963, should perform the required work and bear the resultant costs.

In regard to the Fifth Street Bridge, the Department suggests to the Commission that the actual work and costs thereof for corrective measures to elements of the structure be apportioned as follows:

Baltimore and Ohio Railroad Company - superstructure and substructure.

Borough of Ellwood City - curbs, sidewalks and storm drainage.

PennDOT - roadway storm drainage between curbs.

Q PennDOT state whether, in its opinion, the involved crossings are necessary for the service, accommodation and convenience to the traveling public, or whether any of the crossings can be abolished and the highway closed to all traffic in the vicinity of said crossing.

A In the opinion of the Department, the involved crossings are necessary for the service, accommodation and convenience of the traveling public.

Q Department of Transportation submit testimony regarding the name, route number, general location and termini of the State highways involved in this proceeding.

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A In regard to the structure on Second Street, Legislative Route 315, two traffic routes, PA 65 and PA 288, are carried over the tracks of The Baltimore and Ohio Railroad Company.

PA Traffic Route 65 originates in the City of Pittsburgh; thence proceeds in a northwesterly direction along the Ohio River to Rochester. From there the route proceeds in a northerly direction along the Beaver River to New Brighton at which point it leaves the Beaver River Valley and continues in a northerly direction to Ellwood City. Upon entering Ellwood City on Second Street, the route continues north, traversing the subject bridge, to an intersection with Fountain Avenue at which point the route proceeds in a westerly direction to Fifth Street. Turning north the route proceeds in a northerly direction across the Fifth Street Viaduct to an intersection with Wampum Avenue. At this point Route 65 continues in a northerly direction to its terminus in the City of New Castle.

PA Traffic Route 288 begins with its intersection with U. S. Traffic Route 19 in Zelienople, Butler County. From there it proceeds in a northwesterly direction to a point in Frisco where it intersects with PA. Traffic Route 65. From there it traverses the same streets as PA 65 to an intersection with Wampum Avenue directly north of the Fifth Street Viaduct. From that point the route proceeds in

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a northwesterly direction to its terminus with PA Traffic Route 18 in the Borough of Wampum.

The highway which underpasses the bridge on Fifth Street is designated as Legislative Route 37011 Spur. Legislative Route 37011 Spur extends from the intersection of Fifth Street and Fountain Avenue to the intersection of Fifth Street and Lawrence Avenue. Although this portion of Fifth Street is not designated as a traffic route, it serves as a connection between PA Traffic Routes 65 and 288 at Fountain Avenue and PA Traffic Route 351 at Lawrence Avenue.

Q Department of Transportation submit testimony describing in detail the type, width of pavement, alignment, grades and general physical condition of the approaches to the State highway crossings involved in this proceeding.

A In reference to the Second Street Bridge, the approaches consist of bituminous surface, 39' in width between curbs, on brick on a concrete base. The alignment of the approaches is tangent and the grade of each is approximately 10 percent. The bituminous surface on the southerly approaches extends to Cresent Avenue and, aside from some surface cracking, is quite satisfactory. On the northerly approach the bituminous surface extends for a relatively short distance of approximately 50' and is satisfactory except for some required minor patching. At the Fifth Street Bridge the approaches to the underpass consist of bituminous

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surface, 42' in width between curbs, on brick. The alignment of the approaches is tangent. On the southerly approach the grade of the street descends at a rate of approximately 8 percent; on the northerly approach the grade descends at a rate of approximately 3 percent. The general physical condition of the roadway surface is very good.

Q Department of Transportation submit testimony describing the general type of the existing bridge carrying Second Street over the tracks, including the number of spans, principal dimensions and roadway width, together with the date and purpose of its construction.

A The overhead structure carrying Second Street over the tracks is a three-span through-type steel girder bridge consisting of spans of 25', 86' and 25'. The skew is 69'30" and the veritcal underclearance is approximately 21'6". The roadway is 39' in width, curb to curb, with a 3' divisor in the center.

Because this portion of Second Street did not become designated as a state highway until 1945, the Department has no record of the exact date of construction or does the Department have knowledge of the purpose of its construction.

Q Department of Transportation submit accurate data concerning the present and future highway traffic, including a breakdown as to traffic, at the State highway cross-

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ings involved in this proceeding.

Q In regard to the Second Street Bridge, the present average daily traffic is 8,000 vehicles of which approximately 3 percent are trucks. It is anticipated that by the year 2000 the average daily traffic will increase to 12,800.

The average daily traffic on Fifth Street at the underpass is 11,400 vehicles of which approximately 5 percent are trucks. By the year 2000 it is anticipated that the average daily traffic will increase to 18,250.

Q Department of Transportation state whether the involved bridge carrying Second Street is presently posted for a maximum weight limit.

A The involved bridge carrying Second Street is not presently posted for a maximum weight limit.

Q Department of Transportation submit testimony as to whether the involved Second Street Bridge is adequate in strength and physical dimensions and the involved Fifth Street crossing is adequate to accommodate safely the class and volume of traffic normally using the highways at said locations and, if not, submit testimony regarding the general nature and extent of all work it deems advisable to provide safe and convenient crossings thereat.

A It is the opinion of the Department that the two involved crossings are adequate to accommodate safely the

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class and volume of traffic.

(End of prepared testimony.)

MR. ZAHN: The witness is available for cross-examination.

THE ADMINISTRATIVE LAW JUDGE: Is everyone ready to begin, or do the parties prefer to have a little more time to examine the testimony?

MR. PORACH: I'm as ready as I'll ever be.

CROSS-EXAMINATION

BY MR. PORACH:

Q Mr. Offutt, in response to Question No. 4, you have in your testimony in quite detail as to the condition of the Second Street structure.

Could you summarize, and maybe you have elsewhere in your testimony, your opinion as to its condition and the work that should be done on it, if you can?

A The answers prepared here have been in response to questions submitted to us by the Public Utility Commission. I don't think they have asked us to say that anywhere in our testimony. Should I respond to his question?

MR. WECHSLER: If you can.

A I am an engineer and this inspection was made in the company of another engineer and both of us

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developed the information for this testimony. I really don't see any big problem with the structure. It appears from our standpoint to carry traffic safely over the railroad tracks and this is our main area of interest.

Q Perhaps you did already answer that -- I think Question No. 20 pertains to that.

There were some various exhibits identified by the Borough of Ellwood City concerning that Second Street crossing, and I believe a number of them showed some spalling and cracks in the concrete.

Have you had a chance to see those exhibits?

A Very briefly.

Q And is it your opinion, as an engineer, that any of these cracks or spalling affects the safety of the structure?

A I don't believe so. You asked for my opinion?

Q Yes.

A My opinion is that they don't affect the structural integrity of the structure.

Q And are you familiar generally with the Second Street structure?

A Yes.

Q Exhibits C and D particularly were pictures showing an area at or near the bridge.

Have you seen these exhibits?

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A I am looking at photograph C and there's two different photographs in this packet. They have a different background and there's a utility pole immediately adjacent to the fellow holding the rule and there's not one on the other.

Q Yes, I would agree. I'm looking at the packet that contains Exhibit D and it looks like two different sets. There is a photograph that is marked Exhibit D.

A That's a photograph taken of the northeast area of the bridge showing principally the approach pavement from the bridge north on Second Street.

Q It's your opinion that this photograph, Exhibit D, shows the approach area rather than the bridge area itself?

A I guess a bit of the bridge area, but where the measurements are being taken from is very definitely the approach area on the northeast side of the bridge.

Q I think that's all the further I can go with this. I think we still have confusion with these photographs. This one does appear to be marked Exhibit D though, so I won't ask any more.

