



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

February 13, 1981

IN REPLY PLEASE
REFER TO OUR FILE

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, et al.

To Whom It May Concern:

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

An original and fourteen (14) 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.

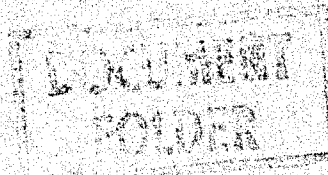
Exceptions should be clearly labeled as "EXCEPTIONS OF (name of
party) - (protestant, complainant, staff, etc.)". Do NOT label exceptions
as a "Brief" or "Brief on Exceptions".

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,

Janice M. Zwart
for William P. Thierfelder
Secretary

jr
Enclosures
Certified Mail
Receipt Requested
see attached list



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Ralph D. Pratt, State Representative

v.

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

C - 80041953

Before: Michael A. Nemec
Administrative Law Judge

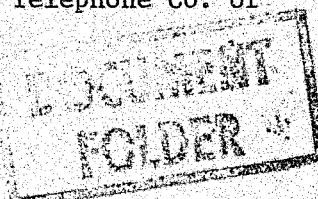
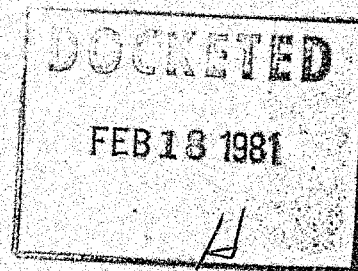
Date: January 22, 1981

INITIAL DECISION
(Subject to Commission Approval)

History of Case

State Representative, Ralph D. Pratt, initiated the present case by formal complaint, docketed April 8, 1980. Representative Pratt complained with regard to the safety and adequacy of three rail/highway crossings within the Borough of Ellwood City: the Second Street overpass, the Fifth Street underpass, and the Sixth Street crossing at grade.

Pennsylvania Power Co. and Lawrence County filed motions for amplification alledging insufficiencies in the complaint. Answers were filed by the Baltimore and Ohio Railroad Co. (B & O), the Pennsylvania Department of Transportation (Penn DOT), The Bell Telephone Co. of



Pennsylvania (Bell), the Western Pennsylvania Water Co. (WPW), and the Pittsburgh and Lake Erie Railroad Co. (P & LE).

The hearing was held as scheduled on August 14, 1980, in Ellwood City. ALJ John Clements presided as an accommodation to the tightness of my schedule at that time (Tr. 9-10). Representative Pratt stated that the required advertisements had not been made but that general news releases had been published. ALJ Clements deferred any ruling on the impact of the advertising (or lack thereof) to me (Tr. 10-11).

While on my review, the record appeared to be relatively complete, I notified all parties of record by a notice dated October 2, 1980, of an opportunity to request an additional hearing, file additional exhibits, and/or a brief within 30 days of the date of the notice. As of the present date, no requests for additional hearings, no additional exhibits, and no briefs have been received by me.

Summary of Testimony

Gregory Ferrese, Borough Manager of Ellwood City, testified for the Borough. Mr. Ferrese described the locations of the three subject crossings within the Borough and stated his concerns with each one (Tr. 35-36).

Mr. Ferrese stated that the Second Street crossing, an overpass, is located between Pittsburgh Circle and Crescent Avenue in the Second Ward. He stated that the road approaching and crossing at Second Street is a state highway. His concern is with holes in the sidewalk at the crossing. Further, he read Ellwood City's sidewalk ordinance as calling for concrete construction while the present ones are "blacktop."

He voiced his belief that the present sidewalks were constructed by the Chessie System (B & O) 10 to 15 years ago. Upon complaint to the Chessie System, he stated, the holes were patched. The Borough, under contracts with Penn DOT, removes snow and ice from the cartway in the winter months (Tr. 36-39).

