

Law Department

ORIGINAL

RECEIVED

SEP 7 1982

STATE OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION



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

September 2, 1982

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

Dear Mr. Rich:

Re: Ellwood City, Pennsylvania  
Complaint Docket No. G-823174  
C-80041953

Enclosed for filing with the Commission are the original and three (3) copies of the Answer of The Baltimore and Ohio Railroad Company in the above-captioned matter. Please return a file-stamped copy in the self-addressed envelope I have provided.

I hereby certify that a copy of the Answer was sent this day to Ralph D. Pratt, Esq.

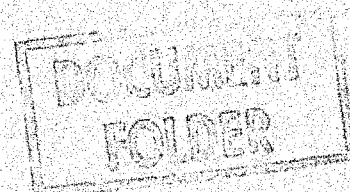
Respectfully,

A handwritten signature in cursive script that reads "Rachel E. Geiersbach".

Rachel E. Geiersbach  
Attorney for The Baltimore  
and Ohio Railroad Company

REG:cc  
Encls.

cc: Mr. Ralph D. Pratt, w/encl.  
3304 Plank Road  
New Castle, Pennsylvania 16105



The Chessie System Railroads, a unit of CSX Corporation, are the Chesapeake and Ohio Railway, Baltimore and Ohio Railroad, Western Maryland Railway and affiliated lines.

ORIGINAL

RECEIVED

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SEP 7 1982

SECRETARY'S OFFICE  
Public Utility Commission

RALPH D. PRATT,  
State Representative

-vs-

THE BALTIMORE AND OHIO  
RAILROAD COMPANY

COMPLAINT DOCKET  
NO. C-823174

C-80041953

ANSWER OF  
THE BALTIMORE AND  
OHIO RAILROAD COMPANY

DOCKETED  
SEP 8 1982

Comes now The Baltimore and Ohio Railroad Company (herein-  
after B&O), by and through its counsel, and respectfully files this  
Answer to the Complaint in the above-entitled matter and respectfully  
represents:

1. The complete name and address of the Respondent are:

The Baltimore and Ohio Railroad Company  
100 North Charles Street  
Baltimore, Maryland 21201

2. The name and address of the attorneys for the B&O are:

Steven B. Garfunkel  
and  
Rachel E. Geiersbach  
Law Department  
Terminal Tower  
P.O. Box 6419  
Cleveland, Ohio 44101

DOCUMENT  
HOLDER

3. The averments in paragraphs 1, 2 and 3, inclusive, of  
the Complaint are admitted.

4. Respondent admits the averments of paragraph 4(a) of  
the Complaint to the extent that Administrative Law Judge Michael A.  
Nemec issued a decision in the matter of Complaint Docket No. 80041953  
on January 22, 1981; that the Commission entered an Opinion and Order

in that matter on May 14, 1981; that on June 1, 1981 The Baltimore and Ohio Railroad Company filed a Petition for Modification of the Commission's Opinion and Order, and that on January 19, 1982 the Commission denied the Petition for Rehearing and affirmed its Order and Opinion of May 14, 1981. Respondent specifically denies the remaining allegations of paragraph 4(a) in that paragraphs 6(a) and 9 of Administrative Law Judge Nemeč's decision provide that the materials to be provided and work to be done with respect to the Fifth Street underpass in the Borough of Ellwood City were to be at the expense of The Baltimore and Ohio Railroad Company and The Pittsburgh and Lake Erie Railroad Company and not solely The Baltimore and Ohio Railroad Company as the Complaint states.

5. Respondent specifically denies the averments of paragraph 4(b) of the Complaint and states that The Baltimore and Ohio Railroad Company has complied with paragraphs 6(a) and 9 of the Commission's Opinion and Order entered May 14, 1981 by removing the old paint, repainting the structural steel and resealing the longitudinal deck joint at the subject underpass.

6. Respondent denies the averments of paragraph 5 of the Complaint for want of knowledge.

7. Respondent further states that the relief being requested by Complainant should be sought, if at all, under Complaint Docket No. C-80041953 already pending before the Commission.

WHEREFORE, Respondent requests that the Commission enter an Order dismissing the Complaint against it and such other relief as the Commission may deem appropriate.

*Rachel E. Geiersbach*  
RACHEL E. GEIERSBACH  
STEVEN B. GARFUNKEL  
Attorneys for  
The Baltimore and Ohio  
Railroad Company  
Terminal Tower  
P.O. Box 6419  
Cleveland, Ohio 44101  
(216) 623-2463

STATE OF OHIO )  
                  ) SS:  
CUYAHOGA COUNTY)

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

*Rachel E. Geiersbach*  
RACHEL E. GEIERSBACH

SWORN TO AND SUBSCRIBED before me this 2nd day of September, 1982.

\_\_\_\_\_  
Notary Public



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

September 29, 1982

IN REPLY PLEASE  
REFER TO OUR FILE

C-80041953

Ralph D. Pratt, Esquire  
3304 Plank Road  
New Castle, PA 16105

C-823174 - Ralph D. Pratt, State Representative versus  
Baltimore & Ohio Railroad Company

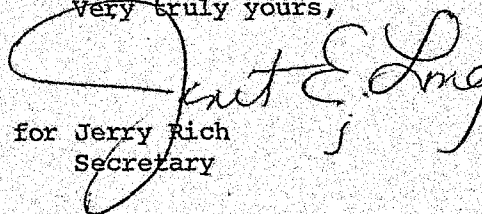
C-80041953 - Ralph D. Pratt, State Representative versus  
Baltimore & Ohio Railroad Company, et al.

Dear Mr. Pratt:

This will advise you that your complaint filed on August 16, 1982 and docketed at C-823174 is being considered as a petition for enforcement of the previous Commission order at C-80041953.

Will you please change your records accordingly.

Very truly yours,

  
for Jerry Rich  
Secretary

cc: Rachel E. Geiersbach, Esquire  
Chessie System  
Terminal Tower  
P.O. Box 6419  
Cleveland, Ohio 44101

JEL:jrg

DOCUMENT  
FOLDER

DOCKETED  
OCT 1 - 1982



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

September 29, 1982

IN REPLY PLEASE  
REFER TO OUR FILE

C-80041953

TO ALL PARTIES OF RECORD

State Representative Ralph D. Pratt

v.

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

To Whom It May Concern:

We are enclosing herewith a copy of a complaint filed by State  
Representative Ralph D. Pratt which is being considered as a petition  
for enforcement of the previous Commission order in the above entitled  
proceeding.

Such answer as you desire to make to the petition should be  
filed with the Commission and served on all parties of record.

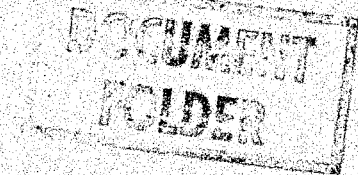
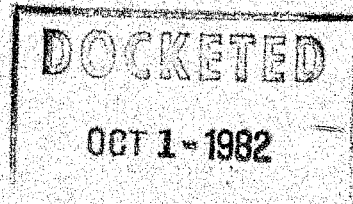
Very truly yours,

for Jerry Rich  
Secretary

Enclosure

cc: List Attached

JEL:jrg



W. U. Jacoby, Esquire  
Columbia Gas of PA, Inc.  
99 N. Front St.  
Columbus, Ohio 43215

Law Bureau  
Bureau of Rail Transportation  
Elaine Deichmiller

Stephen L. Feld, Esquire  
Pennsylvania Power Co.  
1 E. Washington St.  
New Castle, PA 16103

Kenneth W. Walker  
Pennsylvania Department of  
Transportation  
1120 Transportation & Safety Bldg.  
Harrisburg, PA 17120

Edward Leymarie, Jr., Sol.  
Borough of Ellwood City  
525 Lawrence Ave.  
Ellwood City, PA 16117

Frank A. Vitril, Chairman  
Lawrence County Commissioners  
Courthouse  
Court St.  
New Castle, PA 16101

G. C. Smith  
Western PA Water Co.  
P.O. Box 10499  
250 Mt. Lebanon Blvd.  
Pittsburgh, PA 15234

W. Preston Granbery, Esquire  
Bell Telephone Co.  
One Parkway  
Philadelphia, PA 19102

Richard A. Harper, Esquire  
County of Lawrence  
506A First Federal Plaza  
New Castle, PA 16101

Gordon E. Neuenschwander, V.P.  
Pittsburgh & Lake Erie R.R. Co.  
324 P & LE Terminal Bldg.  
Pittsburgh, PA 15219

Ralph D. Pratt, Esquire  
3304 Plank Road  
New Castle, PA 16105

Rachel E. Geiersbach, Attorney  
Baltimore & Ohio Railroad Co.  
P.O. Box 6419  
Cleveland, Ohio 44101

\* Steven B. Garfunkel  
Assistant General Solicitor

ORIGINAL

 Chessie System  
Railroads

OCT 12 8 53 AM '82

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

Law Department  
Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101  
216 623 2463

October 5, 1982

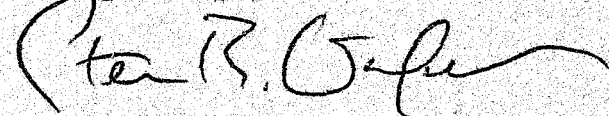
Mr. Jerry Rich, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, Pennsylvania 17120

Re: Ellwood City, Pennsylvania  
Docket No. C-80041953

Dear Mr. Rich:

Enclosed for filing with the Commission are the original and three copies of the Answer of The Baltimore and Ohio Railroad Company in the above-captioned matter. Please return a file-stamped copy in the self-addressed envelope provided.

Very truly yours,



Steven B. Garfunkel  
Attorney for The Baltimore  
and Ohio Railroad Company

SBG/vm  
encl.

cc: Parties of record

DOCUMENT  
FOLDER



The Chessie System Railroads, a unit of CSX Corporation, are the Chesapeake and Ohio Railway, Baltimore and Ohio Railroad, Western Maryland Railway and affiliated lines.