Mr. Offutt, the need of painting on the Fifth Street area that's been testified to earlier, does that, in your opinion, have any effect on the safety and structural capacity of that bridge?

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A Not at this time it doesn't, I don't believe. There's some surface deterioration, rusting members right down at the sidewalk level but at this time I don't think they represent any structural problem. They may in the future if it isn't attended to, but not knowing the design criteria used, it may well be that there's enough metal there to last another long period of time. I can't answer that question not knowing the design criteria used when the bents were designed.

Q I note in your testimony that you generally describe the Fifth Street structure as appearing in good condition, both the superstructure, substructure, sidewalks and you mentioned drainage, is that also correct?

A That's correct.

MR. PORACH: No further questions.

THE ADMINISTRATIVE LAW JUDGE: Is anyone else prepared to cross-examine?

BY MR. GALLAGHER:

Q Mr. Offutt, in your written testimony you said on the Second Street crossing there's some concrete deterioration in places on the retaining walls.

My question is, will PennDOT repair that deterioration since it seems that the deterioration could cause the railings to come loose if not totally fall out -- is PennDOT willing to repair that deterioration?

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A At this time we see no reason to expend no money on that wall. We contributed to its cost in 1964 and I don't believe that any of the deterioration shown to be present at this time is anything more serious than it was in 1964. I don't believe there would be any purpose served in going in and arbitrarily doing any repair work now. I don't think it serves any purpose.

Q Even though the deterioration that exists might affect the integrity of that railing on the retaining wall?

A The railing belongs to the Borough.

Q But the retaining wall, under paragraph 22 of the Commission Order, is within the Department of Highways' ambit to repair and keep it repaired, and it seems those retaining walls are deteriorating to the point that it will affect the railing?

A That's been alluded to in other testimony as I recall, but I don't think anybody has said that there's anything wrong with the handrailing anchorage at this time other than what may have been in existence probably since the structure was built in 1931.

Q I believe it was the Borough's testimony, Mr. Offutt, that the anchor bolts were exposed.

A There are a couple of them that are exposed, and by all indications they've been that way since it was

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built or a very short time period after it was built. It's a wrought iron railing and I presume that the bolts are made of wrought iron also and that will last a long time. The cursory inspection that I made of this structure and its appurtenances didn't indicate to me that there was any imminent danger of the handrailing going to fail.

Q Because of the deterioration --

A Because of any reason.

Q Mr. Offutt, do you believe that the railing as it exists today can still retain the same vehicle impact that it could when it was originally built?

A Yes, but that wouldn't be very much. The same impact doesn't change. I mean when it was built, it would resist a certain impact; today it would resist the same impact, but it was certainly never constructed as a vehicular impedence.

MR. GALLAGHER: Thank you, Mr. Offutt, I have no further questions.

BY MR. LEYMARIE:

Q As to the railing going across the Second Street Bridge, it's your opinion that that railing is safe at this time?

A Yes.

Q You heard the testimony by the Public Works Director to the effect that he was able with his hands to

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shake the railing?

A He said he could shake it but that doesn't mean it's not safe. He didn't say it was unsafe, did he?

Q But placed in the context that the concrete and the structure holding it into the concrete are beginning to deteriorate, doesn't that present a condition that will possibly make it unsafe in the very near future?

A That's problematical.

Q I don't think that's responsive to my question.

A It's the best response I can give. The thing was built in 1931 and it's been deteriorating ever since.

Q That's why we're here, isn't it?

A That's why we were here in 1964, also, and 1963. We didn't grab a hold of the handrailing and try to knock it down at any place. We walked along the thing and observed the condition of the handrailing and didn't determine in our minds that it was not safe.

Q I show you what has been marked Borough's Exhibit L. Exhibit L shows movement in that wall --

A That's a vertical construction joint in one of the retaining walls to the approaches. In my opinion, any one of these that we examined on the 5th of August is not of anything recent. It probably occurred within a very short time period of the time the wall was built.

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Q What type of inspection did you do?

A We walked along the whole thing, examining what we could see, standing closer to the wall than this photograph was taken.

Q So it's merely a visual inspection?

A That is correct. I don't know what else you'd make.

Q Is there any engineering method, any method which you have knowledge of in engineering technology available today to test a structure such as this --

A Are we talking about the bridge or --

Q Let's just concentrate on the retaining wall. Is there any available method for testing safety of this wall other than by visual inspection?

A Surveys could be made of the structure to determine if there was any movement present over a period of time. The fact that it was moving would indicate that there is a loss of some stability. That would be one way of testing it without destroying it. The fact that it's standing is pretty good evidence that it is safe.

Q Has any study as such ever been performed by the Department of Transportation, to your knowledge?

A No.

Q Do you know if any is anticipated in the future?

A No.

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Q Do you know what, if any, repairs have been made on the bridge or this retaining wall since its existence?

A Yes, in 1963 there was a proceeding before the Public Utility Commission regarding the retaining walls on the southerly end of the bridge. Certain construction work was done by P.U.C. Order in that Ellwood City hired an engineer who designed certain drainage features to protect the walls on the southerly approach. Those were built and they are so described in the P.U.C. Order and subsequent Order of 1964 detailing the maintenance responsibilities.

Q In that Order that you're speaking about, the Department of Highways, at its sole cost and expense, was to furnish all material and do all work necessary thereafter to maintain the remainder of the rail-highway crossing, above grade, including the roadway paving between curbs on the existing bridge and highway approaches thereto and including the concrete retaining walls located on each side of the highway on both approaches to the bridge, are you aware of that?

A Correct.

Q Do you think it would not be consistent with this Order that the Department conduct some type of study to determine whether the retaining walls located on each side of the bridge are --

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A There's been no physical evidence that's observable over a period of time that there's further movement in those walls.

Q How much expense would it be for the Department of Transportation to conduct such a study?

MR. WECHSLER: I don't know that this man is able to give dollars and cents in a determination as to how much it would cost.

THE ADMINISTRATIVE LAW JUDGE: I think it's a proper question, if he knows.

A I don't know what it costs to operate a survey corps down here.

Q My only concern is that we have had some problems in Ellwood City with our bridge structures and this has limited some of the industry that has been willing to come to this area because of the bridge structures, and my concern is if these retaining walls aren't able to be supportive of trucks carrying heavy steel or other heavy tonnage, this may deter industry from moving into this area, and possibly if the Department of Transportation would make certain studies of this, we would have this evidence available.

A We would not make such a study unless there was pretty concrete evidence that there was failure in the area we're responsible for maintenance. There is no such

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evidence, to our knowledge.

Q And the exhibit we were speaking of, the movement that it shows, you don't know exactly when that movement was made?

A It has been sometime ago. This I know because of the physical characteristics of the crack, the fact that there are certain stained areas there that have obviously been there for some time, and in examining the handrailing on top, there are bends in the handrailing in one area, which I speak of in our report, that suggest that there was motion there some time shortly after it was constructed. There are other areas where the alignment of the handrailing now is good, yet there is an obvious dislocation at a crack or joint in the retaining wall, indicating that the handrailing was constructed after the dislocation of that joint or crack in the wall. This is referred to in the testimony, also.

Q With regard to these walls, in your report you said, "There is some concrete deterioration in places, certainly not anyways near sufficient to cause concern for its structural integrity"?

A That's correct.

Q And you say the wall is tipped outwardly an estimated 6" or 7"?

A That's correct.

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Q At what point, in your opinion, would it become sufficient to cause concern for a structure?

A If there was continued motion, then it would be time to spend the money to make an engineering study to determine the stability of the wall.

Q Again, would you not say that the only way to determine whether there's structural integrity would be to do an engineering study -- wouldn't that confirm or negate everything that your visual inspections are reporting to?

