

May 14, 1981

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:

This is to advise you that an Opinion and Order has been adopted by the Commission in public meeting on April 3, 1981 in the above entitled proceeding.

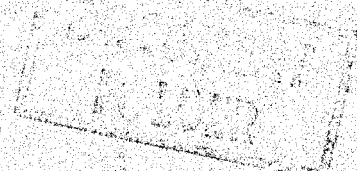
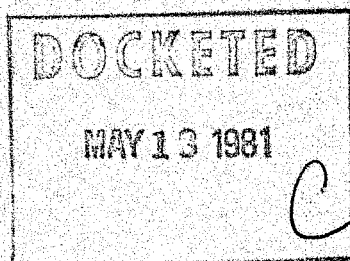
A copy of this Opinion and Order has been enclosed for your records.

Very truly yours,

William P. Thierfelder
Secretary

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Encls.
Cert. Mail
Receipt Req.

See Initial decision letter dated February 13, 1981



PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held April 3, 1981

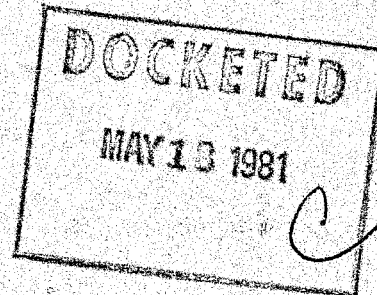
Commissioners Present:

Susan M. Shanaman, Chairman
Michael Johnson
James H. Cawley
Linda C. Taliaferro, abstaining

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

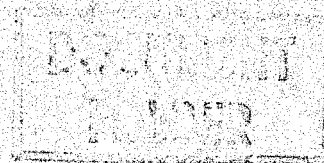
BY THE COMMISSION:

Before us for disposition is the Initial Decision (Recommended Decision) regarding the safety and adequacy of three rail/highway crossings by Administrative Law Judge (ALJ) Michael A. Nemecek dated January 22, 1981.

The crossings are located within the Borough of Ellwood City and identified as: the Second Street overpass, the Fifth Street underpass, and the Sixth Street Crossing at grade.

Exceptions to the Recommended Decision have been 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.

In its exceptions the Complainant points out that when the ALJ infers in Finding of Fact No. 14 that the repairs to the Sixth Street crossing were completed, the ALJ contradicted the statement on page 10 of the Recommended Decision wherein he indicated that, "the record contains nothing regarding whether repairs were completed and whether the repairs were satisfactory." Further, Complainant avers in its Exceptions that repairs on the Sixth Street crossing have been completed.



The Sixth Street crossing certainly required improvement at the time of the hearings, evidenced by the testimony of various witnesses in this proceeding. From the ALJ's Recommended Decision we are unable to determine whether or not the improvements or repairs have been completed. For this reason, we shall reverse the ALJ's ordering paragraph 10 in the Recommended Decision and sustain the complaint as to the Sixth Street at-grade crossing in the Borough of Ellwood City.

Rather than remand this proceeding to the Administrative Law Judge to determine if the improvements to the Sixth Street Crossing have been completed, we shall order The Baltimore and Ohio Railroad Company and The Pittsburgh and Lake Erie Railroad Company to provide us with plans to improve the Sixth Street crossing in the event the crossing has not been improved by the entry date of this Opinion and Order.

The ALJ properly concluded that, "the operating railroads" are the responsible parties and should maintain the crossing in good repair.

In all other respects, we find that the ALJ's opinion and discussion correctly resolves the matters in dispute; THEREFORE,

IT IS ORDERED:

1. That the 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 Company, in the Borough of Ellwood City.

2. That The Baltimore and Ohio Railroad Company 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 Opinion and Order becomes final.

3. That The Baltimore and Ohio Railroad Company 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. 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.

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;
- 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. That 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 Opinion and Order becomes final.

8. That 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. That pursuant to Paragraph 6(a), 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.

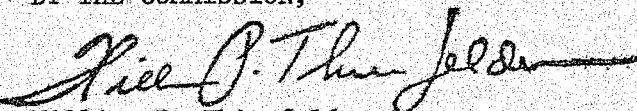
10. That The Baltimore and Ohio Railroad Company and The Pittsburgh and Lake Erie Railroad Company provide this Commission with plans to improve the Sixth Street crossing within 90 days after this Opinion and Order becomes final followed by the actual improvement work by both Respondents within 90 days of Commission approval of the plans.

11. That this Opinion and 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 Opinion and Order in accordance with any preexisting agreement between the parties and any organization not a party.

12. That except to the extent specifically granted in this Opinion and Order, the exceptions of all parties to the Recommended Decision of the Administrative Law Judge are denied.

13. That the Recommended Decision of the Administrative Law Judge is adopted to the extent consistent with this Opinion and Order.

BY THE COMMISSION,


William P. Thierfelder
Secretary

(SEAL)

ORDER ADOPTED: April 3, 1981

ORDER ENTERED: MAY 14 1981