

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

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April 6, 1983

RECEIVED

Hon. Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
Post Office Box 3265
Harrisburg, Pennsylvania 17120

APR 11 1983

SECRETARY'S OFFICE
Public Utility Commission

Re: State Representative Ralph D. Pratt v.
The Baltimore and Ohio Railroad Company,
et al. - Complaint Docket No. 80041953;
Petition for Modification of Order

Dear Secretary Rich:

Enclosed is an original and three copies of The Pitts-
burgh and Lake Erie Railroad Company's Petition for Modifica-
tion of Order in the above-captioned matter.

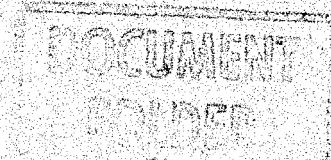
I hereby certify that a copy of said Petition has been
sent to all parties of record.

Very truly yours,

Richard A. Porach
Richard A. Porach

RAP:mps
Encls.

cc: List Attached



Distribution:

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

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

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

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

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

G.C. Smith
Western Pa. Water Company
Post Office Box 10499
250 Mt. Lebanon Blvd.
Pittsburgh, PA 15234

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

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

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

Steven B. Garfunkel, Esquire
Baltimore & Ohio Railroad Co.
Post Office Box 6419
Cleveland, Ohio 44101

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Ralph D. Pratt,)
State Representative)
v.)
The Baltimore and Ohio)
Railroad Company, Depart-)
ment 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

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SECRETARY'S OFFICE
Public Utility Commission

PETITION FOR MODIFICATION OF ORDER

COMES NOW The Pittsburgh and Lake Erie Railroad Company and petitions that the Opinion and Order of your honorable Commission adopted April 3, 1981, and entered May 14, 1981, be modified as follows:

1. Petitioner's name and address are The Pittsburgh and Lake Erie Railroad Company, Commerce Court, Station Square, Pittsburgh, Pennsylvania, 15219.

2. Petitioner's attorney in this proceeding is Richard A. Porach, Esq., whose address is Suite 780, Commerce Court, No. 4 Station Square, Pittsburgh, Pennsylvania, 15219.

DOCUMENT
FOLDER

DOCKETED
APR 12 1983

3. Petitioner is a corporation duly authorized to transact business in Pennsylvania, as a common carrier by railroad, and as such it operates certain lines of railroad throughout the Commonwealth.

4. By Opinion and Order of your honorable Commission adopted April 3, 1981, and entered May 14, 1981, in the above-captioned matter, Paragraph 6.a. requires as follows:

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

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 sub-structure and superstructure of the railroad bridge over and above Fifth Street in the Borough of Ellwood City;. . .".

5. By Certificate and Decision of the Interstate Commerce Commission decided July 17, 1981, and docketed at AB-158 (Sub-No. 1F), Petitioner was permitted to abandon its Ellwood City Secondary Track in the vicinity of the Fifth Street crossing in the Borough of Ellwood City, Pennsylvania. A copy of the Certificate and Decision at AB-158 (Sub-No. 1F) is attached hereto and made a part hereof as Exhibit "A".

6. By appropriate legal actions, Petitioner officially abandoned its Ellwood City Secondary Track in the vicinity of the Fifth Street crossing in the Borough of Ellwood City, Pennsylvania, on September 1, 1981.

7. Your Honorable Commission has the exclusive power to determine and prescribe the manner and conditions in and under which crossings shall be maintained. Furthermore, "the Commission may order the work of construction, relocation, alteration, protection, suspension or abolition of any crossing aforesaid to be performed in whole or in part by any public utility or municipal corporation concerned, or by the Commonwealth [Emphasis added] (66 Pa. C.S.A. §2702(c)).

8. Since Petitioner has abandoned its railroad in the vicinity of the Fifth Street crossing in the Borough of Ellwood City, Pennsylvania, it is no longer a public utility concerned with this crossing.

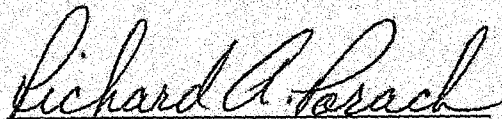
9. Therefore, Petitioner should not be responsible for any future maintenance of the Fifth Street crossing in the Borough of Ellwood City, Pennsylvania.

WHEREFORE, Petitioner respectfully requests your honorable Commission to modify its Opinion and Order adopted April 3, 1981, and entered May 14, 1981, in the above-captioned matter, as follows:

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

- 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;.