A It could be done but I see no reason to do it. It would cost considerable money to do it and I would see no reason to consider doing it unless there was evidence in the ground that there was a failure. After all, the wall has been standing there for 39 years.

Q I appreciate that but that's not what I'm concerned about. You say it would be considerable expense.

What type of expense are you talking about?

A We don't have drawings for that wall. It was built by an agreement between The Baltimore and Ohio Railroad and the Borough of Ellwood City. We would have to spend a considerable amount of money to survey the wall to find out exactly how it was built.

Q Can you even give a rough estimate?

A No, I wouldn't attempt to at this time be-

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cause of the very uncertainties of the whole thing.

Q You say you are not aware of what the structure is exactly -- you'd have to have drawings made of it?

A Absolutely. You would have to know how it was constructed before you're able to make any determination of the stability of the wall. If there's no movement, then the wall is stable.

Q But the pictures do show a movement?

A Years ago. I understand what your concern is, I believe. There's no doubt in my mind but what the wall is an old style gravity type wall in that it achieves its stability by shear massive weight, and there has to be some kind of a tow wall below grade to resist the horizontal shearing forces imposed by the embankment above that elevation.

We have many bridges and retaining walls throughout our seven counties in which there is movement immediately after construction, where the weights of the material being used were not exactly as were contemplated on being used. Earth embankment science, particularly back in 1931, was a very crude thing. It's entirely possible that during the construction all kinds of things could have happened to create forces on the inside of that wall that were not planned on, and I'm sure that this is what's

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happened, as evidenced in the testimony regarding the location and condition of that handrailing. There's no indication on the top of that wall that it was ever relocated from any point, yet it is straight but underneath there is a crack with a dislocation of the face of the wall, showing motion at sometime.

Q In Question 19, you state that the bridge carrying Second Street is not presently posted for a maximum weight limit?

A That's correct and the reason for that, it's not our bridge.

Q But it is a state highway crossing?

A Correct.

Q And there's no concern on your part that the bridge's stability or sufficiency, in your opinion, that would require or make you have an opinion that a weight limit should be posted on the --

A There's no doubt in my mind at all.

Q So it would be your professional opinion that no weight limit would be necessary and that any industrial load --

A Any legal load.

Q Any legal load could cross that bridge at any time?

A Yes.

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MR. LEYMARIE: I have no further questions.

MR. GARFUNKEL: No questions.

THE ADMINISTRATIVE LAW JUDGE: As I understand it, your testimony didn't discuss the situation at Sixth Street because it's not a state --

THE WITNESS: That's correct.

THE ADMINISTRATIVE LAW JUDGE: And that all of the testimony with respect to movement on pages 2 and 3 of your testimony that in your opinion that movement occurred long ago, probably immediately after construction of the bridge and that right now it's presently capable of carrying any legal load, is that roughly your testimony?

THE WITNESS: Yes, sir.

THE ADMINISTRATIVE LAW JUDGE: Any further questions of this witness?

MR. WECHSLER: I have a couple questions.

REDIRECT EXAMINATION

BY MR. WECHSLER:

Q Mr. Offutt, if there were recent motion in that wall, would you have been able to determine if there had been as distinguished from motion that occurred at or about the time of construction?

A You mean recent within the last year, say?

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Q Yes.

A Yes, I would think so.

Q And your inspection gave no indication of recent motion of that wall?

A Nothing.

Q You indicated also on page 2 of your testimony, the first paragraph under "South Approach East Side" that there apparently was motion even before the railing was put up, is that correct?

A Yes.

Q And you referred in your testimony in cross-examination by the Borough of Ellwood City that there were places where the bolts for the railing were visible and you say that apparently was the way the railing was put in, is that correct?

A If I said that, I didn't say it correctly.

Q I'm going to show you what's marked as photograph F. It shows a place where the wall seems to be two different distances from where the sidewalk was at least intended and shows the base plate of the rail.

Is this what you referred to where there was a shift prior to the installation of the railing?

A No, not that one. That would appear to me to be a shift afterwards. Note on the right side of the base plate of the handrail fencing there is an anchor bolt and

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everything appears to be as it was when it was constructed. On the left side of that anchor plate assembly, there is a bolt head and there is obviously a void under it, indicating that the bolt had to be placed very close to a joint which is discernible in the photograph. There was motion in that wall -- I don't know how much -- a small amount -- and it sheared that bolt out of the top of the retaining wall; however, that fence post is still retained by the anchor bolts on the other side, one of them being visible on the right side of the post in the picture. I don't think any of these photographs that I've seen show an area where the sidewalk was constructed after the wall shifted.

Q There are places then that the railing is straight even though the wall is not straight in places.

Would that be an indication that the wall shifted prior to the installation of the railing?

A Yes, sir.

Q Photograph N shows that railing with a bow going out. That would be evidence of a shift after the railing was put in, is that correct?

A Yes.

Q Your inspection of this wall, was that the standard method of examining a wall to judge its integrity?

A No. To judge its integrity in an engineering sense requires a considerable time period to evolve so that

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you have a before and after circumstance, and this inspection was made August 5, a week ago Tuesday.

MR. WECHSLER: I have nothing further. I want to note for the record that we've had much reference to the 1963 P.U.C. Order at C-17665. There has been reference to some portions of the Order that was issued.

THE ADMINISTRATIVE LAW JUDGE: Anything further?

RECROSS-EXAMINATION

BY MR. LEYMARIE:

Q You are definite in your opinion that a visual inspection alone is enough to determine that the maximum weight limit permitted by law may be used on that bridge?

A Yes.

MR. LEYMARIE: I have no further questions.

THE ADMINISTRATIVE LAW JUDGE: Without referring to any pictures, is it possible for you to state in words with respect to the Second Street crossing where the Department perceives that the approaches end and the Department's responsibility for the roadway surface begins?

THE WITNESS: Yes, on the roadway surface, it is possible on the ground to determine where the

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end dams are at the north and south abutments.

THE ADMINISTRATIVE LAW JUDGE: What do you mean by that expression?

THE WITNESS: They would be the outside extremities of the abutment wall construction discernible from the surface. That would be the beginning or the end of the Department of Transportation's responsibility for the highway maintenance. They would also be the limits of our responsibility as regards the roadway surface on the bridge itself.

MR. LEYMARIE: I would object to that because the Order says they're to maintain all the roadway. We maintain the sidewalks and railing on the approaches.

MR. WECHSLER: There's a differential, Your Honor, between the road and the road bed off the bridge and the fact that we're only responsible for the road surface over the bridge. The deck is the responsibility of the railroad. There's a change in our responsibility when you get to the edge of that bridge as to how far down below the actual traveled surface that we are responsible for.

THE ADMINISTRATIVE LAW JUDGE: All I'm really trying to do is see if we can reach an agreement as to what is the approach to this bridge as far as the duty of maintenance as far as the Borough is concerned and as far as the Department is concerned.

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MR. WECHSLER: I don't know whether Ellwood City is going to agree to this, but the railroad and the Department would agree that it's the last expansion dam at each end of the bridge -- the metal dams -- that is the edge of the bridge.

MR. LEYMARIE: I believe that's what the Public Works Director was trying to identify. He did state, too, that it was the expansion joints at either end of the bridge --

MR. PORACH: My recollection is that he was marking a point not up that far. His feeling was that the approaches did not get to the part of the expansion dams but ended prior to that at some point.

MR. WECHSLER: Your Honor, I think the railroad and Department would agree on what I have stated that the expansion dams at the end of the bridge mark the limits of the bridge.

MR. GARFUNKEL: That's correct.

MR. PORACH: We agree.

