

OVERSIZE

DOCUMENTS

OVERSIZE

DOCUMENTS

PA. PUBLIC UTILITY COMMISSION
 Docket No. 0-80041953 FOLDER NO. _____
Boro of Ellwood City EXHIBIT NO. A
 HEARING AT Ellwood City DATE 8/14/80
 REPORTER Arden B. Key

SEP 2 9 49 AM '80 Part 2 Sidewalks

A. Construction and Repair of Sidewalks and Curbs

Section 71. Property Owner Responsible for Construction and Reconstruction of Sidewalks and Curbs. Every owner of property in the Borough of Ellwood City shall, on thirty (30) days' notice from the Borough Council, construct or reconstruct a sidewalk and/or curb, which shall conform to all the requirements of this ordinance²¹ and of specifications adopted thereunder, in front of or alongside of such property. (Ordinance 1308, December 12, 1956, Section 1, as amended by Ordinance 1469, September 9, 1965)

Section 72. Severability. The provisions of this ordinance²² shall be severable, and if any of its provisions shall be held unconstitutional or illegal, such decisions shall not affect the validity of any of the remaining provisions of this ordinance. It is hereby declared as a legislative intent that this ordinance would have been adopted had such unconstitutional or illegal provisions not been included herein.²³ (Ordinance 1308, December 12, 1956, Section 12, as added by Ordinance 1469, September 9, 1965)

Section 73. Character of Notice. The notices referred to in Section 1 of this ordinance²⁴ may be written or printed or partly written and partly printed. (Ordinance 1308, December 12, 1956, Section 2, as amended by Ordinance 1469, September 9, 1965)

Section 74. Material and Specifications. All sidewalks and curbs shall be constructed, reconstructed and repaired of cement concrete only, according to specifications determined from time to time by the Borough Manager and adopted by the Borough Council. A copy of such specifications shall be included on or shall accompany or be attached to every notice issued as provided in Section 1 or 2 of this ordinance.²⁵ (Ordinance 1308, December 12, 1956, Section 3, as amended by Ordinance 1469, September 9, 1965; by Ordinance 1504, June 9, 1966; and by Ordinance 1585, April 10, 1969)

Section 75. Extension of Sidewalk and Curb at Street Intersections. Every owner of a corner lot within the angle formed by the intersection of two streets shall extend the sidewalk and curb beyond the property line of the

- 21. Sections 71 to 79.3 of this chapter.
- 22. Sections 71 to 79.3 of this chapter.
- 23. The material in Section 72 of this chapter, as originally included in Ordinance 1308, was omitted from Ordinance 1469, which completely re-enacted Ordinance 1308, with amendments.
- 24. Section 71 of this chapter.
- 25. Sections 71 or 73, respectively, of this chapter.

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street intersecting the one upon which the sidewalk or curb is being laid to the curb line of such intersecting street. (Ordinance 1308, December 12, 1956, Section 4, as reenacted by Ordinance 1469, September 9, 1965)

Section 76. Width of Sidewalks. The width of every sidewalk shall be fixed by the Council at the time that such sidewalk shall be ordered in and the Council shall have authority to require either that the entire width of the sidewalk be paved or that a grassplot of width specified by the Council be left unpaved directly inside the curb line. Provided: in any case where a property owner obtains a permit under the 8th section of this ordinance²⁶ to construct or reconstruct or repair a sidewalk on his own initiative, the Borough Manager in issuing the permit for such work shall specify the width of such sidewalk. (Ordinance 1308, December 12, 1956, Section 5, as amended by Ordinance 1469, September 9, 1965)

Section 77. Observance of Line and Grade. All sidewalks and curbs shall be constructed, reconstructed and repaired and the grading therefor done upon the line and grade obtained by the property owner from the Borough Manager and not otherwise. Upon notice, as provided in Section 1 of this ordinance,²⁷ such work of construction, reconstruction or repair shall be done by the owner of such property. (Ordinance 1308, December 12, 1956, Section 6, as amended by Ordinance 1469, September 9, 1965)

Section 78. Duty of Manager; Inspection of Work. It shall be the duty and responsibility of the Borough Manager to determine, in the case of any individual property, whether or not the sidewalk and/or curb shall be reconstructed or repaired and if so, the specific part or parts thereof to be reconstructed or repaired in accordance with guidelines set by Borough Council. The Manager may at any time during the course of the work of constructing, reconstructing or repairing any sidewalk or curb visit the site of such work to ascertain whether such work is being done according to requirements and he or one of his assistants shall visit any such site for such purpose whenever requested by the property owner. Within two (2) days after the completion of the work of construction, reconstruction or repair of any sidewalk or curb it shall be the duty of the owner of the property where such work was done to notify the Borough Manager of that fact so that he may inspect such sidewalk to determine whether the grade thereof has been observed and followed. (Ordinance 1308, December 12, 1956, Section 7, as amended by Ordinance 1469, September 9, 1965)

Section 79. Authority for Property Owners to Construct, Reconstruct or Repair Sidewalk Voluntarily. Any property owner, upon his own initiative and without notice from any Borough authority may construct, reconstruct or repair a sidewalk in front of or along his property provided that he shall

26. Section 79 of this chapter.

27. Section 71 of this chapter.

first make application to the Borough Manager and shall conform to the requirements of this ordinance and specifications adopted thereunder as to line and grade and as to materials used and as to manner of constructing, reconstructing or repairing such sidewalk, and that he shall also notify the Borough Manager as required by Section 7 of this ordinance²⁸ within two (2) days after completion of the work. (Ordinance 1308, December 12, 1956, Section 8, as amended by Ordinance 1469, September 9, 1965)

(a) Any owner of property zoned as Commercial, which has never had sidewalk installed or is not required to construct sidewalk by action of Borough Council, upon his own initiative and without notice from any Borough authority, may construct a sidewalk of approved bituminous concrete material in front of or along his property, provided that he shall first make application to the Borough Manager and shall conform to the requirements of this ordinance^{28.1} and specifications adopted thereunder as to line and grade and as to materials used and as to manner of construction, and that he shall notify the Borough Manager within two (2) days after completion of the work. (Ordinance 1308, December 12, 1956, Section 9(a), as added by Ordinance 1483, March 10, 1966)

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BE CONC.

Section 79.1 Authority for Borough to Repair or Replace Sidewalk and Collect Cost Plus 10%. Upon the neglect of any owner of lots to comply with the requirements as provided in Section 1 of this ordinance,^{28.2} the Borough Manager may, after 30 days' notice, cause the repairing or replacing of sidewalk at the cost of such owner and may collect the cost thereof and ten per centum (10%) additional, together with all charges and expenses from such owner and may file a municipal claim therefor or collect the same by action in assumpsit.