3. The averments in paragraphs 1, 2 and 3, inclusive of the Complaint are admitted.

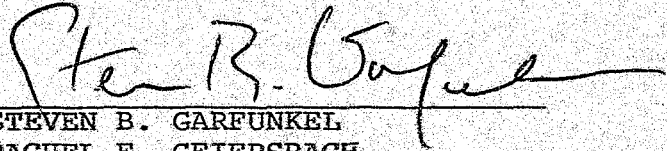
4. Respondent admits the averments of paragraph 4(a) of the Complaint to the extent that Administrative Law Judge Michael A. Nemeč issued a decision in the matter of Complaint Docket No. 8004195 on January 22, 1981; that the Commission entered an Opinion and Order in that matter on May 14, 1981; that on June 1, 1981 B&O filed a Petition for Modification of the Commission's Opinion and Order, and that on January 19, 1982 the Commission denied the Petition for Rehearing and affirmed its Order and Opinion of May 14, 1981. Respondent specifically denies the remaining allegations of paragraph 4(a) in that paragraphs 6(a) and 9 of Administrative Law Judge Nemeč's decision provide that the materials to be provided and work to be done with respect to the Fifth Street underpass in the Borough of Ellwood City were to be at the expense of B&O and The Pittsburgh and Lake Erie Railroad Company and not solely B&O as the Complaint states.

5. Respondent specifically denies the averments of paragraph 4(b) of the Complaint and states that B&O has fully complied with paragraphs 6(a) and 9 of the Commission's Opinion and Order entered May 14, 1981 by removing the old paint, repainting the structural steel and resealing the longitudinal deck joint at the subject underpass.

6. Respondent denies the averments of paragraph 5 of the Complaint.

WHEREFORE, Respondent requests that the Commission enter an Order dismissing the Complaint against it and such other relief as

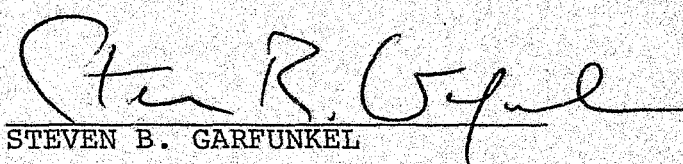
the Commission may deem appropriate.



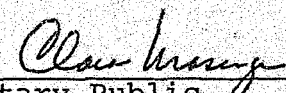
STEVEN B. GARFUNKEL  
RACHEL E. GEIERSBACH  
Attorneys for  
The Baltimore and Ohio Railroad  
Company  
Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101  
(216) 623-2463

STATE OF OHIO     )  
                          )     ss:  
CUYAHOGA COUNTY )

STEVEN B. GARFUNKEL, being first duly sworn according to law, deposes and says that he is Attorney for The Baltimore and Ohio Railroad Company; that he is authorized to and does make this Affidavit for it; and that the facts set forth above are true and correct to the best of his knowledge, information and belief and he expects the said The Baltimore and Ohio Railroad Company to be able to prove the same at the hearing hereof.

  
STEVEN B. GARFUNKEL

SWORN TO AND SUBSCRIBED before me this 5TH day of October, 1982.

  
Notary Public  
CLARA MASUGA, Notary Public  
State of Ohio - Cuyahoga County  
My Commission Expires April 21, 1984



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

October 8, 1982

IN REPLY PLEASE  
REFER TO OUR FILE

C-80041953

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

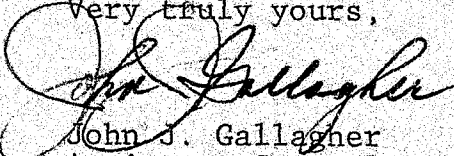
RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION  
OCT 8 3 33 PM '82

Ralph D. Pratt, State Representative v.  
The Baltimore and Ohio Railroad Company,  
Department of Transportation of the  
Commonwealth of Pennsylvania, Borough  
of Ellwood City, Lawrence County,  
Pennsylvania Power Company, Western  
Pennsylvania Water Company, Columbia  
Gas of Pennsylvania, Inc., and The Bell  
Telephone Company of Pennsylvania

Dear Secretary Rich:

Enclosed are the original and two (2) copies of  
the Reply to Petition for Enforcement to be filed in the  
above matter.

Very truly yours,

  
John J. Gallagher  
Assistant Counsel

JJG:ss

cc: All Parties  
Administrative Law Judge Michael A. Nemeo  
Donald R. Fleisher, P.E., Bureau of Rail Transportation

DOCUMENT  
FOLDER

# ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION Oct 8 3 33 PM '82

RECEIVED  
SECRETARY'S OFFICE  
PUBLIC UTILITY  
COMMISSION

Ralph D. Pratt, State Representative :

v. :

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

Complaint Docket  
No. 80041953

**DOCKETED**  
OCT 12 1982

REPLY TO PETITION FOR  
ENFORCEMENT

COMES NOW, the Staff of the Pennsylvania Public Utility Commission, by its attorney, John J. Gallagher, Esquire, and sets forth the following reply to the Petition for Enforcement filed by Representative Ralph D. Pratt:

1. The Commission's order dated April 3, 1981 at paragraph #9 states:

"That pursuant to paragraph 6a above The Baltimore and Ohio Railroad Company and The Pittsburgh and Lake Erie Railroad Company shall, at their sole expense, clean and paint the Fifth Street underpass in the Borough of Ellwood City within 120 days after this opinion and order becomes final."

DOCUMENT  
FOLDER

2. On June 1, 1981, The Baltimore and Ohio Railroad, through its counsel, petitioned the Commission to delete paragraph #9 of its order since there was no evidence presented which indicated an existing or imminent safety hazard to the traveling public. While the original complaint alleged that the lack of paint on the steel structure was causing possible corrosion thereby causing a hazard, the evidence presented by the B&O indicated that the subject bridge was structurally sound and that lack of paint did not affect the load-carrying capacity of the structure.

3. By order dated January 8, 1982, the Commission denied the B&O's petition for modification. While stating ✓ that it did not have the authority to order a structure to be painted based upon aesthetic considerations, the Commission, referring to the rusted steel structure of the bridge, noted that indefinite postponement of painting would result in future structural failure.

Pursuant to this order, the B&O Railroad removed the old paint, repainted the structural steel and resealed the longitudinal deck joint at the underpass.

4. In correspondence to the Commission dated June 21, 1982, the Borough, through its Manager Mr. Gregory Ferrese, indicated that the work performed by the B&O was incomplete. It is the Boroughs position that the concrete portions of the underpass should also be cleaned and painted. Responding for the Commission, Mr. R. A. Peteritas,

Director of the Bureau of Rail Transportation, informed Mr. Ferrese that the standard practice employed for the painting of a structure is that the structural steel is painted, not concrete surfaces.

5. It is Staff's position that the petition for enforcement should be denied. As Mr. Peteritas has indicated, the standard practice involving Commission orders concerning the cleaning and painting of a structure has been for the work to be limited to exposed structural steel and not concrete surfaces.

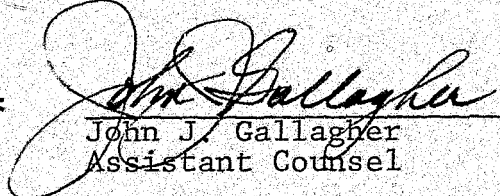
The painting of structural steel is done routinely to retard and inhibit corrosion and rust which reduce load-carrying capacity. Concrete on the other hand is rarely ever painted since painting has little if no effect on its useful life. As the Commission indicated in its previous order, it lacks the authority to order a structure to be painted for aesthetic reasons. Staff would agree by adding that the basis of the Commission's jurisdiction at rail-highway crossings has been the promotion of safety for the traveling public and not whether a particular crossing structure adds or detracts to the aesthetic composition of the local environment. The primary question to be asked concerning the exact nature of work to be performed on a structure is whether that work will contribute to the structures capacity to safety provide egress to the traveling public. Painting of the concrete at the Fifth street underpass will not contribute to that structures load-

carrying capacity and therefore the petition for enforcement  
filed by Representative Pratt should be denied.

Respectfully submitted,

Staff of Pennsylvania  
Public Utility Commission

BY:

  
John J. Gallagher  
Assistant Counsel

DATE: October 8, 1982

CERTIFICATE OF SERVICE

I hereby certify that I am this 8th day of October, 1982, serving by first class mail the foregoing document upon the persons listed below:

Ralph D. Pratt, Esquire  
3304 Plank Road  
New Castle, PA 16105

Richard A. Harper, Solicitor  
Lawrence County  
506-A First Federal Plaza  
New Castle, PA 16101

Stephen L. Feld, Attorney  
Pennsylvania Power Company  
One East Washington Street  
New Castle, PA 16103

W. U. Jacoby, Attorney  
Columbia Gas of Pa., Inc.  
99 North Front Street  
Columbus, Ohio 43215

W. Preston Granbery, Attorney  
The Bell Telephone Co. of Pa.  
One Parkway, 16th Floor  
Philadelphia, PA 19102

William D. Frizlen, Attorney  
Western Pa. Water Company  
250 Mt. Lebanon Boulevard  
Pittsburgh, PA 15234

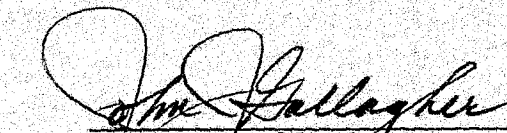
Nick Frisk, Jr., Solicitor  
Borough of Ellwood City  
113 Fifth Street  
Ellwood City, PA 16117

Nicholas S. Yovanovic, Attorney  
The Baltimore & Ohio Railroad Co.  
P.O. Box 6419  
Cleveland, Ohio 44101

Herbert G. Zahn, Asst. Atty. General  
Pa. Dept. of Transportation  
521 Transportation & Safety Bldg.  
Harrisburg, PA 17120

Gordon E. Neuenschwander, Vice Pres.  
Pittsburgh & Lake Erie Railroad Co.  
324 P&LE Terminal Building  
Pittsburgh, PA 15219

Administrative Law Judge Michael  
Nemec  
Pennsylvania Public Utility Commission  
Third Floor, Buhl Building  
204 Fifth Avenue  
Pittsburgh, PA 15222

  
\_\_\_\_\_  
John J. Gallagher  
Assistant Counsel

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17120  
OCTOBER 27, 1982

MONITOR: CHAIRMAN SHANAMAN

In re: C-80041953

(See attached list)

State Representative Ralph D. Pratt  
vs.