THE ADMINISTRATIVE LAW JUDGE: We at least have three-fourths of a stipulation. Are there any further questions of this witness? (No response) Thank you very much. Which railroad would like to go next?

MR. GARFUNKEL: The B & O would call Mr. Begg.

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WILLIAM BEGG, called as a witness on behalf of The Baltimore and Ohio Railroad Company, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GARFUNKEL:

Q Please state your name for the record.

A William Begg.

Q Business address?

A 12 Grant Street, Pittsburgh.

Q By whom are you presently employed?

A The Baltimore and Ohio Railroad Company.

Q In what capacity are you employed?

A Engineer of Structures on the Pennsylvania Division.

Q Are you familiar with the Second, Fifth and Sixth Street crossings in Ellwood City?

A Yes, I am.

Q Are you authorized to testify on behalf of The Baltimore and Ohio Railroad Company?

A Yes, I am.

Q Have you proposed written answers to the questions of the Bureau of Transportation?

A Yes, I have.

Q Were they prepared by you and can you verify

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the answers?

A Yes, I can.

Q In the course of that testimony you make reference to various documents. Can you identify those documents?

A First, I have an agreement here dated the 16th day of July 1930, which is an agreement between the Borough of Ellwood City and The Baltimore and Ohio Railroad Company. This concerns the crossing at Second Street.

In addition there is a copy of the Public Utility Commission's Order of September 3, 1963 under Complaint Docket No. 17665 pertaining to the Second Street crossing.

And third, we have an agreement between the railroad and the Borough of Ellwood City regarding the Fifth Street crossing.

Q What is that date?

A The 7th of August 1911.

MR. GARFUNKEL: Your Honor, I move that the 1930 agreement be marked as B & O's Exhibit No. 1; that the P.U.C. Order of 1963 be identified as B & O's Exhibit No. 2; that the 1911 agreement be identified as B & O's Exhibit No. 3.

THE ADMINISTRATIVE LAW JUDGE: They shall be so identified.

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(B & O's Exhibit No. 1, being an agreement between the Borough of Ellwood City and The Baltimore and Ohio Railroad Company, dated July 16, 1930, was produced and marked for identification)

(B & O's Exhibit No. 2, being the P.U.C. Order at Complaint Docket No. 17665, dated September 3, 1963, was produced and marked for identification)

(B & O's Exhibit No. 3, being an agreement between the Borough of Ellwood City and The Baltimore and Ohio Railroad Company, dated August 1911, was produced and marked for identification)

MR. GARFUNKEL: I move that Mr. Begg's written testimony be admitted into evidence and considered as if it had been presented orally at this hearing.

THE ADMINISTRATIVE LAW JUDGE: Any objection? (No response) Without objection, it shall be so reported.

(The following is copied into the record as the witness' direct testimony)

Q State your name, title and business address.

A I am W. B. Begg, Engineer of Structures on the Pennsylvania Division of The Baltimore and Ohio Railroad Company. My business address is 12 Grant Street, Pittsburgh, Pa. 15219.

Q Are you authorized to testify on behalf of The Baltimore and Ohio Railroad Company?

A Yes.

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Q Are you a Registered Professional Engineer?

A Yes, I am a Registered Professional Engineer.

Q How many years have you been employed by The Baltimore and Ohio Railroad Company?

A 14 years.

Q How long have you been in your present position?

A I have been Engineer of Structures on the Pennsylvania Division for 4 years, before which I was Project Design Engineer in the System Bridge Office for 10 years.

Q State the exact corporate names of the owner and of the operator of the lines of railroad that are involved in this proceeding.

A The corporate name of the owner of the line of railroad involved is The Pittsburg and Western Railroad Company and is operated by The Baltimore and Ohio Railroad Company.

Q State the number of tracks presently located at the sites of the involved crossings; the volume, class and approximate speed of all trains operated daily thereon; and whether any changes to its operations are anticipated in the foreseeable future.

A At the present time, The Baltimore and Ohio Railroad Company has 4 tracks at the Sixth Street grade crossing; 3 tracks over the Fifth Street Underpass; and 4 tracks

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under the Second Street Overpass.

The present volume of traffic consists of 6 mainline freight trains each way and one yard switcher each way per day. The predominant speed for all traffic varies from 10 mph to 20 mph. There are no scheduled passenger trains operating in this area. No changes to the present operations are anticipated at this time.

Q State whether The Baltimore and Ohio Railroad Company has performed an in-depth inspection of the involved bridges or has prepared any engineering studies, estimates or construction plans for any improvement of the highways at the involved crossings and, if so, submit copies thereof into the record and, if not, state whether it will agree to do so.

A The Baltimore and Ohio Railroad Company performs a yearly inspection of the bridges involved. This inspection encompasses all components of the structures and indicates when repairs if needed should be performed. The 1980 inspection took place February 5. No engineering studies, estimates or construction plans have been prepared for highway improvements at the subject crossings and none are contemplated since any improvements would relate to highway work which we do not feel qualified to perform.

Q State the type of railroad crossing warning protection presently provided at the involved Sixth Street

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crossing, at grade, and whether in the opinion of The Baltimore and Ohio Railroad Company, said protection is adequate.

A The present protection consists of automatic flashing lights, bells and gates which the railroad feels is adequate.

Q State the present obligation of The Baltimore and Ohio Railroad Company with respect to maintenance of the existing crossings and the highway approaches thereto.

A At the Second Street crossing, The Baltimore and Ohio Railroad Company is responsible for the maintenance and renewal of the bridge structure, exclusive of street paving, over its property, tracks and right-of-way, pursuant to Agreement July 16, 1930 and the Pennsylvania Public Utility Commission Order dated September 3, 1963, under Complaint Docket No. 17665. The Public Utility Commission Order provides that The Pittsburgh and Lake Erie Railroad Company pay The Baltimore and Ohio Railroad Company 15 percent of the maintenance costs incurred.

The Fifth Street Overpass was constructed pursuant to Agreement dated August 7, 1911. While this agreement is silent regarding maintenance responsibility, The Baltimore and Ohio Railroad Company has maintained the structure.

At Sixth Street, The Baltimore and Ohio Railroad Company is responsible for the maintenance of that

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portion of the crossing which is located between 2' outside the outermost rails of the tracks. The Baltimore and Ohio Railroad Company is also responsible for the maintenance of the warning protection devices at the crossing.

Q State what maintenance and improvement The Baltimore and Ohio Railroad Company has performed on the crossings and approaches during the preceding five years, together with the approximate dates and costs of any such work.

A At Sixth Street, the crossing surface for track No. 1 was renewed through replacement of crossing timbers in July 1980 at a cost of $4100. The other 3 tracks of The Baltimore and Ohio Railroad Company at this crossing will also have new crossing timbers installed with a projected completion date of September 30, 1980 with anticipated cost of $13,000.

At Fifth Street, the surface of the former platform was repaved at an approximate cost of $600 during October 1979. During the months of May and June of 1977, repairs were made to the downspouts from the structure at an approximate cost of $2100.

At Second Street, repairs to the walkway were made in October 1979 at an approximate cost of $300.

The Baltimore and Ohio Railroad Company has no records showing the exact dates, extent, cost or any other

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pertinent information relating to maintenance prior to the above.

Q State which party or parties should be required to perform the actual work of any corrective measures found necessary and ordered by the Commission, and state what portion, if any, of the costs of said work that it will agree to bear and what portion, if any, should be borne by each of the other parties. (The answer shall be specific as to the reasons for its suggested allocation.)

A It is the opinion of The Baltimore and Ohio Railroad Company that the work and expense of maintaining the existing facilities should be apportioned in accordance with existing agreements and orders of the Commission.