All such notices shall be served upon the owner of the premises to which the notice refers if such owner is a resident of the Borough. If the owner is not a resident, then the notice may be served upon the agent or tenant of the owner, or upon the occupant of such premises. If the owner has no agent or tenant or there is no occupant of such premises, then service shall be by notice posted upon the premises. (Ordinance 1308, December 12, 1956, Section 9, as added by Ordinance 1469, September 9, 1965)

Section 79.2 Repair of Dangerous Conditions on Sidewalks. When, in the opinion of the Borough Manager, a dangerous condition exists on a sidewalk that can be repaired by an expenditure of not more than fifty dollars (\$50), the Borough Manager can proceed to have the necessary repairs made after a notice to make the repairs within forty-eight (48) hours shall be served upon the owner of the property. If the owner cannot be served within the county, notice may be served upon the agent of the owner, or the party in possession, or if there is no agent or party in possession, the notice may be served by posting the same upon the said premises.

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- 28. Section 79 of this chapter.
 - 28.1 Sections 71 to 79.3 of this chapter.
 - 28.2 Section 71 of this chapter.

Upon the completion of the work, the cost thereof shall be a charge against the owner of the property and shall be a lien until paid upon the abutting property, provided a claim is filed therefor in accordance with the law providing for the filing and collection of municipal claims. Any such charge may also be collected by action of assumpsit. (Ordinance 1308, December 12, 1956, Section 10, as added by Ordinance 1469, September 9, 1965)

Section 79.3 Work Done by Borough Employes or Private Contractor; Resolution of Council Required for Certain Sidewalk Repairs. The Borough Manager shall be authorized to cause such work to be performed as before mentioned^{28.3} by either municipal employes or through entering into an agreement with a private contractor to perform the work. The cost shall be a charge against the owner of the property according to the provisions heretofore^{28.4} mentioned and shall not exceed \$600.00 for any one property.

Mandatory sidewalk repairs on a single property costing in excess of \$600.00 shall require a resolution by Borough Council authorizing the work to be performed. (Ordinance 1308, December 12, 1956, Section 11, as added by Ordinance 1469, September 9, 1965)

Section 80. Proceedings to Change Width and Location of Sidewalks. The Council of the Borough of Ellwood City, by a majority vote of the entire membership of the said Council may change the location of any sidewalk upon any of the public streets or highways of the said Borough, they may change or vary the width of any such sidewalk from the width now required by the ordinances of the said Borough, upon a petition in writing signed by the owner or owners of any property abutting on the sidewalk desired to be relocated, or the width thereof changed, such relocation or change of width shall be made only by Council when it may deem it best to make such change, and the said changes may be permitted by the said Council for a limited time only, after which time the Council may require the said sidewalks relocated and reconstructed so as to conform to the general ordinances of the Borough of Ellwood City pertaining to the construction of sidewalks. Any permission by action of the said Council to any person or persons, or parties to change the location or width of any sidewalk, as herein provided shall not be any precedent or any limit upon the Council of the said Borough to refuse such permission to any other petitioners, but each petition shall be acted upon and determined solely upon its own merits, and without the consideration of any other party or sidewalk.^{28.5} (Ordinance 631, June 9, 1925, Section 1)

28.3 In Sections 79.1 and 79.2 of this chapter.

28.4 In Sections 79.1 and 79.2 of this chapter.

28.5 Section 2 of this ordinance provided that any ordinances or parts of ordinances of the Borough, so far as the same may be in conflict with the provisions of this ordinance, when acted upon by the Council of the Borough, as provided in this ordinance, were to become, to such extent only, void.

B. Removal of Snow and Ice From Sidewalks

Section 91. Owners and Occupants of Property to Remove Snow and Ice From Sidewalks. The owner, occupant or tenant of every property fronting upon or alongside of any of the streets in the Borough of Ellwood City is hereby required to remove or cause to be removed from all of the sidewalks in front of or alongside of such property all snow or ice thereon fallen or formed, within ten (10) hours after the same shall have ceased to fall or to form. Provided: Snow or ice that has ceased to fall or to be formed after six o'clock of any evening may be removed at any time before ten o'clock of the next morning. Provided further: The owner of a property shall be responsible for conforming to the requirements of this section where such property is occupied by such owner or is unoccupied or vacant; the tenant or occupier thereof, where such property is occupied by such tenant or occupier only; and the owner thereof where such property is a multiple-business or multiple-dwelling property, occupied by more than one tenant or occupier. (Ordinance 1309, December 12, 1956, Section 1)

Section 92. Authority for Borough to Remove Snow and Ice and Collect Cost and Additional Amount. In any case where the owner, occupant or tenant, as aforesaid, shall fail, neglect or refuse to comply with any of the provisions of the first section of this ordinance²⁹ within the time limit prescribed therein, the Borough authorities may proceed immediately to clear all snow and/or ice from the sidewalk of such delinquent, and to collect the expenses thereof, with any additional amount allowed by law, from such owner, occupant or tenant, as the case may be, which may be in addition to any fine or penalty imposed under the third section of this ordinance.³⁰ (Ordinance 1309, December 12, 1956, Section 2)

Section 93. Penalty for Violation. Any owner, occupant or tenant who shall fail to remove any snow or ice from any sidewalk, as required by the first section of this ordinance,³¹ shall, upon conviction thereof before the Burgess or any Justice of the Peace of the Borough, be sentenced to pay a fine of not more than ten dollars (\$10.00) and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment in the County Jail for not more than ten (10) days. Provided: such fine and costs of prosecution may be in addition to any expenses and additional amounts authorized by law, imposed as provided in the second section of this ordinance.³² (Ordinance 1309, December 12, 1956, Section 3)

29. Section 91 of this chapter.

30. Section 93 of this chapter.

31. Section 91 of this chapter.

32. Section 93 of this chapter.

ELLWOOD CITY POLICE DEPARTMENT

525 LAWRENCE AVENUE

ELLWOOD CITY, PENNSYLVANIA 16117

SEP 2 9 50 AM '80

RECEIVED
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION



JACK SNARE
MAYOR

OFFICE 758-7564
RES. 758-6815

ANTHONY DECARBO
CHIEF OF POLICE

OFFICE 758-7239
RES. 758-7564

To: Borough Manager

Date: July 28, 1980

From: Chief of Police

[Handwritten signature]
Here is the data you requested in regards to vehicular and pedestrian traffic at the different Railroad Crossing in the Boro. The pedestrian count is not a true and accurate count since, the number of people using these crossings would increase while, school is in session due to the fact a number of students use these crossings going back and forth to school.

Also included is the accident frequency you requested. If there are any problems or questions do not hesitate to call me.