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

NOTICE

The complainant in the above-captioned proceeding has filed a petition for enforcement of the Commission's Order entered May 13, 1981, as regards the Fifth Street underpass.

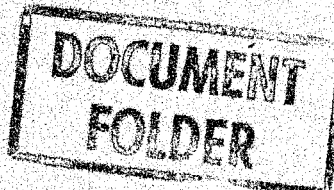
Please be advised that a hearing on this petition will be held Wednesday, December 15, 1982, commencing at 10:00 a.m., in the Second Floor Auditorium, Municipal Building, 525 Lawrence Avenue, Ellwood City.

If any party intends to offer prepared written testimony, such testimony must be served upon each participant of record no less than seven (7) days prior to this hearing.

You are advised that if you fail to appear at the hearing, the hearing will proceed without you. In that event, it is possible that you or your client will have issues determined against you and that you might be assigned positive duties or be required to pay money and will have waived any objection thereto.

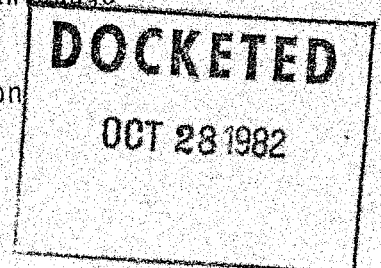
Administrative Law Judge Michael A. Nemecek will be the presiding officer in this case. Judge Nemecek's telephone number is (412) 565-3550. His address is the Third Floor, Buhl Building, 204 Fifth Avenue, Pittsburgh, Pennsylvania 15222.

If you intend to file exhibits, please be advised that three copies of all hearing exhibits to be presented into evidence must be submitted to the Reporter and an additional copy should be furnished to the presiding officer and each party of record.



William Shane, Chief  
Administrative Law Judge

cc: Judge Nemecek      Law Bureau      Bureau of Rail Transportation  
Mr. Bramson      Ms. Dickson      Ms. Crouse      File Room



C-80041953 - Parties of Record:

Ralph D. Pratt, Esquire  
3304 Plank Road  
New Castle, Pennsylvania 16105

John J. Gallagher, Assistant Counsel  
Pa. P.U.C., Law Bureau  
P. O. Box 3265  
Harrisburg, Pennsylvania 17120

Steven B. Garfunkel, Esquire  
Rachael E. Geiersbach, Esquire  
The Baltimore & Ohio Railroad Company  
Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101

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

Richard A. Porach, Esquire  
Pittsburgh & Lake Erie Railroad Company  
324 P&LE Terminal Building  
Pittsburgh, Pennsylvania 15219

Stephen L. Feld, Esquire  
Pennsylvania Power Company  
One East Washington Street  
New Castle, Pennsylvania 16103

J. J. Doherty, Jr., Asst. Vice-President  
The Bell Telephone Company of Pennsylvania  
One Parkway, 16th Floor  
Philadelphia, Pennsylvania 19102

W. U. Jacoby, Esquire  
Columbia Gas of Pennsylvania, Inc.  
99 North Front Street  
Columbus, Ohio 43215

John Hodge, Solicitor  
County of Lawrence  
Lawrence County Government Center  
New Castle, Pennsylvania 16101

Ward T. Williams, Chief Counsel  
Pennsylvania Department of Transportation  
521 Transportation & Safety Building  
Harrisburg, Pennsylvania 17120

William D. Frizlen, Esquire  
Western Pennsylvania Water Company  
250 Mt. Lebanon Boulevard  
Pittsburgh, Pennsylvania 15234

DOCKET NO. C-80041953

CASE NAME State Rep. Ralph D. Pratt vs.

The Baltimore and Ohio Railroad Co.,

etc.

HEARING LOCATION Ellwood City, PA.

HEARING DATE December 15, 1982

ALJ Nemeec

CHECK THOSE BLOCKS WHICH APPLY:

Hearing concluded

Record Closed

Briefs to be filed

Further hearing

Estimated add'l days

BENCH DECISION

REMARKS: motions to be filed by parties

RECEIVED  
DEC 17 1982  
Office of the P. U. C.  
Public Utility Commission

DEC 12 1982

DOCUMENTS  
FOLDER

Names and addresses of parties or counsel of record  
Please Print Clearly  
Incomplete Information May Result in Delay of Process

NAME	ADDRESS	APPEARING FOR
<del>John</del> Dittman	521 T+S Bldg City: Hburg, State: PA, Zip: 17120	PenDOT
Steven Garfunkel	P.O. Box 6419 City: Cleveland, State: Ohio, Zip: 44122	TS & D
John T Gallagher	631 N. office Bldg City: Harrisburg, State: PA, Zip: 17120	PUC TRIAL STAFF
	City: _____, State: _____, Zip: _____	

Check this box if additional parties or counsel of record appear on back.

Monahan & Marshall  
By Janice  
Reporter

**ORIGINAL**

Law Department



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

2441

February 25, 1983

**RECEIVED**

FEB 28 1983

SECRETARY'S OFFICE  
Public Utility Commission

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

Dear Mr. Rich:

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

Enclosed for filing with the Commission in the above-captioned matter are three copies of the revised plans of The Baltimore and Ohio Railroad Company for the repairs to be made to the north abutment and walkways of the Second Street overpass in Ellwood City, Pennsylvania.

I hereby certify that I have served a copy of the plans upon each party of record.

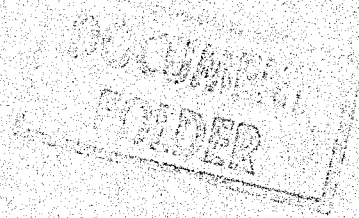
Respectfully,

*Rachel E. Geiersbach*  
Rachel E. Geiersbach

REG:cc  
Encls.

cc: Richard A. Porach, Esq., w/encl.  
324 P & LE Terminal Bldg.  
Pittsburgh, Pennsylvania 15219

Edward Leymarie, Jr., Esq., w/encl.  
432 Fountain Avenue  
Ellwood City, Pennsylvania 16117



The Chessie System Railroads, a unit of CSX Corporation, are the Chesapeake and Ohio Railway, Baltimore and Ohio Railroad, Western Maryland Railway and affiliated lines.

cc: (Cont'd.)

Stephen L. Feld, Esq., w/encl.  
1 E. Washington Street  
New Castle, Pennsylvania 16103

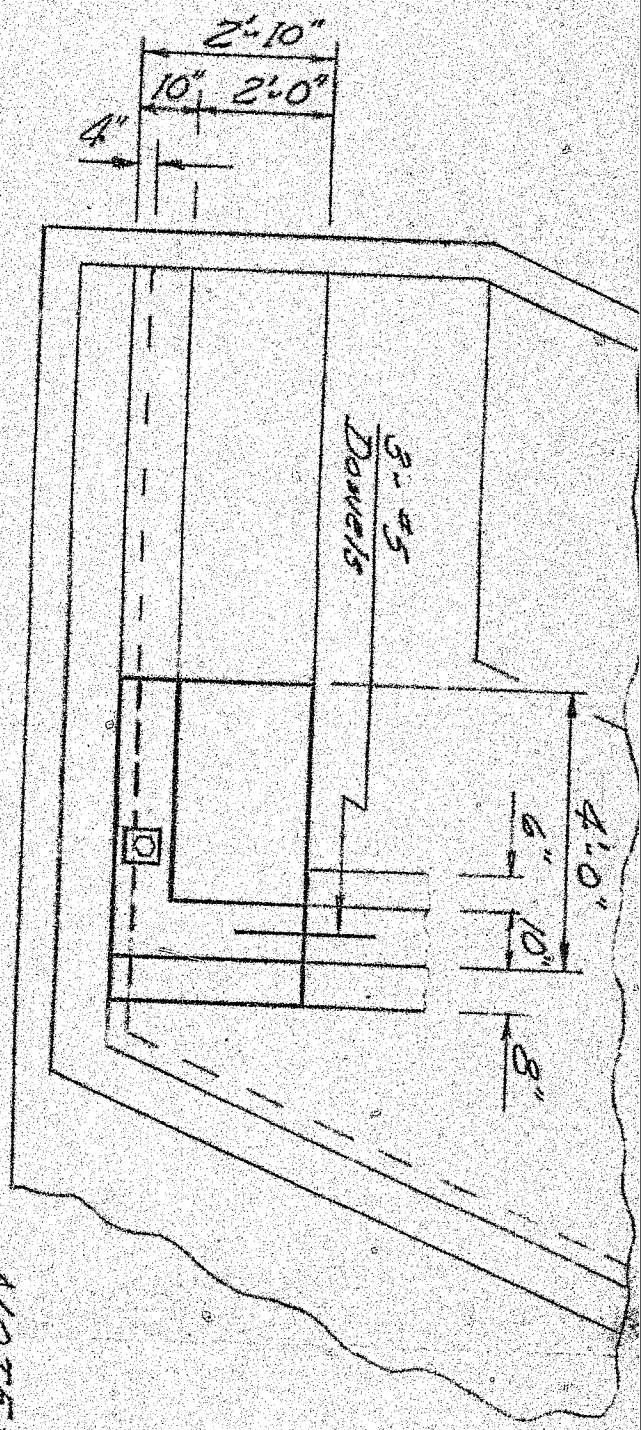
Richard A. Harper, Esq., w/encl.  
Courthouse  
New Castle, Pennsylvania 16101

John L. Gallagher, Esq., w/encl.  
Public Utility Commission  
Commonwealth of Pennsylvania  
631 N. Office Building  
Harrisburg, Pennsylvania 17120