Any improvements would be for the sole benefit of the highway users and the costs of such improvements should be borne by parties other than The Baltimore and Ohio Railroad Company.

Q State whether in the opinion of The Baltimore and Ohio Railroad Company, the involved crossings are necessary for the service, accommodation and convenience to the traveling public, or whether any of the crossings can be abolished and the highway closed to all traffic in the vicinity of said crossings.

A While The Baltimore and Ohio Railroad Company is in favor of the abolition of unnecessary crossings,

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it does not feel adequately qualified to answer this question.

Q Describe the general type of the existing bridge carrying Second Street over the tracks, including the number of spans, principal dimensions and roadway width, together with the date and purpose of its construction.

A The Second Street Overpass is a three-span highway bridge with concrete deck and sidewalks having a roadway width of 40'0". End spans are deck beams with lengths of 22 and 31' and center span has thru plate girders with length of 86'. Bridge was constructed in 1931 and replaced an existing substandard structure.

Q The Baltimore and Ohio Railroad Company describe the general type and condition of the existing bridge carrying its tracks above Fifth Street, including the number of spans and principal dimensions, together with the date and purpose of its construction.

A The Fifth Street Underpass is a four-span railroad bridge carrying 4 tracks and station platform. The structure consists of concrete encased beam spans on steel bents and masonary abutments with span lengths of two at 14'0" and two at 23'8". The overall width is 67'4". The structural integrity and overall condition is good.

Q What is The Baltimore and Ohio Railroad Company's position in regard to the complainant's allegations that a hazard exists to vehicular and pedestrian traffic at

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the Fifth Street crossing due to surface water draining from the railroad unto the street and sidewalks and due to the erosion of the paint on the structural steel; that a hazard exists at the Sixth Street crossing due to the general deterioration; and that a hazard exists at the Second Streeet crossing due to holes in the bridge?

A (1) Regarding the complainant's allegations at the Fifth Street crossing, it is the opinion of The Baltimore and Ohio Railroad Company that no hazard exists attributable to The Baltimore and Ohio Railroad Company.

(2) At the Sixth Street crossing, The Baltimore and Ohio Railroad Company agrees that while work is in progress on the present improvements, the surface is not smooth but this condition is temporary and presents no hazard to pedestrians or motorists using normal judgment.

(3) At the Second Street crossing, no hazard exists.

Q State the general nature and extent of all work the company deems advisable to provide safe and convenient crossings at the subject locations.

A The Baltimore and Ohio Railroad Company feels that no work is necessary by the railroad to provide safe and convenient crossings at the subject locations, other than the completion of the present work at the Sixth Street crossing.

(End of prepared testimony)

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MR. GARFUNKEL: Mr. Begg is available for cross-examination.

MR. WECHSLER: We have no questions.

MR. PORACH: No questions.

CROSS-EXAMINATION

BY MR. GALLAGHER:

Q Mr. Begg, you statedthat the agreement with regard to the Fifth Street Overpass is silent as far as maintenance responsibility, and yet B & O has maintained the structure?

A That's right.

Q Has B & O performed any maintenance on the sidewalks?

A Not that I am aware of. I have no record of us ever working on the sidewalks.

Q Do you know of any maintenance that The B & O has performed on the structure?

A Yes, that is in the testimony.

MR. GALLAGHER: I have no further questions, Your Honor.

BY MR. LEYMARIE:

Q It's your position that no hazard exists attributable to The Baltimore and Ohio Railroad Company at the Fifth Street crossing, is that correct?

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A That's correct.

Q Do you consider an accumulation of water which creates a situation which pedestrians traveling on the east side of the bridge on the sidewalk underneath have to detour on to the roadway possibly to pass through as a dangerous condition?

A Yes.

Q It is your opinion though that none of these conditions were created by B & O, and therefore, they're not responsible, is that correct?

A That's right.

Q Are you able to say what conditions created this situation?

A I believe from crossing the area that there are conditions that exist that can contribute to this condition more than an allegation that the drainage is coming from the railroad.

Q Have you ever walked through the tunnel after a heavy rain?

A I have walked through when there's been water there.

Q Have you seen the dripping coming down through these grates on to the sidewalks?

A Just a little big on the edge of the wall.

Q Doesn't that contribute to the accumulation

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of water?

A What are you talking "accumulation of water"?

Q I described a situation where water accumulates and pedestrians may have to detour on to the street or walk through a puddle?

A A minor contribution, yes. It will not contribute to the extent that I believe you're alluding to.

Q There appears also to be some seepage from the abutting walls to the sidewalk, is there not?

A The only seepage that I have witnessed was from the outside corners of the wall from the top and you see a stained area but I have never seen water physically run down that wall.

Q How many in number would you estimate of visual inspections you have made?

A A half a dozen, a dozen.

Q Have you ever been present during the course of a very harsh storm?

A No, I haven't.

Q Or immediately thereafter?

A No.

Q So then your testimony that the condition created is minute due to the seepage from the bridge or the walls is not based on any visual inspection during the course of a severe thunder storm or something of that nature, is

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that correct?

A To answer that specific question, no.

Q In reference to Sixth Street, you have 4 tracks located there?

A Yes.

Q Have you been across that intersection in a vehicle?

A Yes, sir.

Q Can you describe the ride across it?

A I believe my written testimony indicates the present condition at this time. If you look on page 5 at the top of the page and also on page 8, I think that's the answer you're looking for.

Q You say this condition of the surface is not smooth. I think that's euphemistic. You say that the condition is temporary and presents no hazard to pedestrians or motorists using normal judgment.

When you say "temporary", what is your intent to improve it?

A Back on the page I just alluded to, the completion date for the crossing is September 30, 1980.

Q How substantial an improvement do you think that will be at that crossing?

A I think that's spelled out. There will be new crossing timbers throughout and you will have a smooth

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surface across. The other 3 tracks are going to get the same treatment as the present track that's being improved right now.

Q But you do admit that at present there's a problem situation there as far as motor vehicles crossing?

A Naturally, we're in the process of improving the crossing, so there's bound to be.

Q If a vehicle had to travel across that Sixth Street crossing numerous times, say ten occasions a day, it's very possible that could do considerable harm or wear to a vehicle at present, would you also say that?

A Depending on how fast he went across. That's why I said using normal judgment. You're in a construction area right now and there's nothing we can do about that if we're going to improve the crossing. We have to go through this time period of inconvenience.

Q When I cross the Sixth Street crossing, my speedometer normally reads zero and I'm going at the minimum speed able to maintain my car when I cross it, and you're saying that adjustment will be made that will change that type of situation at the Sixth Street crossing, is that correct?

A When the improvement is completed, that should change the crossing of our tracks.

MR. LEYMARIE: I have no further questions.

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THE ADMINISTRATIVE LAW JUDGE: Any further questions?

BY MR. GALLAGHER:

Q Mr. Begg, do you have any program with regards to the painting of the structure at Sixth Street?

A We do not have it specifically listed at this time. The only report that I can refer to is that it's scheduled from our inspection report from four to five years in the future but I cannot guarantee that it can be done at that time.

MR. GALLAGHER: I have no further questions.

THE ADMINISTRATIVE LAW JUDGE: I believe there was considerable testimony at the grade crossing concerning a major dip, I think was the expression used. From your examination of the crossing, is there such a thing and, if so, will your repairs take care of it?

THE WITNESS: Yes, the one track that has been repaired has taken this dip out where we feel the sewer line runs right down across the crossing area.

THE ADMINISTRATIVE LAW JUDGE: Thank you, that was the only question I have.

MR. LEYMARIE: I have one more question.

BY MR. LEYMARIE:

Q Is there any reason why there is no immediate

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concern with painting the Fifth Street crossing?