PA. PUBLIC UTILITY COMMISSION	
DOCKET NO. <u>C-80041953</u>	FOLDER NO. _____
<u>City of Ellwood City</u> EXHIBIT NO. <u>B</u>	
HEARING AT <u>Ellwood City</u>	DATE <u>8/14/80</u>
REPORTER <u>Arden B. Myers</u>	

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FOLDER

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SEP 2 1980
[Handwritten initials]

ELLWOOD CITY POLICE DEPARTMENT

525 LAWRENCE AVENUE

ELLWOOD CITY, PENNSYLVANIA 16117

JACK SNARE
MAYOR

OFFICE 758-7564
RES. 758-6815

ANTHONY DeCARBO
CHIEF OF POLICE

OFFICE 758-7239
RES. 758-7564



TO: Chief of Police

DATE: July 21, 1980

FROM: Lt. Gilchrist

SUBJECT: Crossings in Ellwood City

A. Accidents

I ran a check of our records for any accidents at or near these crossings.

1) Sixth (6th) Street Crossing	Total	4
2) Fifth (5th) Street Underpass	"	1
3) Second(2nd) Street Overpass	"	7

These totals are for the last five (5) years. (1975 through 1979)

I don't see any clear pattern of accidents or causes of accidents at any of these crossings or intersections.

I do see a few factors which I feel may be a contributing factor to accidents in these areas.

1) Sixth (6th) Street Crossing

The uneven sets of tracks in this area have on many occasions done damage to the undercarriage of many vehicles along with minor injury to the occupants of a few vehicles.

2) Fifth (5th) Street Underpass

The continual leaking of water from the overhead makes both the sidewalk and street very slippery in the colder months.

This could cause vehicles to skid and pedestrians to slip and fall in these areas.

Since part of this area is a grade, it tends to make it more dangerous

than it would be if it were level.

3) 2nd Street Overpass

This overpass on the South side intersects with Crescent Ave just as it levels out coming down off the overpass.

This tends to make pulling out onto 2nd St. From Crescent Avenue a situation where your sight distance is limited to the top of the overpass.

This gives those vehicles pulling out onto 2nd Street from Crescent Avenue very little advance warning as to when other vehicles are approaching.

NOTE: I see no feasible way to eliminate this situation short of removing the overpass and making this a regular crossing or making this state highway a one way street. (West Bound). This would also necessitate re-routing the South bound traffic on PA 65 South and 288 East.

I would also like to bring out that the North side of the overpass is in considerable need of paving. A good majority of traffic traveling South bound is driving over into the North bound lane of traffic as they proceed up the overpass in order to bypass the rough pavement in this area.

There was also a traffic count run in these areas for a 24 hour period each. These are the dates and total number of vehicles using these crossings.

1) 6th St.	5,129	17th to 18th	July 80
2) 5th St.	13,295	16th to 17th	"
3) 2nd St.	8,242	15th to 16th	"

ELLWOOD CITY POLICE DEPARTMENT

525 LAWRENCE AVENUE
ELLWOOD CITY, PENNSYLVANIA 16117

JACK SNARE
MAYOR

OFFICE 758-7564
RES. 758-6815

ANTHONY DeCARBO
CHIEF OF POLICE

OFFICE 758-7239
RES. 758-7564



TO: CHIEF OF POLICE

DATE: JULY 20, 1980

FROM: LT. GILCHRIST

SUBJECT: ACCIDENTS, 5th St., 6th St.,
2nd St.

For the year of 1975

6th Street Crossing	Total	0
5th Street Underpass	Total	1
2nd Street Overpass	Total	3

For the year of 1976

6th Street Crossing	Total	1
5th Street Underpass	Total	0
2nd Street Overpass	Total	0

For the year of 1977

6th Street Crossing	Total	2
5th Street Underpass	Total	0
2nd Street Overpass	Total	2

For the year of 1978

6th Street Crossing	Total	0
5th Street Underpass	Total	0
2nd Street Overpass	Total	0

For the year of 1979

(1979)

6th Street Crossing	Total	1
5th Street Underpass	Total	0
2nd Street Overpass	Total	2

TRAFFIC COUNT

5th Street	16th to 17th July	13,295
2nd Street	15th to 16th July	8,242
6th Street	17th to 18th July	5,129

RVG/nlm

ELLWOOD CITY POLICE DEPARTMENT

525 LAWRENCE AVENUE

ELLWOOD CITY, PENNSYLVANIA 16117

JACK SNARE
MAYOR

OFFICE 758-7564
RES. 758-6815

ANTHONY DECARBO
CHIEF OF POLICE

OFFICE 758-7239
RES. 758-7564



To: Chief of Police

Date: July 24, 1980

From: Patrolman Bucci

On July 24, 1980 between the hours of 1200 and 1300 a pedestrian count was held, the results are as follows. North bound on the west side of 2nd St. 2 pedestrians. North bound on the east side of 2nd St. 2 pedestrians. South bound on the west side of, 2nd St. 0 pedestrians. South bound on the east side of 2nd St. there was 1 pedestrian.

DIRECTION	SIDE OF 2ND ST.	#OF PEDESTRIANS
1. North	West	2
2. North	East	2
3. South	West	0
4. South	East	1

ELLWOOD CITY POLICE DEPARTMENT

525 LAWRENCE AVENUE

ELLWOOD CITY, PENNSYLVANIA 16117

JACK SNARE
MAYOR

OFFICE 758-7564
RES. 758-6815

ANTHONY DECARBO
CHIEF OF POLICE

OFFICE 758-7239
RES. 758-7564



To: Chief of Police

Date: July 23, 1980

From: Patrolman Bucci

From 1200 hrs. to 1300 hrs. on Wednesday the 23rd day of July 1980, a count of pedestrians at 5th St. near Beaver Ave. was conducted by the undersigned officer. The results of that count is as follows. Traveling north on the west side of 5th St. thirty pedestrians were counted. Traveling north on the east side of 5th St. a count of sixteen pedestrians were counted. There were twenty-six pedestrians headed south on the west side of 5th St. The count of pedestrians traveling south on the east side of 5th St. were sixteen.

Direction of Travel	side of 5th St.	# of pedestrians
1. north	west	30
2. north	east	16
3. south	west	26
4. south	east	16

Patrolman M. Bucci

ELLWOOD CITY POLICE DEPARTMENT

525 LAWRENCE AVENUE

ELLWOOD CITY, PENNSYLVANIA 16117

JACK SNARE
MAYOR

OFFICE 758-7564
RES. 758-6815

ANTHONY DECARBO
CHIEF OF POLICE

OFFICE 758-7239
RES. 758-7564



TO: CHIEF OF POLICE

DATE: JULY 18, 1980

FROM: PTL. LOVICH

SUBJECT: PEDESTRIANS CROSSING
6th ST. R.R. CROSSING

Count taken between the hours of 1500 and 1530 hours
and again between 1610 hours and 1630 hours on July 18, 1980
the following number of pedestrians crossed the crossing:

WESTSIDE (north bound)	2
WESTSIDE (south bound)	0
EASTSIDE (north bound)	6
EASTSIDE (south bound)	<u>1</u>
TOTAL.....	9

ENGINEER DEPARTMENT
AGREEMENT FILE NO. **3463**
CORRESPOND FILE NO. **479-55Z**

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SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