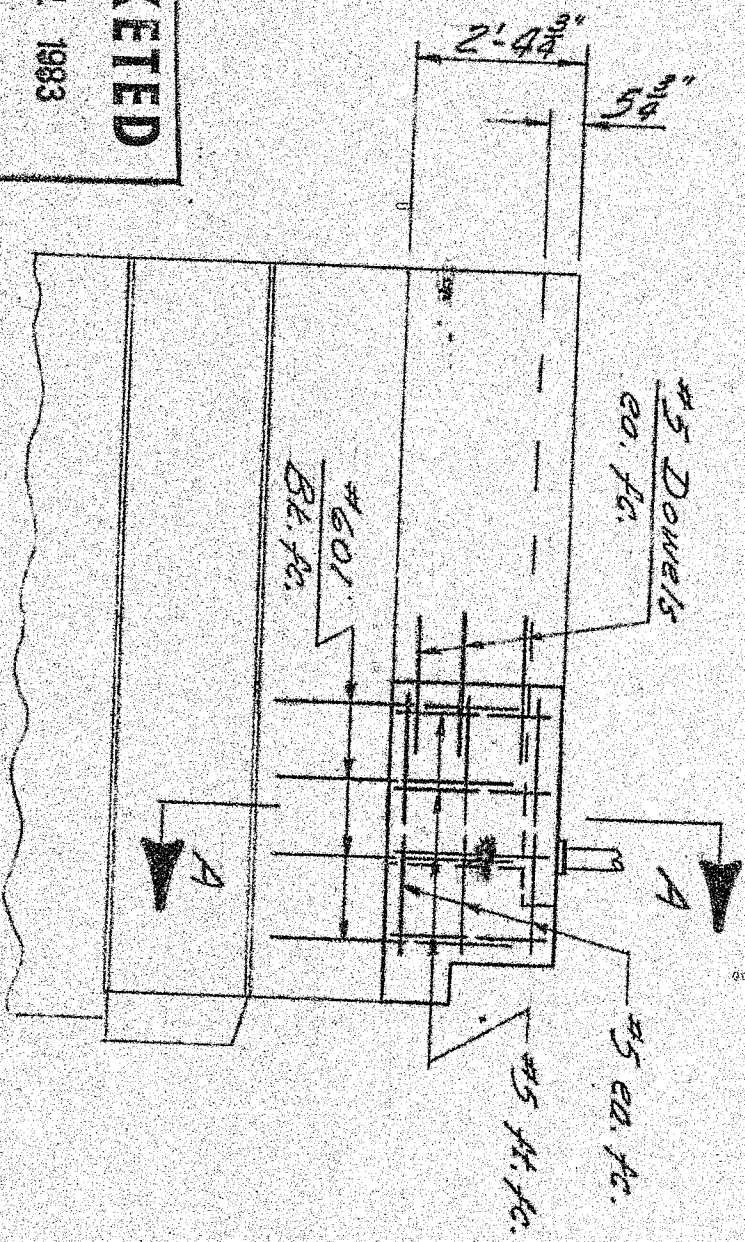
Ralph D. Pratt, w/encl.  
State Representative  
328 Main Capitol Building  
Harrisburg, Pennsylvania 17120

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

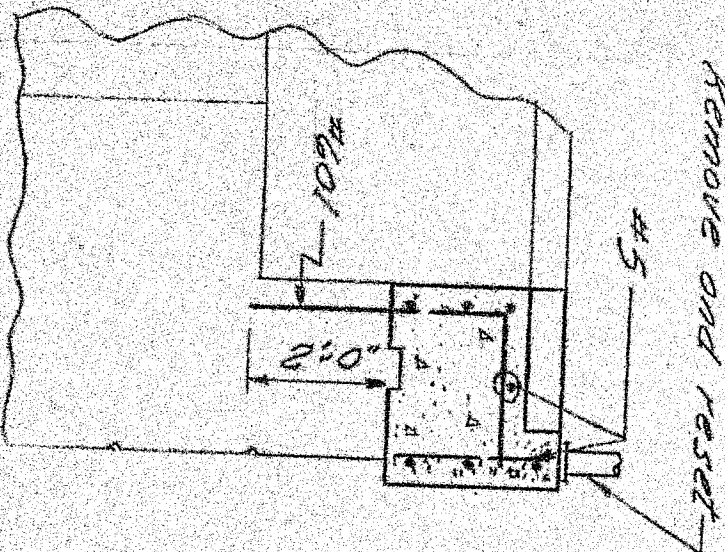
BOOKETED  
MAY 1 1983



PLAN



ELEVATION



SECTION A-A

NOTE:  
New work shown  
in heavy lines.

Remove and reset

GENERAL NOTES:

Specifications: AREA SPEC. DATED 1981, CHAPTER 8 - CONCRETE STRUCTURES AND FOUNDATIONS.

Concrete: Shall have a min. 28 day compressive strength of 3500 PSI using ASTM C-150, Type 1 cement with air approved air entraining admixture. The mix shall contain a min. of 6 bags cement per cu. yd. and a max. water content of 5 1/2 gals. per bag cement. Contact surfaces between old & new masonry shall be thoroughly cleaned & wet before placing new masonry.

Reinforcing: Shall be deformed bars billet steel ASTM A-615 grade 40 or 60. #601 bar and dowels to be set in 2" hole using quick setting non-shrink grout similar to 5 STAR Instant Grout as made by U.S. GROUT.

**DOCUMENT FOLDER**

JL. FOR. 500870

REVISIONS

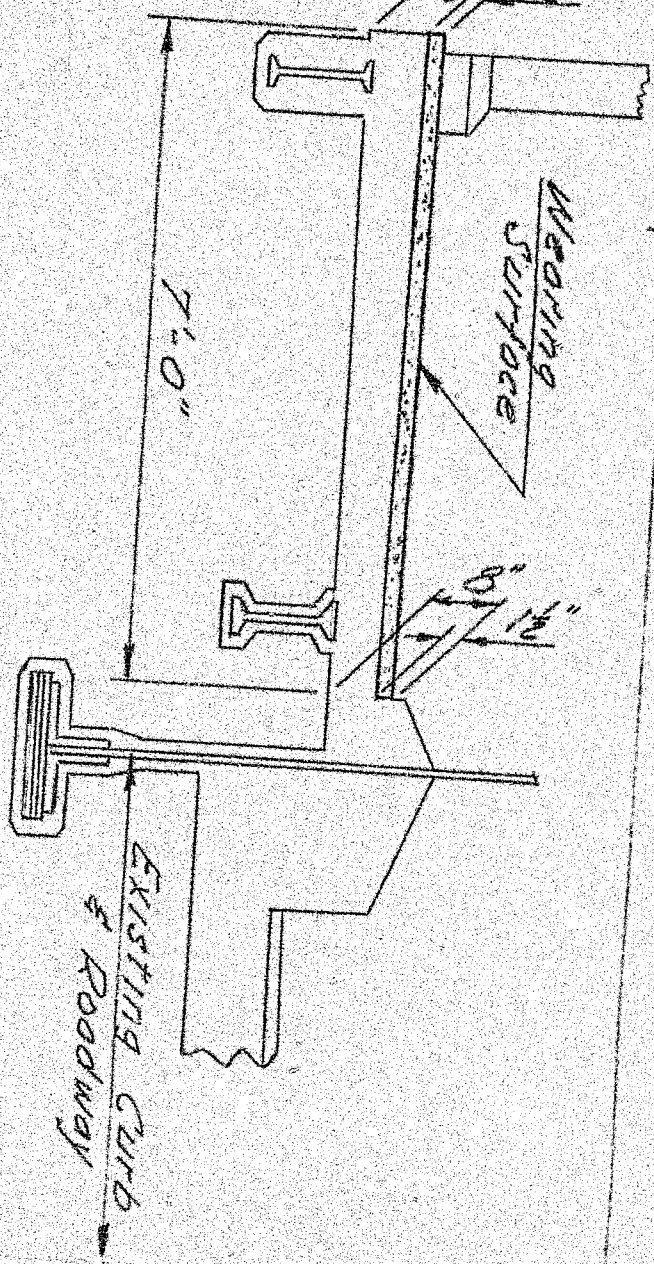
Chessie System  
ENGINEERING DEPARTMENT

Bridge No. 3634  
North Apartment  
ELLMOOD CITY  
Lawrence Co.  
Pa.

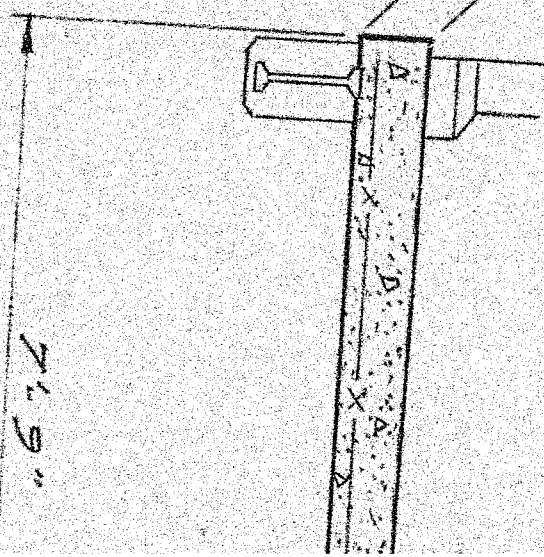
Dr. Div. P&W Sub.

SCALE: 3/4" = 1'-0"	VAL. SEC. 1-951	DRAWING NO. 4721
DATE: 3-26-83	DRAWN: WBS	CHECKED: 25
FILE: H11A-66		SHEET 1 OF 2

SECTION A-A



PLAN



SECTION

7'-9"

West to  
New Castle

Main

(Wearing Surface)

#5 Dowels  
@ 14.5" o.c.

Existing Curb  
& Roadway

B-B

(Wearing Surface)

Remove  
& Replace

71.6"

Remove  
& Replace

111.0"

REVISIONS

Jr. Eng. # 30270

Chessie System  
ENGINEERING DEPARTMENT

BRIDGE NO. 363A  
WALKWAY REPAIRS  
FELLWOOD CITY  
LAWRENCE CO. PA.  
PA. DIV. P&W 545

SCALE: 1/4" = 1'-0"	VAL. SEC.	DRAWING NO.
DATE: 12-7-88	U. 25.1	4721
DRAWN: W.B.B.	25	
CHECKED:		

FILE: 115A-56



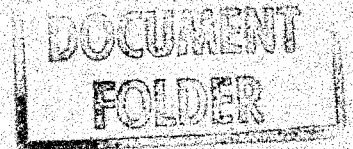
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P. O. BOX 3265, HARRISBURG, Pa. 17120

March 17, 1983

IN REPLY PLEASE  
REFER TO OUR FILE  
C-80041953 ✓  
C-823174

TO WHOM IT MAY CONCERN

Ralph D. Pratt, State Representative  
v.  
The Baltimore and Ohio Railroad Co.,  
et al



TO WHOM IT MAY CONCERN:

Enclosed is a copy of a proposed Initial Decision prepared by Administrative Law Judge Michael A. Nemec.