A We have no knowledge so far, although I know it doesn't look good, but we have no knowledge or any real loss of section of the structure. The structure is still capable of its load-carrying capacity, and naturally, we're going to monitor the structure and we will take our normal maintenance procedures on it.

MR. LEYMARIE: That's all.

THE ADMINISTRATIVE LAW JUDGE: Any other questions of this witness? (No response) Thank you very much, sir. Would you like to move for the admission of your exhibits?

MR. GARFUNKEL: Yes, Your Honor.

THE ADMINISTRATIVE LAW JUDGE: Any objection to B & O's Exhibits 1, 2 and 3?

MR. LEYMARIE: I have no objection.

THE ADMINISTRATIVE LAW JUDGE: Without any objection, their admission is ordered. Off the record.

. . . OFF RECORD DISCUSSION . . .

THE ADMINISTRATIVE LAW JUDGE: With respect to the exhibits of the Borough of Ellwood City, which I believe are designated C through S, there appears to be a question as to whether all the pictures in each packet are identical, and I would ask that counsel for the Borough re-examine the photographs and provide to each party of

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record, three to the Commission and one to me a copy of each photograph, and then I would ask that any counsel then having any objection to the admission of same, advise me in writing within ten days of receipt of the exhibits. If no objection is received, the exhibits will be admitted.

Mr. Porach, would you like to present your witness?

MR. PORACH: Yes.

JULIUS J. STURMAN, called as a witness on behalf of The P & L E Railroad Co., having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PORACH:

Q State your name for the record, please.

A Julius J. Sturman.

Q What is your business address?

A Smithfield and Carson Streets, Pittsburgh, Pa. 15219.

Q By whom are you employed?

A Pittsburgh and Lake Erie Railroad.

Q In what capacity?

A Maintenance and Construction Engineer.

Q Are you a graduate engineer, Mr. Sturman?

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A Yes, I am.

Q Where and when did you graduate?

MR. ZAHN: Mr. Sturman has been a witness at many hearings before PennDOT and we would recommend that he be accepted as a qualified engineer.

THE ADMINISTRATIVE LAW JUDGE: Any objection to the witness' expertise in testifying to the structures in question? (No response)

Q Mr. Sturman, are you authorized to testify on behalf of The Pittsburgh and Lake Erie Railroad Company?

A Yes, I am.

Q Are you familiar with the three crossings that are the subject of this proceeding?

A Yes, I am.

Q I show you three pages of answers to questions and ask you if you prepared those answers?

A Yes, I did.

Q And do the numbers that appear with them correspond to the numbers of the Commission's Questions and Procedure in this proceeding?

A Yes, they do.

Q And are these answers true and correct, to the best of your knowledge, information and belief?

A Yes, they are.

Q Would you give the same answers if you

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testified here today at length?

A Yes, I would.

MR. PORACH: If there's no objection, I'd like to move that this testimony be submitted in the record as if read here today.

RESPONSE: No objection.

THE ADMINISTRATIVE LAW JUDGE: Without objection, it shall be so recorded.

(The following is copied into the record as part of the witness' direct testimony)

Q The Pittsburgh and Lake Erie Railroad Company state whether it has performed an in-depth inspection of the involved bridges or has prepared any engineering studies, estimates or construction plans for any improvement of the highways at the involved crossings and, if so, submit copies thereof into the record and, if not, state whether it will agree to do so.

A P & L E has not performed an in-depth inspection of the involved bridges nor has prepared any engineering studies, estimates or construction plans for any improvement of the highway at the involved crossings and does not agree to do so.

Q The Pittsburgh and Lake Erie Railroad Company submit testimony in regard to the type of railroad crossing warning protection presently provided at the in-

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volved Sixth Street crossing, at grade, and whether, in its opinion, said protection is adequate.

A The type of railroad crossing warning protection presently provided at the involved Sixth Street crossing, at grade, is automatic flashing light signals, gates and bells. It is the opinion of the P & L E that the protection is adequate.

Q The Pittsburgh and Lake Erie Railroad Company state its present obligation with respect to maintenance of the existing crossings and the highway approaches thereto.

A In accordance with Pennsylvania Public Utility Commission Complaint Docket No. 17665 dated September 3, 1963, P & L E pays B & O 15 percent of the actual cost incurred by the B & O in maintaining the substructure and superstructure of the Second Street overpass, exclusive of the roadway paving. In accordance with agreement dated August 7, 1911, the P & L E pays the B & O one-fourth of the cost of maintaining the Fifth Street underpass. The P & L E maintains three tracks in the Sixth Street grade crossing.

Q The Pittsburgh and Lake Erie Railroad Company submit testimony in regard to the maintenance and improvement it has performed on the crossings and approaches during the preceding five years, together with the approximate dates and costs of any such work.

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A The P & L E has maintained its portion of the Sixth Street crossing by making repairs from time to time as the need arose, but no records have been kept of these repairs. However, the most recent repairs were made on June 20, 1980.

Q The Pittsburgh and Lake Erie Railroad Company state which party or parties should be required to perform the actual work of any corrective measures found necessary and ordered by the Commission, and state what portion, if any, of the costs of said work that it will agree to bear and what portion, if any, should be borne by each of the other parties. (The answer shall be specific as to the reasons for its suggested allocation)

A Each party presently responsible should be required to perform the actual work of any corrective measures found necessary and ordered by the Commission and should assume the cost of said work.

Q The Pittsburgh and Lake Erie Railroad Company state whether, in its opinion, the involved crossings are necessary for the service, accommodation and convenience to the traveling public, or whether any of the crossings can be abolished and the highway closed to all traffic in the vicinity of said crossing.

A The P & L E has not made a study and therefore, has no opinion whether the involved crossings are neces-

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sary for the service, accommodation and convenience to the traveling public, or whether any of the crossings can be abolished and the highway closed to all traffic in the vicinity of said crossing.

Q The Pittsburgh and Lake Erie Railroad Company submit testimony as to the exact corporate name of the owner and of the operator of the lines of railroads involved in this proceeding.

A The exact corporate name of the owner and of the operator of the line of railroad involved in this proceeding is The Pittsburgh and Lake Erie Railroad Company.

Q The Pittsburgh and Lake Erie Railroad Company submit testimony as to the number of tracks presently located at the sites of the involved crossings; the volume, class and approximate speed of all trains operated daily over its tracks; and whether any changes to its operations are anticipated in the foreseeable future.

A The P & L E has no tracks at the site of Second Street crossing, one track at Fifth Street crossing and 3 tracks at Sixth Street crossing. The P & L E operates approximately one freight train per week at a maximum speed of 15 mph over its tracks and expects to eliminate entirely its operation in the near future. The present P & L E operations only affect the Sixth Street crossing.

Q The Pittsburgh and Lake Erie Railroad

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Company submit testimony describing the general type and condition of the existing bridge carrying its tracks over Fifth Street, including the number of spans and principal dimensions, together with the date and purpose of its construction.

A The P & L E has no construction plans of the Fifth Street Bridge as the bridge was built and is maintained by the B & O.

Q The Pittsburgh and Lake Erie Railroad Company submit testimony in regard to the complainant's allegations that a hazard exists to vehicular and pedestrian traffic at the Fifth Street crossing due to surface water draining from the railroad unto the street and sidewalks and due to the erosion of the paint on the structural steel; that a hazard exists at the Sixth Street crossing due to the general deterioration; and that a hazard exists at the Second Street crossing due to holes in the bridge.