AGREEMENT

MADE and entered into this 16 day of July, 1930, between the BOROUGH OF ELLWOOD CITY, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter called the "Borough"), by _____ and _____, party of the first part; THE BALTIMORE AND OHIO RAILROAD COMPANY, a corporation organized and existing by and under the laws of the State of Maryland, and its affiliated company, the Pittsburg and Western Railroad Company (hereinafter called the "Baltimore Companies"), parties of the second part; THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a corporation organized and existing by and under the laws of the Commonwealth of Pennsylvania (hereinafter called the "Lake Erie Company"), party of the third part, and THE NATIONAL TUBE COMPANY, a corporation organized and existing by and under the laws of the State of New Jersey (hereinafter called the "Tube Company"), party of the fourth part;

WHEREAS the parties hereto are of opinion that if the highway bridge at Second Street in the Borough of Ellwood City, crossing above grade over the tracks, property and rights of way of the Baltimore Companies, the Lake Erie Company and the Tube Company, which said bridge has become unsafe and is too narrow for modern highway traffic, be replaced by a new bridge, to be constructed at the same location, with modern wide highway approaches, capable of accommodating highway traffic safely and expeditiously, then and in that event it will not be necessary to open Third Street in said Borough across said tracks, property and rights of way, at grade, for a period of at least five years from the date hereof; and

AGREEMENT FILE NO. **3463**
CORRESPOND FILE NO. **479-55Z**

*PAID Ellwood City 66.1 1.175.1.28.583.67 PL
14.170.35 ED 110521931 940 C33676*

PA. PUBLIC UTILITY COMMISSION	
DOCUMENT NO. <u>C-80041953</u>	FOLDER NO.
<u>Bro</u>	EXHIBIT NO. <u>1</u>
HEARING AT <u>Ellwood City</u>	DATE <u>8/14/80</u>
REPORTER <u>Charles Keyes</u>	

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WHEREAS the parties hereto have agreed to cause the reconstruction of said bridge and approaches, the expense of which is to be borne proportionately between the parties hereto and under certain terms and conditions; and

WHEREAS plans and specifications for the said reconstruction have been prepared by the Baltimore Companies and approved by the proper officers of all of the parties hereto, specifically setting forth the details of the said bridge and approaches, designated and referred to as follows, the originals of which are on file in the offices of each of the parties hereto:

1. Baltimore and Ohio drawing #22045-C entitled "Bridge 363-A, Ellwood City, Pennsylvania, General Plan," prepared in the office of Engineer of Bridges of The Baltimore and Ohio Railroad Company, Baltimore, Maryland, under date of March 2, 1927;

2. Baltimore and Ohio drawing #22905-A entitled "Bridge 363-A, Ellwood City, Pennsylvania, Profile," prepared in the office of Engineer of Bridges of The Baltimore and Ohio Railroad Company, Baltimore, Maryland, under date of September 8, 1928;

and

WHEREAS the parties hereto have agreed upon a total estimate of one hundred and thirty-two thousand dollars (\$132,000) as the sum necessary to complete the desired improvement, including bridge structure estimated at eighty-five thousand dollars (\$85,000), bridge approaches estimated at thirty-five thousand dollars (\$35,000) and property and property damage estimated at twelve thousand dollars (\$12,000) and have agreed upon the allocation of various portions of the total estimate and the division of work contemplated among themselves;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That, in consideration of the mutual promises herein contained, the parties hereto do covenant and agree to and with each other as follows:

1. The Borough will, at its own sole cost and expense, acquire all property necessary for and pay all property damage incurred in the construction of a highway bridge carrying Second Street in the Borough of Ellwood City over and across the tracks, property and rights of way of the parties of the second, third and fourth parts hereto, in accordance with plans and specifications hereinafter referred to.

2. The Borough, subject to the approval of the second, third and fourth parties, will let the contract or contracts for the construction of the approaches to the said bridge at both ends thereof, and will send monthly and final statements to the other parties in the proportions hereinafter set forth.

3. The Baltimore Companies, subject to the approval of first, third and fourth parties, will let the contract or contracts for the construction of the bridge itself, will pave the bridge floor, and will send monthly and final bills and statements to the other parties in the proportions hereinafter set forth.

4. The parties hereto will pay all monthly and final statements rendered by the Borough and the Baltimore Companies for the proportion of the work done by them, within thirty (30) days of receipt of such statements covering the total actual cost of the construction of the bridge and its approaches, estimated to be one hundred twenty thousand dollars (\$120,000), in the following proportions:

(a) The Borough will pay one-fourth ($1/4$) of the total actual cost.

(b) The Baltimore Companies will pay sixty-six and one-tenth ($66\frac{1}{10}$) per cent. of the remaining three-fourths ($3/4$) of the total actual cost of construction, which said proportion, except by written consent of the Baltimore Companies, shall in no

event exceed the sum of fifty-nine thousand four hundred ninety dollars (\$59,490).

(c) The Lake Erie Company will pay thirteen and six-tenths (13-6/10) per cent. of the remaining three-fourths (3/4) of the total actual cost of construction, which said proportion, except by written consent of the Lake Erie Company, shall in no event exceed the sum of twelve thousand two hundred forty dollars (\$12,240).

(d) The Tube Company will pay twenty and three-tenths (20-3/10) per cent. of the remaining three-fourths (3/4) of the total actual cost of construction, which proportion, except by written consent of the Tube Company, shall in no event exceed the sum of eighteen thousand two hundred seventy dollars (\$18,270).

5. Upon completion of the bridge structure and its approaches, the Borough will at its own sole cost and expense be responsible for all work and expense involved in the maintenance and renewal of street paving throughout the length of the bridge and its approaches, and the other three companies, to-wit, the Baltimore Companies, the Lake Erie Company and the Tube Company will each at its own sole cost and expense be responsible for the work and expense involved in the maintenance and renewal of the bridge structure (exclusive of street paving as aforesaid) over their respective properties, tracks and rights of way.

6. It is understood and agreed by and between the parties hereto that this agreement shall be considered binding and effective upon all of the parties hereto as soon as it has been approved by the Public Service Commission of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties to this agreement each

have hereto affixed their respective corporate seals, duly attested by their proper respective officers, the day and year first above written.

Approved as to form:
 [Signature]
 GENERAL ATTORNEY
 ASSISTANT PRES. & CHIEF ENGINEER
 APPROVED
 [Signature]

BOROUGH OF ELLWOOD CITY

By [Signature]
President of Council

Attest: [Signature]
Secretary

THE BALTIMORE AND OHIO RAILROAD COMPANY

Attest: [Signature]
Secretary

By [Signature]
Vice President
PITTSBURGH AND WESTERN RAILROAD COMPANY

Attest: [Signature]
Secretary

By [Signature]
Vice President
THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY

Attest: [Signature]
SECRETARY

By [Signature]
VICE-PRESIDENT
NATIONAL TUBE COMPANY

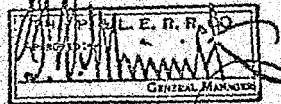
Attest: [Signature]
Assistant Secretary

Vice Pres.

