



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120
November 23, 1981

IN REPLY PLEASE
REFER TO OUR FILE
C-80041953

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

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., The Bell Telephone Company of Pennsylvania, 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 November 6, 1981 in the above entitled proceeding.

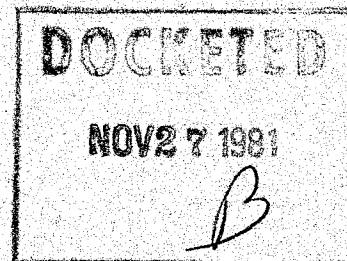
A copy of this Opinion and Order is enclosed for your records.

Very truly yours,

Jerry Rich
Secretary



fao
Encls.
Cert. Mail
Receipt Req.
Bureau of Rail Transportation
Office of Special Assistants
Office of ALJ
Law Bureau



See Initial decision letter dated February 13, 1981

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held November 6, 1981

Commissioners Present:

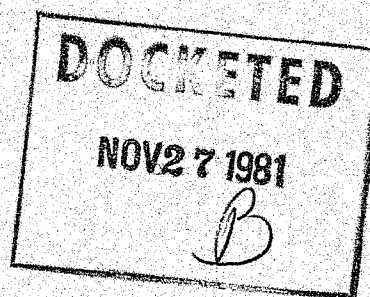
Susan M. Shanaman, Chairman
Michael Johnson
James H. Cawley
Linda C. Taliaferro
Clifford L. Jones

Ralph D. Pratt, State Representative

C-80041953

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., The Bell
Telephone Company of Pennsylvania, and
The Pittsburgh and Lake Erie Railroad
Company.



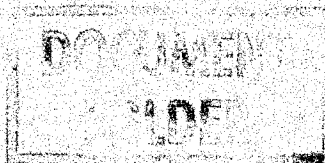
OPINION AND ORDER

BY THE COMMISSION:

Before us for disposition is a Petition for Clarification of Opinion and Order (petition) filed September 17, 1981, by the Borough of Ellwood City (Borough). The petition seeks clarification or modification of our Opinion and Order adopted April 3, 1981, and entered May 14, 1981, in the above-captioned proceeding.

On April 1, 1980, the Honorable Ralph D. Pratt filed a 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 Michael A. Nemeč's (ALJ) Initial Decision (Recommended Decision) was issued for exceptions. The Recommended Decision directed that various improvements be made at the crossings and assigned cost responsibility to the parties. Exceptions to the Recommended 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 Recommended Decision and the exceptions filed thereto, we reversed the ALJ's ordering paragraph 10 which dismissed the complaint at the Sixth Street at-grade crossing, and sustained the complaint. 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.

In the petition before us for disposition, the Borough contends the ALJ's disposition of the complaint at the Second Street overpass, which we affirmed in our Opinion and Order entered May 14, 1981, requires clarification or modification. The Borough argues that our Opinion and Order entered May 14, 1981, improperly places responsibility on it for the curbs, sidewalks, and railings on the Second Street overpass and its approaches. The Borough contends its responsibility should be limited to the approaches only. The Borough is correct; accordingly, we shall modify our Opinion and Order entered May 14, 1981.

A Commission Order dated September 3, 1963, at Complaint Docket No. 17665 provided in part:

19. That, upon completion of the rail-highway crossing project and its opening to public use, The Baltimore and Ohio Railroad Company, at its initial cost and expense, furnish all material and do all work necessary thereafter to maintain the entire substructure and superstructure of the existing three-span bridge, exclusive of the roadway paving between curbs, but including the abutments, piers, backwalls, expansion dams, curbs, sidewalks and railings on said bridge.
20. That The Pittsburgh & Lake Erie Railroad Company pay The Baltimore and Ohio Railroad Company a sum or sums of money equal to 15 percent of the actual cost incurred by the said Baltimore and Ohio Railroad Company in maintaining the substructure and superstructure of the existing bridge in accordance with numbered paragraph 19 of this Order.
21. That, upon completion of the improvement and its opening to public use, Borough of Ellwood City, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the curbs, sidewalks, and railings located along each side of the roadway on both approaches to the existing rail-highway crossing, above grade.

Our Opinion and Order in the instant proceeding entered May 14, 1981, provided in part:

4. That 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 Opinion and 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 Company, improvements within 90 days of this Commission's approval.

It is clear that placing responsibility for the sidewalks and sidewalk railings at the Second Street overpass and its approaches on the Borough of Ellwood City in our Opinion and Order entered May 14, 1981, is inconsistent with the Commission's September 3, 1963 Order.

The evidence of record in the instant proceeding does not suggest that any change in responsibility for the curbs, sidewalks, and sidewalk railings from that determined in the Commission's 1963 Order is appropriate.

We shall modify our Opinion and Order entered May 14, 1981, in order to assign responsibility for curbs, sidewalks, and sidewalk railings on the Second Street overpass to The Baltimore and Ohio Railroad Company. Also, we shall limit the Borough's responsibility for the curbs, sidewalks, and sidewalk railings to the approaches to the Second Street overpass only; THEREFORE,

IT IS ORDERED:

1. That 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 the Commission complete plans to repair, strengthen or replace the curbs, sidewalks and sidewalk railings on the approaches to the Second Street overpass within 90 days after entry of this Opinion and Order.

2. Upon approval by this Commission of the plans submitted pursuant to Paragraph 1, above, the Borough of Ellwood City shall complete, in cooperation with The Baltimore and Ohio Railroad Company, improvements within 90 days of this Commission's approval.

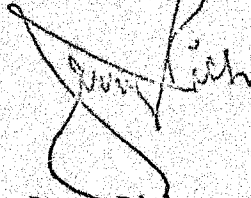
3. That The Baltimore and Ohio Railroad Company, as is its responsibility under Paragraph 19 of the September 3, 1963 Order, at its initial cost and expense shall provide to this Commission complete plans to repair, strengthen or replace the curbs, sidewalks and sidewalk

railings on the Second Street overpass within 90 days after entry of this Opinion and Order.

4. Upon approval by this Commission of the plans submitted pursuant to Paragraph 3, above, The Baltimore and Ohio Railroad Company shall complete the improvements within 90 days of this Commission's approval.

5. That The Pittsburgh and Lake Erie Railroad Company pay the Baltimore and Ohio Railroad a sum or sums of money equal to 15 percent of the actual cost incurred by the Baltimore and Ohio Railroad Company in performing the work in accordance with Paragraphs 3 and 4 of this Opinion and Order.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: November 6, 1981

ORDER ENTERED: NOV 23 1981