A An inspection on July 31, 1980, revealed that no hazard exists to vehicular and pedestrian traffic at the Fifth Street crossing due to surface water draining from the railroad unto the street and sidewalks and due to the erosion of the paint on the structural steel. During the rain on July 31, 1980, no water was seen draining from the railroad and the drain pipes from the railroad which have been repaired were functioning in a satisfactory manner.

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The slight rusting of the structural steel does not substantially affect the load carrying capacity of the structure so as to render the bridge unsafe. No hazard exists at Sixth Street crossing and the P & L E portion of the crossing was last repaired on June 20, 1980. No holes in the roadway pavement or the sidewalks were found at the Second Street crossing to create a hazard condition.

Q The Pittsburgh and Lake Erie Railroad Company submit testimony regarding the general nature and extent of all work the company deems advisable to provide safe and convenient crossings at the subject locations.

A It is the opinion of the P & L E that no work is necessary within the limits of its responsibility to provide safe and convenient crossing at Sixth Street, nor at Fifth and Second Street.

(End of prepared testimony)

Q A couple more questions, Mr. Sturman, The Sixth Street crossing is a grade crossing in this proceeding, is that correct?

A That's correct.

Q And does The P & L E have tracks at this crossing?

A Yes, they do.

Q Compass direction-wise, which tracks belong to The P & L E at that location?

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A On the south side of the crossing.

Q The most southerly tracks?

A Right, the most southerly tracks.

MR. PORACH: That's all the questions. The witness is available for cross.

MR. WECHSLER: The Department has no questions.

MR. GARFUNKEL: No questions.

THE ADMINISTRATIVE LAW JUDGE: Does Staff have any questions?

MR. GALLAGHER: No questions.

CROSS-EXAMINATION

BY MR. LEYMARIE:

Q It's your testimony that The P & L E only has one freight train per week through Ellwood City?

A Yes, sir.

Q You also state in answer 23 that your operations only affect the Sixth Street crossing?

A Our present operation, yes.

Q But to get to Sixth Street, you'd have to cross Fifth Street, also?

A No, we come from the other direction.

Q You come from the other direction, would you explain that?

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A The opposite direction of Fifth Street.

Q You're traveling east?

A East.

Q But you do use the Fifth Street Bridge?

A No, we don't. We only service one industry -- Airway Industries is the only industry we serve.

Q So it's your testimony that P & L E has no tracks at the Fifth Street Bridge?

A We do have one track over it.

Q Do you intend to eliminate that?

A We intend to eliminate all our service.

Q How near in the future are we speaking?

A In the foreseeable year -- within a year or so.

MR. LEYMARIE: I have no further questions.

MR. PORACH: There was one further matter, Your Honor. The testimony of Mr. Sturman refers to an agreement of August 7, 1911, and that is a different agreement of August 7, 1911 than The B & O has introduced, and it's just an agreement between The P & L E and The B & O. We do not have enough copies here today but we can make them available as a late-filed exhibit just to complete the record.

THE ADMINISTRATIVE LAW JUDGE: Very well. Any counsel object to that way of proceeding?

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MR. ZAHN: No.

THE ADMINISTRATIVE LAW JUDGE: Very well, I would ask that you do that.

MR. GALLAGHER: Your Honor, I'd just like to clarify one thing.

BY MR. GALLAGHER:

Q Mr. Sturman, you mentioned that you will eliminate these tracks, is that correct?

A We will eliminate the operations.

Q But not the trackage itself?

A There will be some disposition made of the tracks. As to what, we can't tell you now -- whether The B & O will take it over or what.

Q I was just going to say if you eliminate the tracks, you'd have to file an application with the P.U.C. to eliminate them?

A Yes, definitely.

MR. GALLAGHER: That's all.

THE ADMINISTRATIVE LAW JUDGE: Any further questions of this witness? (No response) Anything additional from The Pittsburgh and Lake Erie?

MR. PORACH: Nothing further.

THE ADMINISTRATIVE LAW JUDGE: Very well, thank you very much.

MR. GALLAGHER: Your Honor, there has

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been mention today many times of the Questions and Procedure that were sent out by Administrative Law Judge Shane, and I think it might be advisable if we incorporated a copy of those into the record.

THE ADMINISTRATIVE LAW JUDGE: Very well. Would you like those to be referred to as Staff Exhibit 1?

MR. GALLAGHER: The only problem is, Your Honor, I don't have an original and three copies.

MR. ZAHN: Not if they're incorporated in the record you don't need three copies.

THE ADMINISTRATIVE LAW JUDGE: In what sense do you want them to be incorporated in the record was my question. You don't want them as an exhibit?

MR. GALLAGHER: Not as an exhibit, no.

THE ADMINISTRATIVE LAW JUDGE: Any objection? (No response) Without objection, they shall be so incorporated. Is there anything further that can be done today?

MR. GALLAGHER: Your Honor, I'd like to have Mr. Huff testify.

WILLIAM W. HUFF, called as a witness on behalf of the Pa. P.U.C., having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. GALLAGHER:

Q Please state your full name for the record.

A William W. Huff.

Q Would you please state your business address?

A P. O. Box 3265, Harrisburg, Pa. 17120.

Q By whom are you employed?

A Pennsylvania Public Utility Commission, Bureau of Rail Transportation.

Q In what capacity?

A Engineer.

Q Are you authorized to testify on behalf of the Commission today?

A Yes, I am.

MR. GALLAGHER: Your Honor, I hope I will not have to go into Mr. Huff's qualifications, but if I need to I will.

MR. ZAHN: Mr. Huff has testified at many hearings and is well qualified.

MR. PORACH: We'll stipulate.

MR. LEYMARIE: I submit.

THE ADMINISTRATIVE LAW JUDGE: I should state for the record that Mr. Huff has testified in numerous hearings in my experience with the Commission.

Q Mr. Huff, are you familiar with the subject

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three crossings?

A Yes, I am.

Q With regard to the Fifth Street crossing, Mr. Huff, there has been a great deal of testimony as to the problems occurring on the sidewalk with regard to the water collection there.

Have you any opinion as to the cause of that water build-up?

A Yes, I have an opinion. I've been out to the site on two occasions other than today, and the last time was at the field conference we held on May 22 of this year, and I think they had a very heavy rain the day before and I did not see any indication of any water running down the abutment walls. There was staining on the walls but the staining was dry. I am sure there has been some water come down there at one time or another and I'm sure there's been some that's been leaking through the deck. It's my opinion that the main source of the water problem is the fact that the crossing is on a sag and the rain water runs down the sidewalk and the sidewalk is on the east side, and some portions of it drains toward the abutment wall rather than toward the curb, and therefore, there's no way for the water to discharge and it lays in puddles only on the sidewalks, which would naturally create a hazard condition, especially in the wintertime when it freezes.

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Q What recommendations would you make as to the corrective measures that should be taken to alleviate this problem?

A The east sidewalk especially should be rebuilt so as to provide a positive drainage toward the curb so it will pick up in the drainage system, and also to eliminate the possibility of any water draining down the abutment walls on to the sidewalk, that a depressed gutter should be constructed in the sidewalk adjacent to the abutment face to collect any water that might run down and then from there be carried off on to the roadway.

Q In your opinion, who should perform these corrective measures?

A Our records don't indicate that this crossing was ever assigned maintenance responsibility by the Commission or its predecessor, and I think that the sidewalk should be the responsibility to be maintained by the Borough of Ellwood City, and as such, the Borough should construct these sidewalks and to maintain the same thereafter, which maintenance would also include the necessity of cleaning any gutter placed along the abutment walls to collect that water there.

Q With regard to the condition of the cast iron railings on the Second Street crossing --

A At the field conference held on May 22, I

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observed that in some cases there had been quite a bit of spalling on top of the retaining walls so that adequate support was not provided the railing, and there was testimony here today about the railing being shaky; this is used I would imagine to quite an extent by school children, and I think the top of that wall should be repaired to the extent the rail can be adequately and firmly supported.