4/11/30
[Signature]

4/12/30
[Signature]

4/13/30
[Signature]



Elroy
APPROVED
[Signature]
GENERAL MANAGER

[Signature]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 17665

BOROUGH OF ELLWOOD CITY

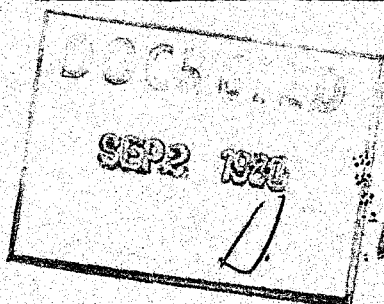
v.
THE BALTIMORE AND OHIO RAILROAD COMPANY,
PITTSBURGH AND WESTERN RAILROAD COMPANY,
THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY,
NATIONAL TUBE COMPANY, DEPARTMENT OF
HIGHWAYS OF THE COMMONWEALTH OF PENNSYLVANIA
and COUNTY OF LAWRENCE

ORDER

BY THE COMMISSION, SEPTEMBER 3, 1963:

On June 25, 1962, after careful review of the evidence presented in the Borough of Ellwood City's complaint proceeding alleging, inter alia, that the retaining walls supporting the highway approaches to the existing rail-highway crossing, above grade, were dangerous, we found that corrective or remedial measures were necessary or desirable to prevent collapse of the walls or the development of a serious hazard to the users of the highway.

We also found that under the state of the record as it then existed it would be impossible for the Commission to make a just, reasonable, and definitive order disposing of all engineering problems, as well as the questions of responsibility of the various parties in regard to the repair and future maintenance of the crossing. In that order, we directed (1) that Borough of Ellwood City make a comprehensive engineering investigation or study to determine the physical condition and safety of the retaining walls supporting the highway approaches to the bridge and the general nature, extent, and estimated cost of all work, if any, required to place the walls in a safe and satisfactory condition; (2) that the borough prepare such detailed construction plans as may be required to carry out the work recommended in the engineering report and investigation; (3) that a copy of the engineering report, plans, and estimate be furnished to the Commission and to all parties of record; and (4) that upon completion of the



- 1 -

PA. PUBLIC UTILITY COMMISSION	
DOCKET NO. <u>C-5004953</u>	FOLDER NO. _____
<u>B & O</u>	EXHIBIT NO. <u>2</u>
HEARING AT <u>Ellwood City</u>	DATE <u>8/14/80</u>
REPORTER <u>Arline B. Kiger</u>	

investigation, plans, and estimate, the case is scheduled for further hearing to receive the new data into evidence and to receive additional testimony on the performance of work and the allocation of the costs of the work, including engineering costs incident to the construction and maintenance of the entire rail-highway crossing project.

The borough has complied with the provisions of our order; further hearing has been held, briefs filed, and the matter is now before us for final decision and order.

Complainants' Exhibit No. 9, admitted at the hearing of March 20, 1963, is a detailed report of the engineering investigation conducted by Peter F. Luftus Corporation, Design and Consulting Engineers, retained by the Borough of Ellwood City to make a comprehensive study and recommendations for repair of the present structure.

The report leaves little doubt that the westerly wall of the southerly ramp is in a critical condition and that unless corrective measures are taken in the immediate future, the complete collapse of this structure is imminent. According to the report, the wall has developed numerous cracks, some minor shrinkage cracks and some serious structural breaks extending the full height and thickness of the wall. The wall has rotated about its base and has moved or tipped outwardly away from the sidewalk and roadway which it supports. Actual measurements show that at one location the wall is now approximately $9\frac{5}{8}$ inches out of plumb. Based upon the detailed inspection of conditions in the field and a thorough structural analysis of the loads and over-turning force acting upon the wall, the consulting engineers reasonably conclude that the failure of this retaining wall is a direct result of excessive foundation pressures under the toe caused by the combined effect of heavy truck loads on the fill behind the wall and high hydrostatic pressures for which the wall was never designed.

The analysis shows that if the soil behind the wall is dry and there are no heavy traffic loads on the roadway, the wall is

quite stable and the bearing pressure on the underlying soil at the toe of the foundation is within the supporting capacity of the soil. If a heavy truckload is placed on the roadway; and the soil remains dry, the wall is still reasonably stable against overturning but the pressures exerted on the foundation increase to approximately 3-1/2 tons per square foot which is just about the maximum that the soil can support without yielding or change in the soil structure.

If, as a result of prolonged precipitation or other causes, the soil behind the wall becomes saturated, or even partially so, the pressure on the wall will be greatly increased. The engineering analysis shows that for an assumed condition of partial saturation (a relatively modest 50 per cent) foundation pressures for the two sections of the wall investigated would increase to approximately 7-1/2 tons per square foot for the lower section and 11-1/2 tons per square foot for the higher section. These pressures are greatly in excess of the safe capacity of the soil under the foundation.

To eliminate the excessive hydrostatic pressures on walls designed to support only normal earth pressures, it is sound engineering practice to provide adequate drains; weep holes, or other means of removing the water from behind the walls.

According to available plans, the existing structure supposedly provided weep holes through the walls at the elevation of the top of the footing at 20-foot intervals along the wall but, unfortunately, no provision was made to conduct the trapped water to the drains.

The consulting engineers found convincing evidence that as a result of percolation or seepage of water through cracks in the sidewalk and roadway into the fill behind the wall and the lack of adequate drainage to remove the trapped water, the soil from time to time becomes saturated, thereby creating the high hydrostatic pressures on the wall which in turn produced excessive foundation pressures, yielding of the underlying strata and tipping or rotating of the wall.

It is important to note that the consulting engineers found, by actual measurement, that in the relatively short period between July 10, 1962 and March 13, 1963, one section of the westerly wall had tipped or moved at least one-half inch more than the adjacent wall. As the wall rotates out of plumb, the center of gravity of the structure is shifted away from the fill and the ability of the structure to resist the normal forces imposed upon it are seriously reduced. Thus the condition of the wall becomes progressively worse.

After considering numerous factors such as cost, interference with traffic, general inconvenience to the borough, effectiveness of alternate remedies, and even replacement of the walls, the consulting engineers recommend that, to correct the existing conditions, effective steps be taken to provide adequate and proper drainage of the soil back of the wall and thereby eliminate the cause of the high hydrostatic pressures on the structure. The consulting engineers presented detailed methods and procedures to accomplish this and estimated the entire cost, exclusive of engineering and contingencies, of correcting the westerly wall of the south ramp at \$10,700.