With regard to the Second Street overpass, Mr. Ferrese provided accident totals and traffic totals as follows (Tr. 47-48):

<u>Accidents</u>	<u>Traffic Count</u>
1975 - 3	
1976 - 0	7/15-16/80 8,242 vehicles
1977 - 2	
1978 - 0	7/24/80 (Noon to 1 p.m.) 5 pedestrians
1979 - 2	

On cross-examination Mr. Ferrese stated he was not an engineer (Tr. 52) and that the accident counts were supported by accident reports (Tr. 53). He further stated that the "pot holes" on the sidewalk were repaired but that he never brought the Borough's sidewalk ordinance to the attention of the Chessie System (Tr. 55). On further cross, he stated that the sidewalk ordinance was "passed" in 1956 but did not know when the Second Street bridge was built (Tr. 59).

On direct examination, Mr. Ferrese stated that the Fifth Street crossing, an underpass, is located between Lawrence Avenue and Spring Avenue, in the Third Ward (Tr. 36). His concern here is also the sidewalks because of complaints about inadequate drainage. Further, he would like the area of the underpass painted, particularly because of its location in the Ellwood City business district. The street in the underpass is a state highway which Ellwood City keeps clean pursuant to a contract with Penn DOT (Tr. 40-41).

Mr. Ferrese also provided accident and traffic counts for the Fifth Street underpass (Tr. 47-48):

<u>Accidents</u>	<u>Traffic Count</u>
1975 - 3	
1976 - 0	7/16-17/80 13,295 vehicles
1977 - 2	
1978 - 0	7/23/80 (Noon to 1 p.m.) 88 pedestrians
1979 - 2	

With regard to Fifth Street, Mr. Ferrese was asked on cross-examination whether he knew the source of water that collected in the underpass. He stated he observed water coming from drainpipes and down the walls (Tr. 55-57). He further stated that Ellwood City was responsible for highway drainage at the underpass (Tr. 60).

Concerning the Sixth Street at-grade crossing, Mr. Ferrese testified that the roadway is a Borough right-of-way. His concern was with the "bumpy" condition of the tracks. The crossing is protected by gates but he recalled an incident "approximately two years ago" when an automobile was struck by a train, apparently because the gates were not functioning (Tr. 42-43).

Mr. Ferrese provided the following data on accidents and traffic for the Sixth Street crossing (Tr. 47-49):

<u>Accidents</u>	<u>Traffic Count</u>
1975 - 0	7/17-18/80 5,129 vehicles
1976 - 1	
1977 - 2	7/18/80 (3-3:30 p.m.) Total for both:
1978 - 0	(4:10-4:30 p.m.) 9 pedestrians
1979 - 1	

George Hulick, Jr., Director of Public Works for Ellwood City, testified for the Borough. Mr. Hulick identified numerous photographs taken by an Ellwood City patrolman. However, Ellwood City has not seen fit to provide the parties and the record with copies (Tr. 151-152).

As to the Second Street Bridge (an overpass), Mr. Hulick testified that the railing along the sidewalk was "very wobbly in places" with what he described as spalling or deterioration and some cracks on the underside. Also, he described the median strip as deteriorating and crumbling onto the cartway. He further described a hole in the sidewalk which he covered with a steel plate (Tr. 64-72).

Regarding the Fifth Street underpass, Mr. Hulick described Ellwood City's storm drainage system which includes two inlets at the lowest point in the underpass. He described "seepage" from the walls and dripping from the superstructure which could fall on pedestrians and vehicles using the underpass. He also described the underpass as an "eyesore" in need of paint (Tr. 72-77).

Finally, Mr. Hulick described the Sixth Street at-grade crossing as he has experienced it. In driving across it he said one must go slowly because of irregularities. He stated his opinion that the warning and safety devices in place at present are adequate (Tr. 77-81).

On cross-examination, some difficulty arose because of uncertainty as to the end of approaches and the start of the crossing (Tr. 81-86). Further, Mr. Hulick agreed that spalling was not indicative, by itself, of structural weakness (Tr. 86-87). As to the Fifth Street underpass, Mr. Hulick stated that some of the sidewalk slabs slope toward the street and some toward the abutment (Tr. 96). He confirmed the problems in the Fifth Street underpass resulted from the accumulated water on the sidewalk and water dripping from above (Tr. 98).