MR. GALLAGHER: The witness is available for cross-examination.

CROSS-EXAMINATION

BY MR. LEYMARIE:

Q You said the main source of the water problem was the dip or the bow created by --

A That's my opinion of what I have seen, right.

Q And this is created due to the location of the bridge being there, is that correct?

A It's due to the location of the highway going out into a sag curve, which makes the water run down the sidewalk to the lowest point, and if the sidewalk is sloping toward the abutment rather than toward the curb, you're going to have a puddle. I'm not saying that's where 100 percent of the water comes from but puddles can be caused by that.

Q You've heard testimony that there was a

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storm sewer immediately above the --

A It's out in the roadway, right.

Q And the way that Beaver Avenue drains, any drainage that would be headed in a westward direction would be headed toward that storm sewer?

A I would say street water would, yes.

Q But it would be your testimony that you think there's quite a bit of water draining down Fifth Street on to the sidewalk on the east side?

A Sufficient water to cause a puddle -- it wouldn't take too much to cause a puddle.

Q You don't think there's much of a drainage problem caused by seepage coming from the bridge above on to that sidewalk?

A I say there's indication that water has in the past some down the abutment wall and also has come through the deck, but however, I was there within a day after a heavy rain and there was a puddle on the sidewalk at that time but the abutment walls were dry. I'm not saying it doesn't come down that but, in my opinion, the problem could be alleviated by sloping the sidewalk so it wouldd rain toward the roadway.

Q If part of this problem is created through drainage from the abutment walls and drainage from the railroad bridge above, why is it your opinion that the Borough

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should bear the total cost of the repairs?

A Total cost of the repairs to the sidewalk -- I'm talking about the sidewalk alone, that's all, nothing else. The sidewalk should drain toward the curb, I don't think there's any doubt about that -- it shouldn't drain the other way.

Q Do you think if the sidewalk was laying in the proper position, it would totally cure the problem?

A No, sir, I didn't mean that if that's the way I said it. I guess what I should say, obviously there was water coming down the abutment walls from the railroad above and if the sidewalk did drain towards the curb, it would get rid of it; however, no matter if there was no water there and positively, absolutely no water coming down from the railroad track above and with the sidewalk sloping toward the abutment, you're going to get surface water on the sidewalk coming off of Fifth Street and cause a puddle. That should be corrected irregardless of where the water comes from.

Q My main concern is there is water gathering there and part of that could be caused due to the railroad crossing there?

A I'm not eliminating that as a possibility.

Q My concern then comes that it's your opinion that the Borough should maintain that, when you also say that

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part of the situation is created due to the existence of the railroad crossing there?

A I think the Borough should maintain the sidewalks, yes. That doesn't mean they should maintain anything above the sidewalk.

Q We do maintain the sidewalk. We do have the sidewalk swept and various things that go on there --

A That's what your testimony was.

Q Our concern is if the crossing is creating a problem through drainage, why shouldn't they have to bear the cost for problems that they are creating rather than the Borough budget?

A I don't know that anybody is causing the problem. All I'm saying is I think the sidewalk should be reconstructed to drain toward the curb, and I don't think anybody can say that anybody caused that problem other than the fact there might have been some settlement underneath.

MR. LEYMARIE: I have no further questions.

THE ADMINISTRATIVE LAW JUDGE: Any questions of this witness?

BY MR. WECHSLER:

Q Mr. Huff, with respect to Second Street, the spalling you noticed at the top of the wall, that has not damaged the integrity of the wall in any way, has it?

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A No, not the wall as far as its ability to withstand any earthquake.

Q So you're suggesting that either the wall be fixed up at the location where the posts are or replace the whole top of the wall?

A That's my main concern, the fact that the railings --

Q So you either repair the concrete where the fence posts attach or move the fence posts to a new location and reanchor them?

A Correct, that's part of the bridge as much as anything else.

Q But it might be cheaper to move the fence posts just a little bit and reanchor them.

MR. MECHSLER: That's all I have.

THE ADMINISTRATIVE LAW JUDGE: Mr. Huff, who should pay for the work on the Second Street Bridge?

THE WITNESS: I think the Order of September 3, 1963 at C. 17665 puts the sidewalk and railing responsibility maintenance-wise on the bridge itself on to The B & O; the approaches, it puts it on to the Borough.

THE ADMINISTRATIVE LAW JUDGE: You believe that the same maintenance responsibility should be maintained?

THE WITNESS: I have no reason to change it.

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THE ADMINISTRATIVE LAW JUDGE: I think the question counsel for Ellwood City was getting to was, assuming the premise that two parties are responsible for the problem of water accumulating under the bridge, why, in your opinion, should only one party -- Ellwood City-- be required to repair the sidewalk?

THE WITNESS: I think I intentionally did not say who I thought should pay for it. I said they should do the work and I thought they should maintain it, but I did not say who I thought should pay for it.

THE ADMINISTRATIVE LAW JUDGE: And is Staff reserving judgment or not giving an opinion on who should pay for it at this time?

MR. GALLAGHER: Yes.

THE ADMINISTRATIVE LAW JUDGE: Finally, are you familiar with the Sixth Street crossing?

THE WITNESS: I've been over it, yes.

THE ADMINISTRATIVE LAW JUDGE: Is it your view that the work already done and your understanding of the work contemplated would substantially correct the problem there?

THE WITNESS: I have not gone over the crossing since any work was done; however, I can say it was a bad crossing before.

THE ADMINISTRATIVE LAW JUDGE: Very

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well. Any other questions of this witness?

MR. PORACH: Yes.

BY MR. PORACH:

Q Did that include the entire Sixth Street crossing?

A I would say the entire crossing. I really can't say whether the crossing of The P & L E tracks was paved properly, but I do know there's a difference in elevation between The P & L E tracks and The B & O tracks.

Q If there's a difference in elevation between the two railroads, there's going to be a hump in the surface of the tracks themselves and you don't really recall P & L E's tracks' condition?

A No, I can't tell you that.

Q And was your testimony that at Fifth Street you felt that most of the problem with the water was not from the abutments?

A In my opinion, most of the water is not from the abutment.

MR. PORACH: That's all.

THE ADMINISTRATIVE LAW JUDGE: Any further questions? (No response) I should note for the record that there's no one present in the hearing room, no citizens from Ellwood City in the audience. I think we'll do it this way with respect to further hearing:

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I note that Representative Pratt apparently had a conflict with the opening of a hospital and is no longer present. We may or may not need a further hearing anyway, depending on how Judge Nemec views the lack of advertising of this hearing. I would suggest that upon receipt of the transcript and upon receipt of the late-filed exhibits, that each party review same and advise if they feel an additional hearing is necessary or if they wish to introduce any additional testimony, and if none do, I assume Judge Nemec will take that into account as a factor in deciding whether or not an additional hearing is necessary. At this point in the proceeding, I can't say whether or not one is going to be required.

Is there anything further, anything that I've left out that anybody can think of? (No response) I also assume that Judge Nemec will advise the parties once the record is closed and ask the parties if they want to submit briefs, etc. Anything else? If not, thank you very much and thank you for your co-operation.

(Hearing adjourned at 3:15 o'clock p.m.)

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CERTIFICATE

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing on the above cause before the Public Utility Commission of the Commonwealth of Pennsylvania, and that this copy is a correct transcript of the same.

Arlene B. Kiger
Official Reporter

Reported by:
Arlene B. Kiger,
Official Reporter
7823 Mt. Carmel Rd.
Verona, Pa. 15147
(412) 241-1577

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