According to the consultant's report, the recommended repairs would not restore the existing walls to their original alignment and plumb position. However, safe and stable conditions would be assured at only a fraction of the cost of replacing the walls by new construction. The report also sets forth that, since only one wall has reached the stage wherein it is a definite impending hazard, temporary safety could be obtained by presently limiting the corrective work to this wall. The other wall could be watched for signs of distress and steps taken in time to prevent hazardous conditions from developing. However, the consultants are careful to point out that an offset or movement of approximately 4-1/2 inches now exists at one point on the opposite wall supporting the easterly side of the south ramp and that the corrective measures recommended for the westerly wall should also be applied to the easterly wall in the near future.

The engineers found that the two walls which support the northerly ramp are in "rather good shape" although there was some evidence of a slight movement or adjustment of the walls and sidewalks adjacent thereto. They recommended that steps be taken to insure that water does not penetrate and saturate the fill behind the wall. It is the opinion of the consultants that if this is done carefully and any breaks that may subsequently develop in the seal be repaired promptly, then nothing more need be done to these walls at the present time but that they should be checked periodically for any possible movement.

In addition to their detailed inspection and analysis of the retaining walls, the consulting engineers observed the general physical condition of the substructure and superstructure of the existing bridge. This observation revealed that the abutments and the bridge superstructure were generally in good condition. However, due to the accumulation of dirt and other foreign matter, the expansion joints on the abutments are clogged or frozen and, as a result thereof, the concrete sidewalk and possibly the backwalls had been damaged. Also, some disintegration and spalling of the concrete has occurred on the underside of the sidewalk slabs exposing the steel reinforcement bars. At some places the concrete forming the caps of the retaining walls has disintegrated badly.

Although at the initial hearing held in this proceeding, an engineer witness for the Department of Highways testified that before desirable corrective measures can be taken "it will be necessary to make an engineering study of these conditions to arrive at the most feasible method of making immediate repairs or reconstruction"; another well qualified professional engineer testifying in behalf of the department at the final hearing of March 20, 1963, stated that the department has reviewed the report of the consulting engineers, that the department has not been ordered by the Commission to prepare a report or plan for the alteration of the existing crossing and "is not in a position to make any of its own recommendations." The witness further

testified that "inasmuch as the department is not responsible for any maintenance outside of the curb lines in this area, the Department of Highways does not wish to criticize the consultant's recommendations."

At the original hearing, an engineering witness of The Baltimore and Ohio Railroad Company testified that the existing retaining walls were not then dangerous but could become so in the future, that remedial or corrective measures should be taken in the near future and that "someone should make a detailed study, yes."

Notwithstanding this testimony, another senior engineer of the respondent railroad company testified at the final hearing of March 20, 1963, that "The Baltimore and Ohio Railroad Company has reviewed the report of the consulting engineer, and has no comments or criticisms to offer thereon, and is of the opinion that any remedial measures are not its responsibility."

The Pittsburgh & Lake Erie Railroad Company, which owns only a right of way, and has no tracks beneath the existing bridge, does not take exception to the findings of the borough's consulting engineers insofar as they relate to the cause of the unsatisfactory condition of the retaining walls. However, the railroad company's engineer does not agree with the corrective measures recommended by the consultants. A structural engineer of the railroad company testified at the hearing of March 20, 1963 that a reference line should be established from which accurate measures to the wall should be taken for a period of one year and that if in that time the movements are appreciable, then approximately 22 weep holes, costing approximately \$450, should be drilled throughout the entire wall to remove the entrapped water. Should the wall continue to move after the weep holes are drilled, the carrier's engineer recommended that tie rods be placed across and beneath the highway to tie the walls together and prevent any additional outward movement. It is estimated by the engineer that the installation of sufficient tie rods to do a satisfactory job would cost approximately \$2,800.

A commissioner of Lawrence County testified at the final hearing held March 20, 1963 that the commissioners had reviewed the report of the borough's consulting engineers but had no comments either for or against the report.

The complainant and the respondents all deny responsibility for the maintenance of these walls and it is quite clear from the evidence that none of the parties, with the exception of the borough and The Pittsburgh & Lake Erie Railroad Company, displayed much concern about the ultimate safety and the needed repairs to the structure.

Based upon all the evidence, including the results of the engineering investigation and the testimony of the borough's consulting engineer, we are convinced that the westerly retaining wall, and to a lesser degree, the easterly wall, of the south ramp are in a critical condition and that unless adequate and effective measures are completed at an early date, complete failure or collapse of the walls could occur which would not only endanger the public but would be costly to reconstruct. Furthermore, since the recommendations for the necessary corrective measures made by the borough's consulting engineers, after a thorough study of the problem, appear to be reasonable and sound and since none of the parties, except The Pittsburgh & Lake Erie Railroad Company, has taken exception to these recommendations, we will order them completed at the earliest practicable date and will allocate the costs thereof between the parties as justice and equity require.

The complainant and respondents are not agreed as to the party or parties legally responsible for the maintenance of the existing retaining walls which form a necessary and integral part of the entire rail-highway crossing, above grade.

The history of the construction and maintenance of the existing rail-highway crossing, above grade, is set forth in detail in our order of June 25, 1962. However, for clarity, the relevant portions thereof will be repeated here:

The existing bridge was constructed in 1931 in accordance with the provisions of an agreement dated July 16, 1930 between Borough of Ellwood City, The Baltimore and Ohio Railroad Company, The Pittsburgh & Lake Erie Railroad Company, and National Tube Company. This agreement, which was approved by The Public Service Commission of the Commonwealth of Pennsylvania on September 9, 1930 at Municipal Contract No. 5422-1930, provides, inter alia, that the borough would, at its sole cost and expense, acquire all property necessary for and pay all property damages incurred in the construction of the bridge; that the borough, subject to approval of the other parties to the contract, would let the contract or contracts for the construction of the approaches to the said bridge; and that The Baltimore and Ohio Railroad Company, subject to approval of the other parties, would let the contract or contracts for the construction of the bridge itself and pave the bridge floor.

The agreement also provides that the borough will pay one-fourth of the total construction cost of the bridge and approaches, which total construction cost was estimated to be \$120,000; that The Baltimore and Ohio Railroad Company would pay $66\frac{1}{10}$ per cent of the remaining three-fourths of the total actual cost of construction; The Pittsburgh & Lake Erie Railroad Company would pay $13\frac{6}{10}$ per cent of the remaining three-fourths; and that National Tube Company would pay $20\frac{3}{10}$ per cent of the remaining three-fourths of the total actual cost.

Paragraph 5 of the agreement is the only portion of the contract relating to the future maintenance and repair of the improvement and provides "***upon completion of the bridge structure and its approaches, the borough will, at its sole cost and expense, be responsible for all work and expense involved in the maintenance and renewal of street paving throughout the length of the bridge and its approaches, and the other three companies, to wit, The Baltimore and Ohio Railroad Company, The Pittsburgh & Lake Erie Railroad

Company, National Tube Company will each at its own sole cost and expense be responsible for the work and expense involved in the maintenance and renewal of the bridge structure (exclusive of street paving as aforesaid) and their respective properties, tracks and rights of way."