Robert B. Offutt, assistant district engineer for PennDOT, testified for PennDOT. He provided detailed testimony on his cursory

inspection on August 5, 1980, of the Second and Fifth Street crossings. He stated that the Second Street Bridge carries an average of 8,000 vehicles daily, of which 3% are trucks while the daily average for the Fifth Street underpass is 11,400 vehicles, of which 5% are trucks. He concluded both are adequate to safely accommodate the public but he detailed areas where maintenance was needed (Tr. 103-115, 128, 131-132).

On cross, Mr. Offutt stated he could see no purpose in expending funds on retaining walls at the Second Street crossing because of deterioration he observed. He also stated his opinion that deterioration in the retaining wall had not affected the stability of the hand railing. He further stated that because the alignment of the hand railing is good, that it was constructed after an initial subsidence in the retaining wall (Tr. 125, 127-128). The initial subsidence or movement was all he could detect and concluded that there was no continuing movement (Tr. 125-126).

On examination by ALJ Clements, Mr. Offutt defined a bridge approach as ending at the outside extremities of the abutment wall. Counsel for PennDOT and the railroads agreed that the expansion dams at either end of the Second Street Bridge mark the limits of the bridge (Tr. 132-134).

William Begg, engineer of structures, Pennsylvania division, testified for the B & O. He identified two agreements and an Order of this Commission. He testified that the B & O has four tracks under the Second Street Bridge, three over Fifth Street and four at the Sixth Street crossing. B & O traffic consists of six mainline

freight trains and one yard switcher each way each day at speeds from 10 to 20 m.p.h. (Tr. 136-139).

Mr. Begg stated that the B & O performs a yearly inspection of all bridge structures, with the last on the subject structures on February 5, 1980. He described his understanding of the B & O's maintenance responsibility under prior orders of this Commission (Tr. 139-141).

Mr. Begg stated that the B & O expended \$300 for walkway repairs on the Second Street bridge in October, 1979. Further, downspouts at the Fifth Street bridge (underpass) were repaired in 1977. Finally, new crossing timbers had been installed at the first track at Sixth Street with replacement on the other three tracks scheduled for completion by September 30, 1980, at a total cost of some \$17,000 (Tr. 141).

Mr. Begg described the Second and Fifth Street structures in detail. He stated that in the opinion of the B & O no hazard attributable to the B & O exists at Second Street or Fifth Street and that the unevenness at Sixth Street will be corrected by the present repairs (Tr. 143-144).

Julius J. Sturman, maintenance and construction engineer, testified for the P & LE. He stated that the P & LE has no tracks at the Second Street bridge, one at Fifth Street and three at Sixth Street. The P & LE operates one freight train per week over its tracks at a maximum speed of 15 m.p.h. and expects to eliminate its operation within a year. Mr. Sturman stated the opinion of the P & LE that no work was necessary within the limits of its responsibility (Tr. 152-159, 161-162).

William W. Huff, Pa. PUC engineer, testified for Commission Trial Staff. He stated his opinion that the top of the retaining wall on the Second Street bridge should be repaired and the guard-rail reset or the guardrail removed and reset where the concrete has not deteriorated. He recommended that the B & O, pursuant to prior Commission orders, perform the work and bear the expense.

As to Fifth Street, Mr. Huff recommended that the sidewalk be reset so water would drain to the street, with a drain (depressed gutter) between the sidewalk and the abutment to collect any water running down the walls. He recommended that the Borough do the work with costs to be allocated later. Mr. Huff expressed no opinion as to the adequacy of the repairs being made to the Sixth Street crossing (Tr. 163-173).

Ralph Brown, engineering technician, testified for Pennsylvania Power Co. (Penn Power). He briefly identified Penn Power's facilities at the Second and Sixth Street crossings and provided drawings of them. He also identified facilities of Ellwood City and a cable TV firm (Tr. 22-26).

James J. Gagliano, Jr., community planner, testified for Lawrence County. He stated that the County maintains no facilities at the subject crossings and has made no investigation into the County's involvement with the crossings (Tr. 28-29).