An original and nine (9) copies of exceptions to the decision, if any, must be filed in the Secretary's Office and a copy to each party of record within 15 days of the date of this letter.

Replies to the exceptions, if any, must be filed within 20 days of the date of this letter.

Exceptions and reply exceptions shall obey 1 Pa. Code 35.212, particularly the 50 page limit.

Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Do NOT label exceptions as a "Brief" or "Brief on Exceptions".

All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and late filed replies will not be attached.

Very truly yours,

*William R. Shane*  
William R. Shane, Chief  
Administrative Law Judge

Enclosures  
Certified Mail  
Receipt Requested

cc: ALJ Nemec/ Bigelow/ Bramson/ OSA/ Commissioners/ Law Bureau/  
Bureau of S & C/ Correspondence

Refer to attached similar letter list.

C-80041953

C-823174

Similar letter list:

Richard A. Porach, Esquire  
✓ 324 P & LE Terminal Building  
Pittsburgh, PA 15219

Edward Leymarie, Jr., Esquire  
✓ 432 Fountain Avenue  
Ellwood City, PA 16117  
BOROUGH OF ELLWOOD CITY

✓ Stephen L. Feld, Esquire  
1 East Washington Street  
New Castle, PA 16103  
PENNSYLVANIA POWER COMPANY

✓ Richard A. Harper, Esquire  
Courthouse  
New Castle, PA 16101  
COUNTY OF LAWRENCE

✓ Ralph D. Pratt, State  
Representative  
328 Main Capitol Building  
Harrisburg, PA 17120

✓ Stephen Dittman, Esquire  
Assistant Counsel  
Department of Transportation  
521 Transportation & Safety  
Building  
Harrisburg, PA 17120  
PENNDOT

✓ Rachel E. Geiersbach  
Chessie System Railroads  
Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101  
CHESSIE SYSTEM RAILROADS

✓ John J. Gallagher, Esquire  
PA PUC LAW BUREAU

✓ Ward T. Williams, Chief Counsel  
PA Dept. of Transportation  
Room 521, Transportation & Safety  
Building  
Harrisburg, PA 17120  
PENNDOT



. . . . "The Baltimore & Ohio Railroad Company at their sole cost and expense provide all material and do all work necessary to maintain the substructure and superstructure at the railroad bridge over and above Fifth Street in the Borough of Ellwood City," and;

. . . . "Pursuant to Paragraph 6(a) above, the Baltimore & Ohio Railroad Company shall, at their sole expense, clean and paint the Fifth Street underpass in the Borough of Ellwood City within 120 days after this order becomes final."

Subsequently, on May 14, 1981, an Opinion and Order was entered by the Pennsylvania Public Utility Commission concurring in Paragraphs 6(a) and 9 of Administrative Law Judge Nemeč's decision and ordering same.

The Baltimore & Ohio Railroad Company filed on June 1, 1981, a petition for modification of the Commission's Opinion and Order entered May 14, 1981, and for a rehearing in its issue.

By Opinion and Order entered on January 19, 1982, the Commission denied the petition and request for a rehearing and affirmed its Order and Opinion of May 14, 1981.

- (b) Respondent, The Baltimore & Ohio Railroad Company, is presently, has been or will be violating Paragraphs 6(a) and 9 of the Commission's Opinion and Order entered May 14, 1981, whereby Respondent was ordered, inter alia to . . . .  
"do all work necessary to maintain the substructure and superstructure of the railroad bridge over and above Fifth Street"  
. . . . [Paragraph 6(a)], and;

"Pursuant to Paragraph 6(a), the Baltimore & Ohio Railroad Company shall, . . . clean and paint the Fifth Street underpass" . . . . [Paragraph 9]

In fact, Respondent is merely cleaning and painting only certain parts of the underpass

and not all parts of the substructure and superstructure, which is a blatant violation of the Commission's Opinion and Order entered May 14, 1981.

At the suggestion of Chief ALJ Shane the complaint was considered by the Secretary to be a petition for enforcement of the order at C-80041953.

The Baltimore and Ohio Railroad Company filed an Answer in which it pointed out correctly that paragraphs 6(a) and 9 also included the Pittsburgh and Lake Erie Railroad Company. Further, it alleged compliance in that removal of old paint, repainting of the structural steel and resealing of the longitudinal deck joint had all been completed.

An answer was also filed by Commission trial staff. It relied on this Commission's order adopted January 8, 1982, and entered January 19, 1982, and a letter from the Director of the Rail Transportation Bureau to support the proposition that paragraph 9 did not refer to concrete surfaces.

A further hearing on the matter was held in Ellwood City on December 15, 1982. The B & O, trial staff and the Department of Transportation were represented while neither Ellwood City nor Representative Pratt was. Tr. 179-180. Representative Pratt subsequently explained his non-attendance in a letter dated December 16, 1982. It is attached as Appendix A. He also submitted a statement which reiterates his position along with a cover letter dated February 4, 1983. The December 15, 1982, hearing resulted in an additional 13 pages of transcript and one B & O exhibit consisting of 4 photographs.

#### Summary of the Testimony

Mr. William B. Begg, engineer of structures for the Pennsylvania division of the B & O, testified he was responsible for construction and

maintenance of all structures, including bridges. Of the latter he has 1500 bridges within his jurisdiction. He stated his belief that the painting of the structural steel by the B & O complied with this Commission's requirements. However, as of 9:30 a.m. of the date of the hearing he learned the concrete surfaces of the underpass had been painted. No representative of the Borough of Ellwood City had requested permission to paint the underpass. Tr. 180-182.

Mr. Begg sponsored four photographs of the Fifth Street underpass taken after the concrete surfaces had been painted. He explained in some detail the work performed by the B & O. The approximate cost was \$10,000. Tr. 182-184; B & O Exhibit 4(A-D).

On my questioning Mr. Begg specified on the photographs the portions of the structure cleaned and painted by the B & O. Those portions consisted of the structural steel. Tr. 184-185.

On cross-examination by trial staff Mr. Begg stated an opinion that there is no value to painting concrete other than to change the color for cosmetic effect. He felt painting would not extend the useful life of the concrete. Tr. 185-186.

On cross-examination by counsel for the Department of Transportation Mr. Begg stated he did not know whether any permit had been obtained from the Department. He stated that the B & O's work was coordinated with Ellwood City. Tr. 186.

On further questioning by me Mr. Begg stated he was not aware of any adverse effect resulting from the painting of the concrete surfaces. He stated the B & O probably would have given permission for the painting,

if it had been asked, but would have provided that it saw no benefit to it. He stated he believed that testimony was presented at the prior hearing to the effect that the underpass was dark and, as a result, it was difficult to see vehicles or pedestrians at certain times. He would not agree that painting the concrete surfaces white would increase the amount of light available in the underpass. To the contrary he felt the only effective way to improve the lighting situation would be to install lights. He was not unaware of any overpass where the B & O had installed lightning. Tr. 186-188.

#### Discussion

Thus it falls to me to provide an interpretation of my recommended decisions dated January 22, 1981. Obviously paragraph 9 was not sufficiently specific. However, finding of fact 12 should have helped clarify the matter:

12. The dingy condition of the walls and ceiling of the Fifth Street underpass adversely affect the safety and convenience of the travelling public. Recommend Decision of January 22, 1981, slip. op. p. 11. Also see Tr. 36, 40-41.

Thus Representative Pratt's interpretation of the recommended decision coincides with my understanding and intent.

Trial staff places too much reliance on the order adopted January 8, 1982, entered January 19, 1982. Firstly, the petition to modify paragraph 9 was denied. Secondly, while this Commission did state it did not possess the authority to direct painting for solely aesthetic reasons, it added that the direction to paint was based on other considerations.

Those included maintenance of the structural steel and elimination of an eyesore. It is suggested that the adoption by the Commission of my recommended decision in its order of April 3, 1981, entered May 14, 1981, included finding of fact 12.

Further, as is so often noted, a good picture is often worth several pages of prose. B & O Exhibit 4 demonstrates the added visibility provided by the painted sidewalls. The three rows of steel pillars that support the bridge deck tend to impede the visibility of pedestrians and motorists. The painted sidewalls provide a contrasting background and additional light that can only improve visibility. B & O Ex. 4A,B,D.

For now the concrete surfaces of the structure have been painted, although not by the railroads but by Ellwood City volunteers. Thus, the direction of paragraph 9 has been complied with even though not in the manner contemplated. In order to insure clarity and proper maintenance in the future it is proposed that paragraph 6(a) which assigns a portion of the maintenance responsibility for the Fifth Street underpass be modified as set forth below in a proposed order.

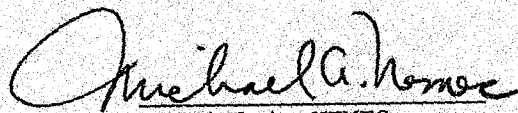
#### Proposed Order

In consideration of the foregoing paragraph 6(a) of the order adopted April 3, 1981, and entered May 14, 1981, at C-80041953 is modified to read as follows:

- 6(a) The Baltimore and Ohio Railroad Company and The Pittsburgh and Lake Erie Railroad Company, at their sole cost and expense, provide all material and do all work necessary to maintain the substructure

and superstructure of the railroad bridge over and above Fifth Street in the Borough of Ellwood City, to include the painting, as needed, of the concrete surfaces of the sidewalls, wingwalls and abutments that face the public thoroughfare.