At the time of the construction of the bridge, Second Street in the Borough of Ellwood City was not on the state highway system and Department of Highways was not a party to the agreement. However, pursuant to the Act of June 1, 1945, P.L. 1242, Article VII, Paragraph 701, Second Street was made a part of the State Highway System and the Department of Highways has, since the effective date of this act, paved the highway between curbs throughout the length of the bridge.

Neither the complainant nor the respondents are willing to perform any of the necessary work or to bear any of the cost incident thereto.

The Borough contends that the contract of 1930, under which the bridge was constructed, does not mention the maintenance or repair of the retaining walls and that the only responsibility of the borough pursuant to this contract is for the maintenance and renewal of the street paving throughout the length of the bridge and the approaches thereto. The borough also contends that pursuant to the Act of June 1, 1945, P.L. 1242, which placed Second Street on the state highway system, the Department of Highways has paved the highway between curbs throughout the length of the bridge and the approaches and inasmuch as the retaining walls are an integral and necessary part of the state highway itself, Department of Highways should be required to maintain the walls.

Department of Highways is willing to assume the responsibility of all work and expense involved in the maintenance and renewal of the highway pavement throughout the length of the bridge but contends that the remainder of the rail-highway crossing should be maintained in accordance with the agreement of 1930 which was approved by

The Pittsburgh & Lake Erie Railroad Company, which has owned a right of way at the location of the bridge for over 50 years but has never constructed or maintained tracks thereon, contends that, under the agreement it is responsible for the maintenance and renewal of that portion of the bridge structure, exclusive of street paving, over its right of way; that it has maintained and kept in good repair this portion of the bridge; that a careful reading of the contract discloses that none of its provisions is directed to the maintenance, repair, or reconstruction of the retaining walls; that without any tracks or facilities located on its right of way beneath the bridge, the carrier receives no benefit from the bridge and that justice and fair play require that the railroad company be protected from any expense of repairing or maintaining the retaining walls.

The Baltimore and Ohio Railroad Company and its affiliate, Pittsburgh and Western Railroad Company, also contend that under the terms of the aforesaid contract, they are responsible only for the maintenance and renewal of that portion of the bridge, exclusive of street paving, over their tracks and right of way; that by eliminating the sloping embankment and thus reducing the amount of damages payable by the borough under the contract, the retaining walls were of primary and direct benefit to the borough and that the clear intent of the said contract was to place the responsibility for their maintenance upon the borough.

County of Lawrence contends that the existing condition of the retaining walls is a result of faulty construction and maintenance, that the county was not a party to the construction of the bridge nor had it any duties in connection with the maintenance thereof and that no burden should be placed upon the county for the correction of a situation over which it had no notice or control.

We have carefully reviewed all the facts of this case and have given due consideration to the pleadings of the complainants and the respondent and are of the opinion that justice and equity require that Borough of Ellwood City, County of Lawrence, The Baltimore and Ohio Railroad Company, The Pittsburgh & Lake Erie Railroad Company, and Department of Highways each bear a reasonable portion of the cost of restoring the retaining walls to a safe and satisfactory condition for public use.

Furthermore, since the parties are not agreed as to their respective responsibilities for the present and future maintenance of this important rail-highway crossing, above grade, it is necessary and proper for the future safety of the public that a definitive order issue clearly setting forth the responsibility of the parties in respect thereto. Accordingly, we will allocate the future maintenance of the crossing between the parties as best seems just and reasonable.

It should be noted here that the contract between some of the respondents with respect to the maintenance of the bridge does not bind the Commission in allocating the costs of this improvement. Every such agreement is entered into subject to the lawful exercise of the police power of the Commonwealth. The Commission may, under the Public Utility Law, allocate the costs of the improvement, leaving the parties thereafter to secure such reimbursement as they may be entitled under their contracts; Pittsburgh and Lake Erie Railroad Company v. Public Service Commission, 75 Pa. Super. 282; Pennsylvania R. R. Co. v. Pennsylvania Public Utility Commission, Pa. Superior Court, June 26, 1939.

Upon full consideration of the matters and things involved, we find and determine that the existing rail-highway crossing, above grade, will become dangerous unless adequate repairs or corrective measures are completed in the immediate or near future and that the alteration or reconstruction of the existing concrete retaining walls supporting the southerly approach thereto generally in accordance with the recommendations contained in complainant's Exhibit No. 9,

is necessary or proper for the prevention of accidents and to promote the safety of the public; THEREFORE,

IT IS ORDERED:

1. That the instant complaint be and is hereby sustained.

2. That the existing rail-highway crossing in the Borough of Ellwood City, Lawrence County, where Second Street (State Highway Route 315) crosses above the grade of the tracks of Pittsburgh and Western Railroad Company (owned and operated by The Baltimore and Ohio Railroad Company) and the right of way of The Pittsburgh & Lake Erie Railroad Company be altered or reconstructed generally in accordance with the recommendations of the borough's consulting engineers as contained in the report and investigation admitted of record at the hearing of March 20, 1963, as complainant's Exhibit No. 9, which report is hereby approved and made part hereof.

3. That Borough of Ellwood City furnish all material and do all work necessary to alter and repair the existing easterly and westerly concrete retaining walls supporting the southerly highway approach to the existing bridge generally in accordance with the recommendations of its consulting engineers as contained in the report of the investigation admitted of record as complainant's Exhibit No. 9; said work to include all necessary renewals, repairs, and/or replacement of the parapet rails, sidewalks, curbs, and roadway paving adjacent to the altered retaining walls.

4. That The Baltimore and Ohio Railroad Company furnish all material and do all work required to repair and/or restore to a safe and satisfactory condition all disintegrated or damaged portions of the sidewalk slabs, including the upper and lower surfaces thereof, the concrete abutments, back walls, pier and expansion dams, sidewalk railings, curbs and roadway paving located on the entire bridge structure, including the portions thereof located on or over the property and right of way of National Tube Company and The Pittsburgh & Lake Erie Railroad Company.

5. That during the time the borough and the railroad company are altering and/or repairing the existing bridge structure and the approaches thereto, in accordance with this order, Department of Highways cooperate with the borough and the railroad company and, at its sole cost and expense, establish and maintain such detours or temporary routes as may be required to accommodate properly traffic using the highway at this location.

6. That The Baltimore and Ohio Railroad Company, at its sole cost and expense, furnish and maintain any construction inspectors, watchmen, or flagmen required to protect its facilities and operations during the time the rail-highway crossing project is being constructed in accordance with this order.

7. That any relocation of, changes in, or removal of any adjacent structures, equipment, or other facilities of any public utility, other than The Baltimore and Ohio Railroad Company, Pittsburgh and Western Railroad Company, and The Pittsburgh & Lake Erie Railroad Company, located within the limits of any highway, which may be required as incidental to the execution of the improvement, be made by said public utility, at its sole cost and expense, and in such manner as will not interfere with the construction of the improvement.