Under questioning by ALJ Clements, Mr. Gagliano stated that all liquid fuel taxes received by the County are distributed to local municipalities on the basis of population. He stated that the County does not own or maintain any highway but agreed that the

involved crossings were necessary for the accommodation and convenience of County residents (Tr. 30-31).

The County was asked to provide information on the amount and method of distribution of liquid fuel tax funds within 20 days of the hearing (Tr. 32-33). To the present date I have no knowledge that the County has complied.

Discussion

From the record developed here it appears that the problems involved are relatively minor but should be promptly corrected. This Commission last considered the Second Street crossing in 1962-1963 issuing an Order on September 3, 1963, at C-17665. No reason has been presented here for changing the responsibility for maintenance as set out in that order. Therefore, the B & O and the Borough should take the necessary steps to strengthen and secure the hand and guard railings on the Second Street bridge.

It does not appear that the Fifth Street bridge (underpass) has been the subject of a Commission Order. It appears appropriate at this juncture to assign maintenance responsibility and direct that the sidewalk condition be corrected. The B & O should be assigned responsibility of the structure, with directions to forthwith paint it. PennDOT should be responsible for the roadway while the Borough should be responsible for the sidewalk. While the source of the bonded water, whether from surface drainage or from the superstructure, is not clear, the Borough should reset the sidewalk slabs allowing for an open drain along the base of the abutment wall.

Finally, as to the Sixth Street crossing, the record contains nothing regarding whether repairs were completed and whether the repairs were satisfactory. Clearly the operating railroads are the responsible parties and should maintain the crossing in good repair. Should they fail to do so, the Borough is certainly free to file another complaint with this Commission.

Findings of Fact

1. The complainant is State Representative Ralph D. Pratt.
2. Respondents are the Baltimore and Ohio Railroad Co. (B & O), the Pittsburgh and Lake Erie Railroad (P & LE), Department of Transportation of the Commonwealth of Pennsylvania (PennDOT), Borough of Ellwood City, Lawrence County, Pennsylvania Power Co., Western Pennsylvania Water Co., Columbia Gas of Pa., Inc., and the Bell Telephone Co. of Pa.
3. The complaint deals with three rail/highway crossings in the Borough of Ellwood City: the Second Street overpass, the Fifth Street underpass, and the at-grade crossing of Sixth Street.
4. The Second Street overpass consists of a three-span highway bridge built in 1931 with a concrete deck and sidewalks having a roadway width of 40'. The end spans are deck beams with lengths of 22' and 31'. The center span has through plate girders with lengths of 86' (Tr. 143).
5. The Second Street overpass carries legislative route (LR) 315 and traffic routes (TR) PA 68 and PA 288 over and above four tracks owned and operated by the B & O (Tr. 111, 138-139).
6. While a retaining wall has tipped out several inches, the movement occurred many years ago, perhaps right after construction and no recent movement has been noted (Tr. 105, 125, 127-128).

7. The hand rail and its supports along the sidewalk on the Second Street overpass have suffered some deterioration and require strengthening.

8. Maintenance of the Second Street overpass was assigned by this Commission in a previous proceeding at C-17665 by Order issued September 3, 1963, as follows:

- a. Superstructure, substructure - B & O
- b. Curbs, sidewalks, storm drainage - Ellwood City
- c. Roadway and storm drainage between curbs - PennDOT

9. The Fifth Street underpass consists of a four-span railroad bridge carrying three tracks of the B & O and one track of the P & LE over and above LR 37011 Spur, connecting TR PA 65 and 288 with TR PA 351 (Tr. 112).

10. A significant problem with the Fifth Street underpass is created by portions of the sidewalk on the east side of the roadway which slope toward the retaining wall instead of toward the roadway, causing surface water to accumulate in sufficient quantity to impede pedestrian access (Tr. 107).

11. No maintenance responsibility has been assigned by this Commission with regard to the Fifth Street underpass.

12. The dingy condition of the walls and ceiling of the Fifth Street underpass adversely affect the safety and convenience of the travelling public.

13. The complaint with the Sixth Street at-grade crossing concerns the condition of the road surface between the rails of the four B & O tracks and three tracks of the P & LE.