February 15, 1983



MICHAEL A. NEMEC  
Administrative Law Judge

RALPH D. PRATT, ESQUIRE, MEMBER  
10TH DISTRICT  
328 MAIN CAPITOL BUILDING  
HARRISBURG, PENNSYLVANIA 17120  
PHONE: (717) 787-2647  
  
3304 PLANK ROAD  
NEW CASTLE, PENNSYLVANIA 16105  
(412) 658-8000



COMMITTEES

APPROPRIATIONS  
BUSINESS AND COMMERCE,  
MINORITY CHAIRMAN,  
SUB-COMMITTEE ON BANKING  
AND SAVINGS AND LOAN  
ASSOCIATIONS

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

December 16, 1982

DEC 20 1982

Michael Nemec, Esq.  
Administrative Law Judge  
Public Utility Commission  
11th Floor-State Office Building  
Pittsburgh, Pennsylvania 15222

DOCUMENT  
FOLDER

Re: Public Utility Commission Hearing  
Fifth Street Underpass  
Ellwood City Borough, Lawrence Co.  
December 15, 1982

Dear Attorney Nemec:

Please accept this letter as my sincere apology for my absence for the above-referenced hearing which was scheduled for December 15, 1982, in the Borough of Ellwood City. Please be advised that I have no record of receiving a notice for this hearing. The same holds true for Attorney Leymarie, Ellwood City Borough Solicitor.

The question of the actual painting of the substructure of the Fifth Street Underpass is now moot due to the efforts of volunteers in the borough who have completed the painting. Notwithstanding, the issue of whether or not the Respondent, Baltimore and Ohio Railroad Company, has the duty to comply with the PUC Order regarding the Fifth Street Underpass by painting the entire substructure remains unresolved.

Therefore, I shall provide a written statement to the Administrative Law Judge who, hopefully, will take said statement into consideration during his deliberation regarding the subject matter of the petition. Hopefully, your time and efforts were not in vain due to my absence and that a decision on this matter will be forthcoming shortly.

Once again, I apologize for any inconvenience or hardship which may have been caused by my nonattendance of the public hearing.

Sincerely yours,

RALPH D. PRATT  
Member - 10th District

DOCKETED

MAR 21 1983

RDP:skf

PS Form 3811, Dec. 1980

● **SENDER:** Complete items 1, 2, 3, and 4.  
Add your address in the "RETURN TO" space on reverse.

**(CONSULT POSTMASTER FOR FEES)**

1. The following service is requested (check one).
- Show to whom and date delivered .....
  - Show to whom, date, and address of delivery .....
2.  **RESTRICTED DELIVERY** .....  
*(The restricted delivery fee is charged in addition to the return receipt fee.)*
- TOTAL \$** \_\_\_\_\_

3. **ARTICLE ADDRESSED TO:**  
Richard G. Harper, Esquire  
I.D.

4. **TYPE OF SERVICE:**
- REGISTERED     INSURED
  - CERTIFIED     COD
  - EXPRESS MAIL

**ARTICLE NUMBER**  
44310

**(Always obtain signature of addressee or agent)**

I have received the article described above.

**SIGNATURE**     Addressee     Authorized agent  
*D. Keller*

5. **DATE OF DELIVERY**



6. **ADDRESSEE'S ADDRESS (Only if requested)**

7. **UNABLE TO DELIVER BECAUSE**

7a. **ADDRESSEE'S INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

*See Bureau*    ©-100-11953

PS Form 3811, Dec. 1980

SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

- 1. The following service is requested (check one).
  - Show to whom and date delivered
  - Show to whom, date, and address of delivery
- 2.  RESTRICTED DELIVERY (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO: Stephen Z. Field, Esquire I.D.

4. TYPE OF SERVICE:	ARTICLE NUMBER
<input type="checkbox"/> REGISTERED <input type="checkbox"/> INSURED	44309
<input checked="" type="checkbox"/> CERTIFIED <input type="checkbox"/> COD	
<input type="checkbox"/> EXPRESS MAIL	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE  Addressee  Authorized agent

*Karen Kelly*

5. DATE OF DELIVERY	POSTMARK
3/21/83	

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:	7a. EMPLOYEE'S INITIALS:

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

See Bureau C-80041953

PS Form 3811, Dec. 1980

SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

- 1. The following service is requested (check one).
  - Show to whom and date delivered
  - Show to whom, date, and address of delivery
- 2.  RESTRICTED DELIVERY (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO: Rachel E. Heierbach I.D.

4. TYPE OF SERVICE:	ARTICLE NUMBER
<input type="checkbox"/> REGISTERED <input type="checkbox"/> INSURED	44311
<input checked="" type="checkbox"/> CERTIFIED <input type="checkbox"/> COD	
<input type="checkbox"/> EXPRESS MAIL	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE  Addressee  Authorized agent

*[Signature]*

5. DATE OF DELIVERY	POSTMARK
MAR 21 1983	

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:	7a. EMPLOYEE'S INITIALS:

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

See Bureau C-80041953

PS Form 3811, Dec. 1980

SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

- 1. The following service is requested (check one).
  - Show to whom and date delivered
  - Show to whom, date, and address of delivery
- 2.  RESTRICTED DELIVERY (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO: Richard A. Porach, Esquire I.D.

4. TYPE OF SERVICE:	ARTICLE NUMBER
<input type="checkbox"/> REGISTERED <input type="checkbox"/> INSURED	44307
<input checked="" type="checkbox"/> CERTIFIED <input type="checkbox"/> COD	
<input type="checkbox"/> EXPRESS MAIL	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE  Addressee  Authorized agent

*R. P. Jarvis*

5. DATE OF DELIVERY	POSTMARK
MAR 21 1983	

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:	7a. EMPLOYEE'S INITIALS:

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

See Bureau C-80041953

PS Form 3811, Dec. 1980

SENDER: Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

- 1. The following service is requested (check one).
  - Show to whom and date delivered
  - Show to whom, date, and address of delivery
- 2.  RESTRICTED DELIVERY (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO: Edward Seymour, Jr., Esquire I.D.

4. TYPE OF SERVICE:	ARTICLE NUMBER
<input type="checkbox"/> REGISTERED <input type="checkbox"/> INSURED	44308
<input checked="" type="checkbox"/> CERTIFIED <input type="checkbox"/> COD	
<input type="checkbox"/> EXPRESS MAIL	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE  Addressee  Authorized agent

*[Signature]*

5. DATE OF DELIVERY	POSTMARK
3-21-83	

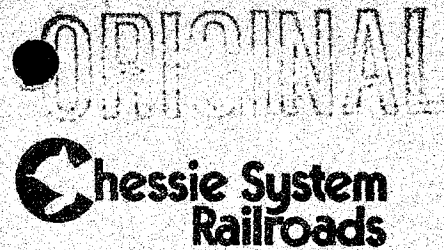
6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:	7a. EMPLOYEE'S INITIALS:

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

See Bureau C-80041953

Steven B. Garfunkel  
Assistant General Solicitor



Law Department  
Terminal Tower  
P. O. Box 6419  
Cleveland, Ohio 44101  
216 623 2463

March 31, 1983  
**RECEIVED**

APR 1 1983

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

SECRETARY'S OFFICE  
Public Utility Commission

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

Dear Mr. Rich:

Enclosed for filing are the original and nine copies of Exceptions of The Baltimore & Ohio Railroad Company in the captioned matter.

I hereby certify that a copy of said exceptions has been sent to all parties of record.

Very truly yours,

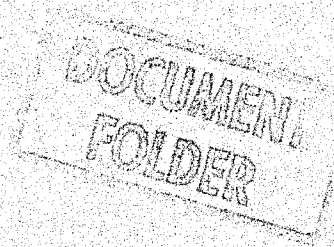
A handwritten signature in dark ink, appearing to read "Steven B. Garfunkel", is written over the typed name.

Steven B. Garfunkel

SBG/vm  
encl.

cc: Administrative Law Judge Michael A. Nemeo

Richard A. Porach, Esq.  
Edward Leymarie, Jr., Esq.  
Stephen L. Feld, Esq.  
Richard A. Harper, Esq.  
John L. Gallagher, Esq.  
Ralph D. Pratt, State Representative  
Stephen Dittmann, Esq.



The Chessie System Railroads, a unit of CSX Corporation, are the Chesapeake and Ohio Railway, Baltimore and Ohio Railroad, Western Maryland Railway and affiliated lines.

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Ralph D. Pratt, State Representative )  
 )  
v. )  
 )  
The Baltimore & 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 )

Complaint Docket  
No. 80041953

RECEIVED

APR 1 1983

SECRETARY'S OFFICE  
Public Utility Commission

EXCEPTIONS OF THE BALTIMORE & OHIO RAILROAD COMPANY

This matter originated as a Complaint filed concerning three rail highway crossings located in the Borough of Ellwood City - the Second Street overpass, the Fifth Street underpass, and the Sixth Street crossing at grade. The Commission entered an Opinion and Order dated May 14, 1981 under paragraph 6(a) of which

"... The Baltimore & Ohio Railroad Company at their sole cost and expense provide all material and to do all work necessary to maintain the substructure and superstructure at the railroad bridge over and above Fifth Street in the Borough of Ellwood City..."

Paragraph 9 of that Order further provided:

"... Pursuant to Paragraph 6(a) above, The Baltimore & Ohio Railroad Company shall, at their sole expense, clean and paint the Fifth Street underpass in the Borough of Ellwood City..."

On June 1, 1981, The Baltimore & Ohio Railroad Company

DOCUMENT  
FOLDER

DOCKETED  
APR 1 1983

("B&O") filed a Petition for Modification of Order or for Re-hearing. The Petition sought the deletion of paragraph 9 on the grounds that there was no evidence in the record indicating that lack of paint made the bridge structurally unsafe or likely to become structurally unsafe.

The Commission, in Order entered July 19, 1982, denied B&O's Petition for Modification. The Commission rejected B&O's contention that the previous order was based solely on aesthetic considerations. In its Opinion, the Commission agreed that there was no evidence that "the present rusted condition of the bridge" posed a hazard or affected its structural integrity. The Commission was of the opinion, however, that failure to paint will result in structural failure in the future.