Respectfully submitted,



Richard A. Porach, Esq.
Attorney for The Pittsburgh and
Lake Erie Railroad Company
Suite 780
Commerce Court
No. 4 Station Square
Pittsburgh, PA 15219
(412) 261-3201

SERVICE DATE

CERTIFICATE AND DECISION

JUL 27 1981

AB-158 (Sub-No. 1F)

PITTSBURGH AND LAKE ERIE RAILROAD COMPANY--ABANDONMENT--
IN BEAVER AND LAWRENCE COUNTIES, PA

Decided: July 17, 1981

We have considered the application of the Pittsburgh and Lake Erie Railroad Company (P&LE) filed June 12, 1981, for a certificate of public convenience and necessity permitting the abandonment of a line of railroad known as the Ellwood City Branch, extending from railroad milepost 1.0 to the end of the line at railroad milepost 3.7, a distance of 2.7 miles, in Beaver and Lawrence Counties, PA.

The application is governed by 49 U.S.C. 10903, as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980, and by the Commission's Regulations Governing Abandonment of Railroad Lines and Discontinuance of Service, 49 C.F.R. Part 1121.

The application is filed under the "summary" procedures of Section 1121.33 of the Regulations, which are designed to facilitate the filing and processing of abandonment applications to which little or no opposition is anticipated.

Public notice of the filing of the application has been given in compliance with the Regulations. A comment was filed by the Railway Labor Executives' Association. Ellwood City Forge Corporation filed a comment in support of the proposed abandonment. No protest pursuant to 49 U.S.C. 10904(c)(1) as amended and Section 1121.33(a)(1) of the Regulations have been filed and this proceeding may be disposed of on the record as submitted.

Airway Industries, Inc., a luggage manufacturing business, is the only permanent shipper located on the line and does not produce sufficient revenues to make the line viable. This patron shipped or received 45 carloads in 1978, 71 in 1979, 55 in 1980, and 13 for the first 3 months of 1981. The physical condition of the track varies from poor to fair, and substantial expenditures would have to be made to upgrade it to minimum standards. Sufficient alternate transportation facilities exist in the vicinity, and immediate uninterrupted access to rail service can be provided by The Baltimore and Ohio Railroad Company which serves the Ellwood City area. If the abandonment is approved, P&LE will provide the B&O with sufficient trackage to service Airway Industries.

The environmental and energy impacts of this action have been examined and found not to be significant. Areas of consideration included, but were not limited to, energy consumption, air, water and noise pollution, and public safety. It was determined that the right-of-way would not be suitable for alternative public use following abandonment.

EXHIBIT "A"

Therefore, we find:

1. Abandonment of said line will not result in a serious adverse impact on the rural and community development of Beaver and Lawrence Counties, PA.
2. The property is not suitable for other public purposes.
3. This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is certified: The present and future public convenience and necessity permits the abandonment by the Pittsburgh and Lake Erie Railroad Company of the above-described line of railroad, subject to the conditions for the protection of employees discussed in Oregon Short Line R. Co.-Abandonment Goshen, 360 I.C.C. 91 (1979).

It is ordered:

1. The findings herein are being published in the Federal Register concurrently with the service of this decision. In the event any person or governmental entity is considering an offer of financial assistance or an offer to purchase the line, to enable rail service to be continued, it must tender such offer to the carrier within 10 days following publication. The offer must also be filed concurrently with the Commission and the offeror must also comply with the requirements of 49 C.F.R. 1121.38(b) and 49 U.S.C. 10905, as amended by Section 402(c) of the Staggers Rail Act of 1980.
2. All correspondence to the Commission with respect to offers of financial assistance for the continued operation or acquisition of the subject line shall contain an appropriate reference to this proceeding, and the following notation shall be typed in boldface on the lower left hand corner of envelopes containing such correspondence: "Section of Finance, AL-RSCP".
3. Subject to the conditions as set forth above and provided no offer for continued rail operations is received, actual abandonment may be effected by applicant after the effective date of this certificate and decision.
4. In the event abandonment is effected, tariffs applicable to the line herein may be canceled upon not less than 10 days' notice to this Commission and when filing schedules cancelling tariffs applicable to that line, applicant shall refer to this certificate and decision by date and docket number.
5. If the authority granted by this certificate and decision is exercised, P&LE shall advise this Commission in writing, immediately after abandonment of the line of railroad, of the date on which the abandonment actually took place.
6. If the authority granted in this certificate and decision is not exercised within one year from its effective date, it shall be of no further force and effect.

7. This certificate and decision shall be effective 30 days from the date of service unless otherwise ordered by this Commission.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell (Board Member Krock did not participate).

Agatha I. Mergenovich
Secretary

(SEAL)