14. Repairs to the Sixth Street crossing were in progress at the time of the hearing in this case and no information has been provided as to the condition of the crossing as of completion of the repairs.

15. The Second Street overpass, the Fifth Street underpass and the Sixth Street at-grade crossing provide access to vehicles and pedestrians between portions of the Borough of Ellwood City divided by rail facilities.

Conclusions of Law

1. Pursuant to 66 Pa. C.S.A. §2702(b) this Commission has jurisdiction over the Second, Fifth and Sixth Street crossings of railroad facilities with public highways in the Borough of Ellwood City.

2. Pursuant to 66 Pa. C.C.A. §2702(c) this Commission has jurisdiction over the public utilities and municipal corporations who are parties to this proceeding.

3. The Second, Fifth and Sixth Street crossings are necessary for the safety and convenience of the travelling public.

ORDER

(Subject to Commission Approval)

In consideration of the foregoing, it is hereby ordered that:

1. Maintenance responsibility as established by this Commission in its Order of September 3, 1963, at C-17665 shall remain in effect where Second Street crosses over and above tracks owned and operated by the Baltimore and Ohio Railroad Co. in the Borough of Ellwood City.

2. The Baltimore and Ohio Railroad Co. pursuant to the September 3, 1963, Order, paragraph 19, at its sole expense, and in cooperation with the Borough of Ellwood City provide this Commission with plans for the repair of the top of the abutment which provides support for the handrailing on the Second Street overpass within 90 days after this Order becomes final.

3. The Baltimore and Ohio Railroad Co. shall, within 90 days of this Commission's approval, complete, in cooperation with the Borough, the work called for by the plans ordered in paragraph 2 above.

4. The Borough of Ellwood City, as is its responsibility under paragraph 21 of the September 3, 1963, Order, at its sole expense, shall provide to this Commission complete plans to repair, strengthen or replace the sidewalks and sidewalk railings on the Second Street overpass within 90 days after this Order becomes final.

5. Upon approval by this Commission of the plans submitted pursuant to paragraph 4 above, Ellwood City shall complete, in cooperation with the Baltimore and Ohio Railroad Co., improvements within 90 days of this Commission's approval.

6. Maintenance responsibility for the Fifth Street crossing below and under tracks of the Baltimore and Ohio Railroad Co. and the Pittsburgh and Lake Erie Railroad Co. in the Borough of Ellwood City is hereby established as follows:

- a. The Baltimore and Ohio Railroad Co. and the Pittsburgh and Lake Erie Railroad Co. 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;

- b. The Pennsylvania Department of Transportation at its sole cost and expense, to furnish all material and do all work to maintain the roadway paving between the curbs in the Fifth Street underpass in the Borough of Ellwood City;
- c. The Borough of Ellwood City at its sole cost and expense to furnish all materials and do all work necessary to maintain the curbs and sidewalk in the Fifth Street underpass in the Borough of Ellwood City.

7. Pursuant to paragraph 6(c) above, the Borough of Ellwood City shall, at its sole expense, provide this Commission with plans for resetting the sidewalk in the Fifth Street underpass to provide for drainage to the cartway within 90 days after this Order becomes final.

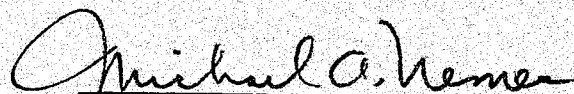
8. Upon approval by this Commission of the plans required in paragraph 7 above, the Borough of Ellwood City shall, at its sole expense, perform all work necessary under its plan within 90 days of this Commission's approval.

9. Pursuant to paragraph 6(a) above, the Baltimore and Ohio Railroad Co. and the Pittsburgh and Lake Erie Railroad Co. 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.

10. The complaint as to the Sixth Street at-grade crossing in the Borough of Ellwood City is dismissed without prejudice.

11. This Order is without prejudice to any party's right to recover from any other party or organization not a party any or all costs expended in complying with this Order in accordance with any pre-existing agreement between the parties and any organization not a party.

January 22, 1981


MICHAEL A. NEMEC
Administrative Law Judge