

August 9, 1983

C-80041953

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

Ralph D. Pratt, State Representative

v.

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 Pennsyl-  
vania, Inc., The Bell Telephone Company of Pennsylva-  
nia and The Pittsburgh and Lake Erie Railroad Company

To Whom It May Concern:

This is to advise you that an Opinion and Order has been  
adopted by the Commission in Public Meeting on July 22, 1983, in  
the above entitled proceeding.

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

Very truly yours,

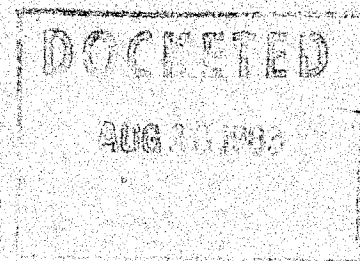


Jerry Rich, Secretary

jr  
Encls.  
Cert. Mail

Bureau of Rail Trans.  
Law Bureau  
Office of ALJ

Similar letters to: see attached list



PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120

Public Meeting held July 22, 1983

Commissioners Present:

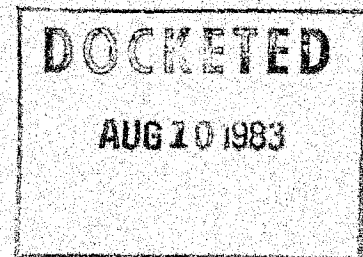
Linda C. Taliaferro, Chairman  
Michael Johnson  
James H. Cawley

Ralph D. Pratt, State Representative

v.

C-80041953

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



OPINION AND ORDER

BY THE COMMISSION:

Before us for disposition is a Petition for Modification of Order filed April 11, 1983, by The Pittsburgh and Lake Erie Railroad Company. We shall grant the Petition and modify our May 14, 1981 Opinion and Order.

On April 1, 1980, the Honorable Ralph D. Pratt filed a formal complaint (complaint) regarding the safety and adequacy of three rail/highway crossings within the Borough of Ellwood City. The rail/highway crossings are: the Second Street overpass; the Fifth Street underpass; and, the Sixth Street crossing at grade.

A hearing was held on August 14, 1980; Administrative Law Judge Clements presided because Administrative Law Judge Michael A. Nemeč's prior scheduling precluded his attendance. On February 13, 1981, Administrative Law Judge (ALJ) Michael A. Nemeč's Initial Decision, dated January 22, 1981, was issued for exceptions. The Initial Decision directed that various improvements be made at the crossings and assigned cost responsibility to the parties. Exceptions to the Initial Decision were filed by the Commission's Trial Staff, The Baltimore and Ohio Railroad Company, The Pittsburgh and Lake Erie Railroad Company and Complainant, State Representative Ralph D. Pratt.

Subsequent to review of the Initial Decision and the exceptions filed thereto, we entered an Opinion and Order on May 14, 1981, wherein

we reversed the ALJ's ordering paragraph 10, which dismissed the complaint at the Sixth Street at grade crossing. We ordered improvement work at the Sixth Street crossing by The Baltimore and Ohio Railroad Company and The Pittsburgh and Lake Erie Railroad Company. In all other respects, we concluded that the ALJ's opinion and discussion correctly resolved the matters in dispute.

On September 17, 1981, the Borough of Ellwood City (Borough) filed a Petition for Clarification of Opinion and Order. In its petition the Borough argued that our Opinion and Order, entered May 14, 1981, improperly placed responsibility on it for the curbs, sidewalks, and railings on the Second Street overpass and its approaches. The Borough contended that its responsibility should be limited to the approaches only.

By Opinion and Order adopted November 6, 1981, and entered November 23, 1981, we modified our Opinion and Order entered May 14, 1981, and assigned responsibility for curbs, sidewalks, and sidewalk railings on the Second Street overpass to The Baltimore and Ohio Railroad Company. Also, we limited the Borough's responsibility for the curbs, sidewalks, and sidewalk railings to the approaches to the Second Street overpass only. Our reasoning in support of the modification of our Opinion and Order, entered May 14, 1981, is set forth in our Opinion and Order entered November 23, 1981.