Pursuant to that order, B&O cleaned and painted the structural steel. On July 27, 1982, State Representative Ralph D. Pratt filed a Petition for Enforcement of Order alleging that B&O had not complied with this Commission's July 19, 1982 Order, since it had not painted the concrete of the underpass.

Hearing was held on the Petition for Enforcement in Ellwood City on December 15, 1982. Neither Representative Pratt nor a Borough representative appeared. William B. Begg, Engineer of Structures for the B&O, testified that pursuant to this Commission's Order, the B&O had cleaned and painted all structural steel in addition to resealing the longitudinal deck joint (Tr. 182-185). It was Mr. Begg's opinion that B&O had complied with the Order inasmuch as painting the concrete served no remedial or preventative purpose and therefore was

not a maintenance item under either paragraph 6(a) or 9 of the Order (Tr. 185-186).

Subsequent to hearing, Mr. Pratt sent a letter advising that the concrete surfaces had been painted by Ellwood City residents. He reiterated his request that the original Order of May 14, 1981 be amended to specifically obligate B&O to paint the concrete surfaces in the future.

The Proposed Order would so amend paragraph 6(a), for the stated reason that the underpass would be more visible to and, therefore, safer for motorists. It is respectfully submitted that there is no evidence to support this Order.

The original Complaint alleged that "paint or other protective coating on the steel structure is eroded causing possible corrosion to structure thereby creating a hazard to vehicular and pedestrian traffic." At the original hearing, the B&O and the other parties adduced evidence addressing that allegation. Indeed, none of the Fifth Street underpass evidence concerned visibility to motorists or safety hazards posed. The only issue addressed was what was necessary to maintain the structural integrity of the structure. While traffic counts and accident statistics were admitted in evidence, these statistics related to the allegation of surface water accumulation in the underpass. Moreover, those statistics did not indicate that the lack of painting has resulted in a hazardous condition to motorists.

Even at the hearing for Enforcement, there was absolutely no evidence bearing on how painting would make the underpass safer for the motoring public.

Apparently, the evidence upon which the Administrative Law Judge based his recommendation were four B&O photographic exhibits taken during daylight hours which depicted the underpass in its painted condition. There was, however, no comparison made with photographs of the structure in its unpainted condition. Certainly, the bridge looked whiter and cleaner, but whether its being painted has actually enhanced safety, especially during the nighttime hours, is mere speculation.

In sum, the record is inadequate to support an order that painting the concrete is necessary or even desirable for the public safety. There are no pictures from both approaches at varying distances. There are no pictures depicting the underpass under different weather and lighting conditions. There is no evidence of alternative, less costly measures to protect the travelling public, such as road markers, reflective materials, or improved lighting. Indeed, as previously stated, there was no evidence that a hazardous condition even exists so as to warrant any remedial measures.

If visibility is a problem, it would be most manifest at night. It is submitted that no amount of paint can compensate for inadequate lighting. Clearly, the only permanent and cost-effective method of increasing nighttime visibility is through adequate lighting in the approaches and in the underpass, the responsibility for which should be borne by the Borough of Ellwood City.

Moreover, intrusion of this Commission into non-maintenance items raises more problems than it solves. Should the Commission be consulted as to what color would most effectively increase

visibility? Should the Order specify the color? Must a Petition be filed seeking approval of the type of paint to be used? If a phosphorescent chartreuse were scientifically determined to be the most visible color, could the Borough insist that the concrete be painted white, nonetheless?

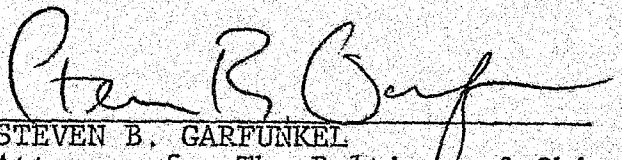
It is submitted that the Proposed Order is not supported by the evidence, and, in effect, obligates the B&O to make up for the Borough's failure to adequately light its streets and protect its traffic. The Proposed Order imposes an unnecessary cost on the B&O with no ascertainable benefit to anyone.

The B&O respectfully requests that the Proposed Order of the Initial Decision be amended to read as follows:

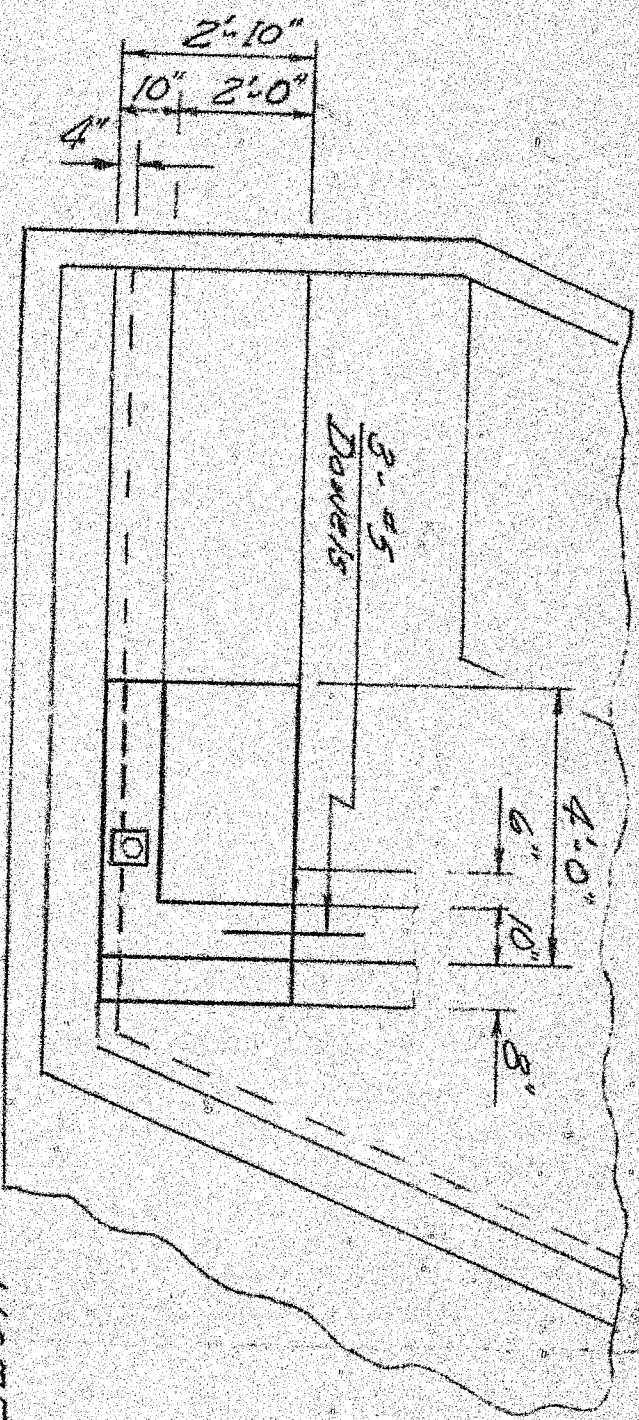
Paragraph 6(a) of the Order adopted April 3, 1981, at C-80041953 is modified to read as follows:

- 6(a) The Baltimore & Ohio Railroad Company and The Pittsburgh and Lake Erie Railroad Company, at their sole cost and expense, provide all material and do all work necessary to maintain the substructure and superstructure of the railroad bridge over and above Fifth Street in the Borough of Ellwood City, to include the cleaning and painting, as needed, of the structural steel of the bridge.

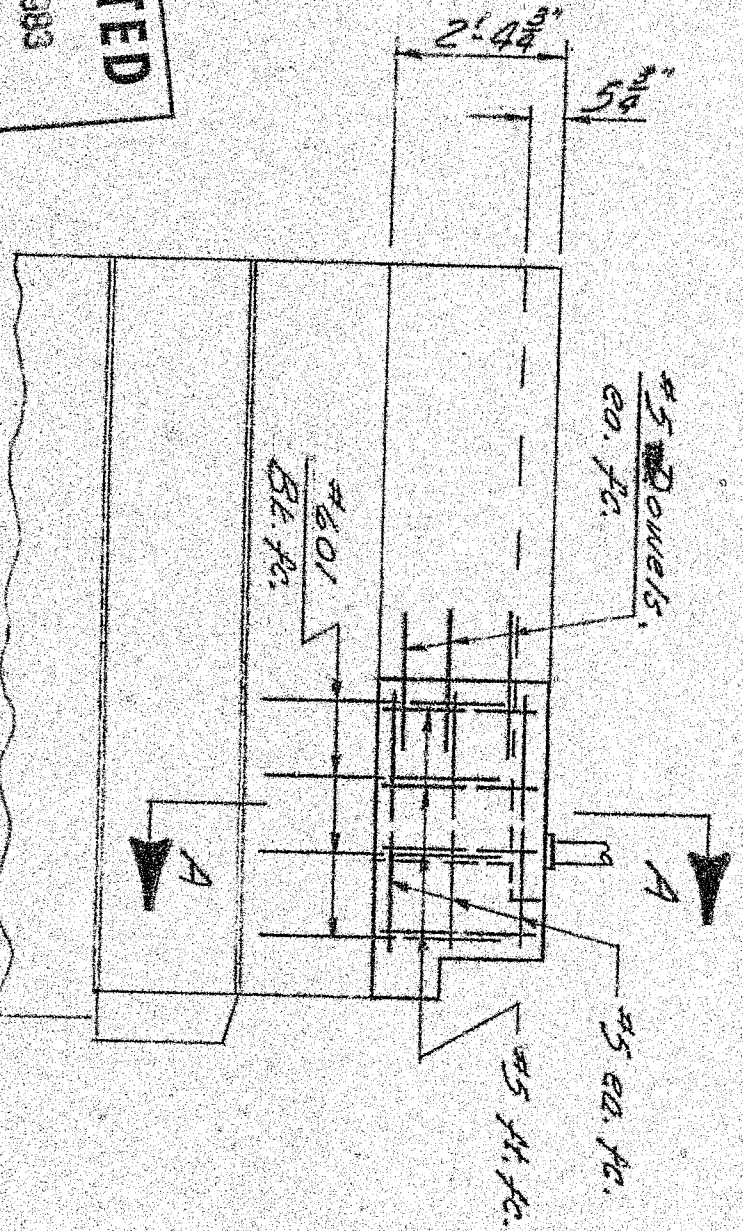
Respectfully submitted,



STEVEN B. GARFUNKEL  
Attorney for The Baltimore & Ohio  
Railroad Company  
P. O. Box 6419  
Cleveland, Ohio 44101  
(216) 623-2463

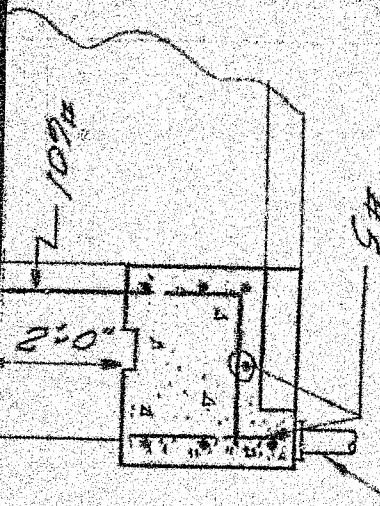


PLAN



NOTE:  
New work shown  
in heavy lines.