On January 19, 1982, we entered an Opinion and Order addressing a Petition of The Baltimore and Ohio Railroad Company for Modification of Order or, in the Alternative, for Rehearing, which was filed June 1, 1981. After finding that our decision requiring The Baltimore and Ohio Railroad Company and The Pittsburgh and Lake Erie Railroad Company to paint the Fifth Street underpass was appropriate, we denied the above-mentioned petition in its entirety.

On August 16, 1982, State Representative Ralph D. Pratt filed a formal complaint (complaint) against The Baltimore and Ohio Railroad Company seeking Commission enforcement of Ordering Paragraphs 6(a) and 9 of our Opinion and Order, entered May 14, 1981. By letter dated September 29, 1982, the Commission informed State Representative Pratt that his complaint was being considered as a Petition for Enforcement of the Commission's Opinion and Order, entered May 14, 1981, at C-80041953. A hearing on the matter was held in Ellwood City on December 15, 1982. By Further Initial Decision dated February 15, 1983, ALJ Nemeč modified Ordering Paragraph 6(a) of our May 14, 1981 Opinion and Order by including "the painting, as needed of the concrete surfaces of the sidewalks, wingwalls and abutments that face the public thoroughfare,"<sup>1/</sup> as a maintenance responsibility at the Fifth Street crossing.

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<sup>1/</sup> On May 11, 1983, we adopted as our action the Further Initial Decision of ALJ Nemeč, dated February 15, 1983, and denied the exceptions filed thereto.

On April 11, 1983, The Pittsburgh and Lake Erie Railroad Company (Petitioner) filed a Petition of Modification of Order (Petition). Petitioner requests that this Commission modify Ordering Paragraph 6(a) of our May 14, 1981 Opinion and Order by deleting its maintenance responsibility for the Fifth Street crossing. As support for its request, Petitioner submits that it was permitted to abandon its Ellwood City Secondary Track in the vicinity of the Fifth Street crossing by Certificate and Decision of the Interstate Commerce Commission, decided July 17, 1981, and docketed at AB-158 (Sub-No. 1F). Petitioner maintains that it is no longer a public utility concerned with the Fifth Street crossing and, therefore, it should not be responsible for any future maintenance of the crossing. To date, no party has filed a reply to the subject Petition.

Consistent with Section 703(g) of the Public Utility Code, 66 Pa. C.S. §703(g), "[t]he Commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it." The facts, as alleged in the Petition, indicate that the Petitioner is no longer a public utility concerned with this crossing. 66 Pa. C.S. §2702(c). Therefore, we agree with the Petitioner that it should not be responsible for any future maintenance of the Fifth Street crossing in the Borough of Ellwood City, Pennsylvania. Accordingly, we shall modify Ordering Paragraphs 6(a) and 9 of our Opinion and Order, entered May 14, 1981.<sup>2/</sup>

As indicated previously, we have not received any replies to the Petition, although the Petition was served upon all parties of record. In view of the apparent lack of opposition to the Petition, we consider it unnecessary to afford further notice and provide an additional opportunity to be heard before we make the subject modification; THEREFORE,

IT IS ORDERED:

1. That the Petition for Modification of Order filed by The Pittsburgh and Lake Erie Railroad Company is hereby granted.

2. That in consideration of the foregoing, Ordering Paragraph 6(a) of the Opinion and Order, entered May 14, 1981 and modified by Order entered May 11, 1983, at C-80041953, is modified to read as follows:

6. That maintenance responsibility for the Fifth Street crossing below and under tracks of The Baltimore and Ohio Railroad Company, in the Borough of Ellwood City, is hereby established as follows:

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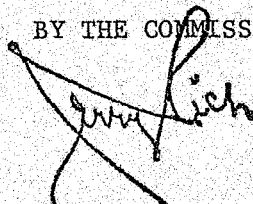
<sup>2/</sup> Ordering Paragraph 6(a) had been modified by our Order entered May 11, 1983.

- (a) The Baltimore and Ohio Railroad Company at its 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.

3. That in consideration of the foregoing, Ordering Paragraph 9 of the Opinion and Order, entered May 14, 1981, at C-80041953, is modified to read as follows:

9. That pursuant to Paragraph 6(a), above, The Baltimore and Ohio Railroad Company shall, at its 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.

BY THE COMMISSION,



Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: July 22, 1983

ORDER ENTERED: AUG 9 1983