Remove and reset



GENERAL NOTES:

Specifications: AREA SPERS, dated 1981, CHAPTER 8 - Concrete Structures and Foundations.  
Concrete: Shall have a min. 28 day compressive strength of 5,500 PSI using ASTM C150, Type 1 cement with an approved air entraining admixture. The mix shall contain a min. of 6 bags cement per cu. yd. and a max. water content of 5 1/2 gals. per bag cement. Joints surfaces between old & new masonry shall be thoroughly cleaned & wet before placing new masonry.  
Reinforcing: Shall be deformed bars billet steel ASTM A615 Grade 40 or 60. #601 bar and dowels to be set in 2" hole using guide setting non-shrink grout similar to 5 Star Instant Grout as made by U.S. GROUT.

11. Loc. # 30270

**CERTIFIED CORRECT PLANS**

Approved by  
  
 Engineer  
 PENNA. PUBLIC UTILITY COMMISSION  
 Attest:  
  
 Secretary

Bureau of Rail Transportation

MAR 18 1983

**Chessie System**  
 ENGINEERING DEPARTMENT

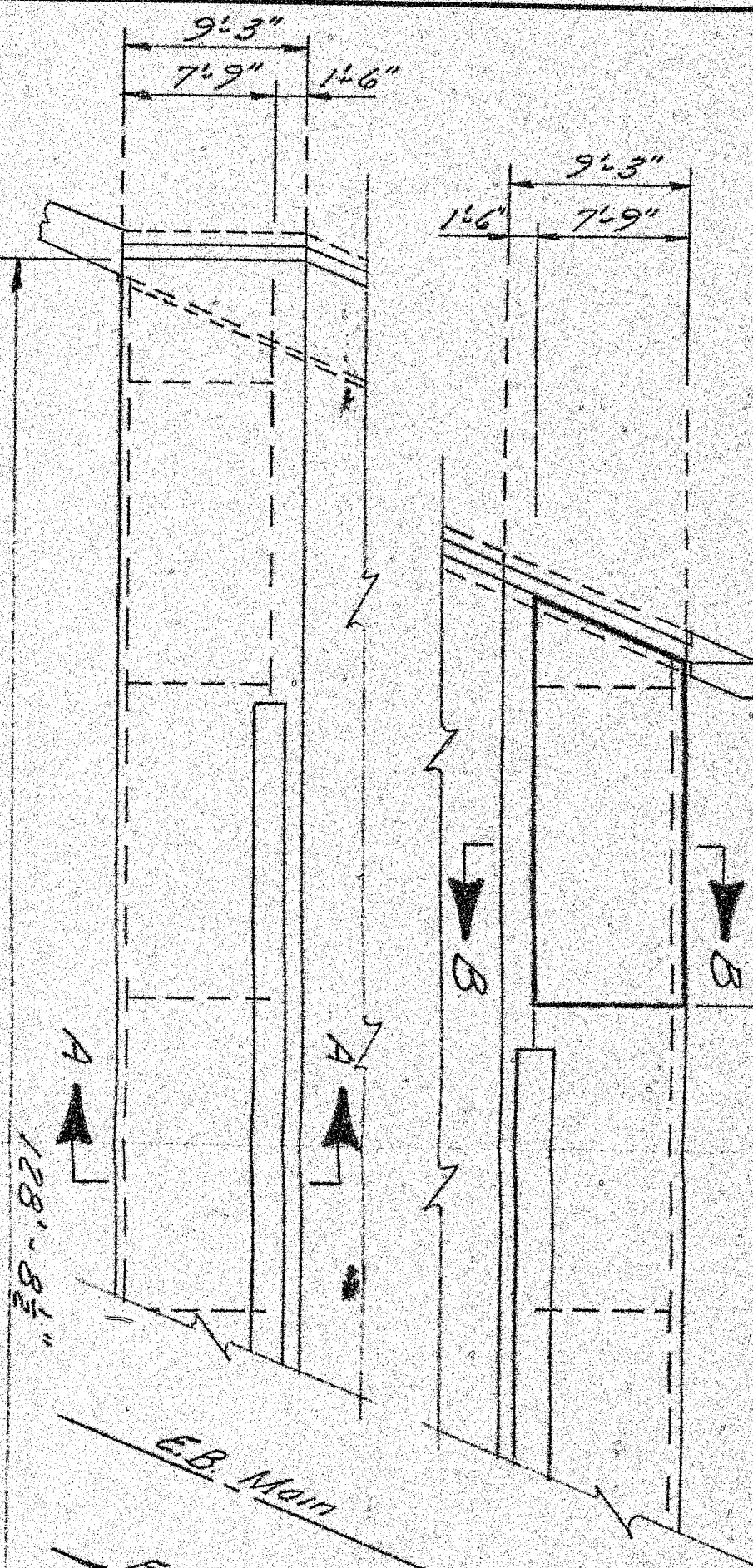
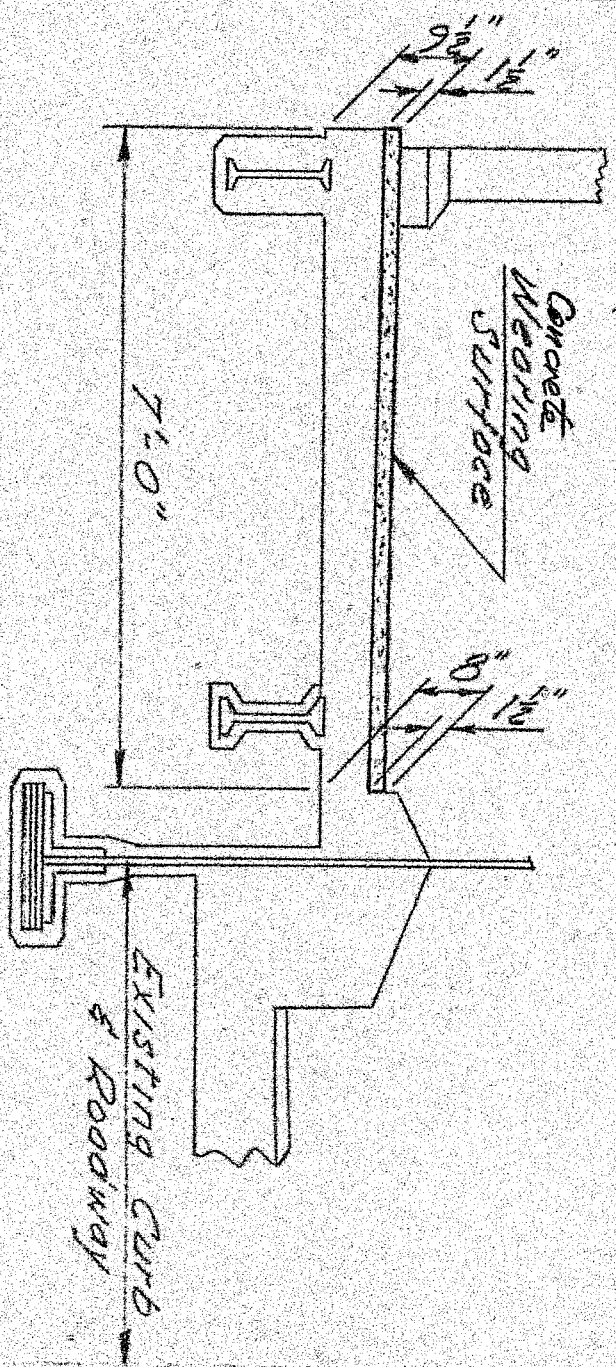
Bridge No. 8634  
 NORTH ABUTMENT  
 ELLWOOD CITY  
 Lowndes Co. Pa.  
 Pa. Div. P&W 506

SCALE: 3/4" = 1'-0"  
 DATE: 3-22-82 VAL. SEC. 1-25-1  
 DRAWN: WBB 25 DRAWING NO. 4721

**BOCKETED**  
 APR 12 1983

ELEVATION

SECTION A-A



PLAN

SECTION

West to  
New Castle

West to  
Pittsburgh  
W.B. Main

(12" Wearing Surface)

#5 Dowels  
@ 12.5" O.C.

EXISTING CURB  
& ROADWAY

SECTION B-B

Remove  
& Replace

CERTIFIED CONNECT PLANS

Approved by  
PENNA. PUBLIC UTILITY COMMISSION  
Attest:

*[Signature]*

J. P. ...  
MAR 18 1983  
Secretary

Chessie System  
ENGINEERING DEPARTMENT

BRIDGE NO. 363A  
WALKWAY REPAIRS  
ELLWOOD CITY  
LAWRENCE CO. PA.

PA. DIV. PAW 505

REVISIONS	SCALE: 1/2" = 1'-0"	VAL. SEC.	DRAWING NO.
	DATE: 12-7-82	0.95.1	4721
	DRAWN: W.B.B.	25	SHEET 2 OF 2
FILE: H13A-86			