8. That any relocation of, changes in, or removal of any adjacent structures, equipment, or other facilities of any public utility, other than The Baltimore and Ohio Railroad Company, Pittsburgh and Western Railroad Company, and The Pittsburgh & Lake Erie Railroad Company, located beyond the limits of any highway, which may be required as incidental to the execution of the improvement, be made by said public utility in such manner as will not interfere with the construction of the improvement.

9. That Borough of Ellwood City cooperate with The Baltimore and Ohio Railroad Company so that in the alteration of the existing rail-highway crossing, above grade, the operation of the railroad company's facilities will not be endangered or unnecessarily impeded.

10. That Borough of Ellwood City furnish all material and do all work necessary to complete the remainder of the improvement in a satisfactory manner, including the repair, alteration, or installation of such facilities as may be required to provide proper drainage of the highway approaches to the existing rail-highway crossing, above grade.

11. That all work necessary to complete the rail-highway crossing project be done in a manner satisfactory to this Commission on or before May 30, 1964, and that on or before said date Borough of Ellwood City and The Baltimore and Ohio Railroad Company each report to this Commission the date of actual completion of its respective portion and, at the earliest practicable time subsequent to said date of completion, submit to this Commission a detailed statement of the actual cost incurred by it in furnishing material and in performing work in compliance with this order.

12. That Borough of Ellwood City pay all compensation for damages, if any, due to the owners, exclusive of The Baltimore and Ohio Railroad Company, The Pittsburgh & Lake Erie Railroad Company and Pittsburgh and Western Railroad Company, for property taken, injured, or destroyed by reason of the alteration and repair of the existing crossing, above grade, in accordance with this order.

13. That The Baltimore and Ohio Railroad Company pay Borough of Ellwood City, when and as certified by Pennsylvania Public Utility Commission, a sum or sums of money equal to 20 per cent of the actual cost incurred by said borough in furnishing material and in performing work in compliance with numbered paragraphs 3 and 10 of this order.

14. That The Pittsburgh & Lake Erie Railroad Company pay Borough of Ellwood City, when and as certified by Pennsylvania Public Utility Commission, a sum or sums of money equal to 5 per cent of the actual cost incurred by said borough in furnishing material and in performing work in compliance with numbered Paragraphs 3 and 10 of this order.

15. That Department of Highways pay Borough of Ellwood City, when and as certified by Pennsylvania Public Utility Commission, a sum or sums of money equal to 60 per cent of the actual cost incurred by said borough in furnishing material in performing work in compliance with numbered paragraphs 3 and 10 of this order.

16. That County of Lawrence pay Borough of Ellwood City, when and as certified by Pennsylvania Public Utility Commission, a sum or sums of money equal to 10 per cent of the actual cost incurred by said borough in furnishing material and in performing work in compliance with numbered paragraphs 3 and 10 of this order.

17. That The Pittsburgh & Lake Erie Railroad Company pay The Baltimore and Ohio Railroad Company, when and as certified by Pennsylvania Public Utility Commission, a sum or sums of money equal to 15 per cent of the actual cost incurred by said Baltimore and Ohio Railroad Company in furnishing material and performing work in compliance with numbered paragraph 4 of this order.

18. That Borough of Ellwood City bear the entire cost incurred by it in preparing the comprehensive engineering investigation or study in compliance with numbered paragraph 1 of our order issued June 25, 1962, in this proceeding.

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 per cent 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.

22. That, upon completion of the improvement and its opening to public use, Department of Highways, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the remainder of the rail-highway crossing, above grade, including the roadway paving between curbs on the existing bridge and highway approaches thereto and including the concrete retaining walls located on each side of the highway on both approaches to the bridge.

23. That this order, insofar as it imposes alteration, construction and/or maintenance cost upon The Baltimore and Ohio Railroad Company, is without prejudice to the right of said Baltimore and Ohio Railroad Company to recover from The Pittsburgh & Lake Erie Railroad Company, the Borough of Ellwood City, and National Tube Company part or all of such costs in accordance with any legal agreement between the parties.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

(signed) Joseph Sharfsin

Chairman

ATTEST:

William P. Ryan
Secretary

SEP 2 6 51 AM '11

THIS AGREEMENT, made this seventh day of August, 1911, between the Borough of Ellwood City, a municipal corporation of the State of Pennsylvania (hereinafter termed the "Borough"), party of the first part, and the BALTIMORE AND OHIO RAILROAD COMPANY, a corporation of the State of Maryland (hereinafter termed the "Railroad Company"), party of the second part, WITNESSETH:

WHEREAS, the Railroad Company operates the Pittsburgh and Western Railroad Company and through it operates the Ellwood Short Line Railroad Company, which latter Company is the owner of a railroad running through the Borough; and

WHEREAS, it is to the mutual advantage of the parties hereto that the grade at Fifth Street in the Borough be altered and the said street be paved and improved, that a subway be built on Fifth Street under the tracks of the Ellwood Short Line Railroad Company and under a track operated by the Pittsburgh and Lake Erie Railroad Company, and that a bridge be built from a point opposite the northern end of Fifth Street, extending across intervening property and the Connequenessing Creek to the Borough of Hazel Dell, as hereinafter set forth;

NOW, THEREFORE, it is agreed as follows:

FIRST, The Railroad Company agrees to construct in substantial accordance with the plans hereinafter enumerated, and which plans are made a part hereof, a subway on Fifth Street leading under said railroad tracks, at a cost to be ascertained in a manner hereinafter provided, one-half of which cost the Borough agrees to pay to the Railroad Company on monthly estimates rendered within fifteen days after presentation and approval of said estimates by the Borough Engineer.

SECOND, The parties to this agreement shall advertise for bids for the construction of the said subway, including the sewer to be constructed therewith, and the necessary excavating and grading in the change of the grade of the said Fifth Street, and the bids, when received, shall be opened by the engineers representing both of the parties hereto, and tabulated and the contract let to the lowest responsible bidder or bidders.

THIRD, The sewer leading from the said subway, as shown upon plan of proposed Fifth Street and Locust Way Storm also plan for profiles of same and both of which plans are hereinafter mentioned, shall not be less than thirty-six inches in diameter, but the said Borough shall have the right to have a larger sewer constructed by paying the total difference between the cost of the thirty six inch sewer and the larger sewer that the Borough may hereafter decide to construct.

Fourth: The construction of the said subway shall include the construction of the sewer above mentioned and the lowering of the sanitary sewer on Fifth Street and Spring Avenue, and the grading of Fifth Street from Lawrence Avenue to Spring Avenue, made necessary by the said improvement, and the grading, paving and curbing of the Street in and under the subway and construction of sidewalks on that portion of Fifth Street lying between Chestnut Way and the north right of way line of the Railroad Company.

FIFTH: The Borough agrees that it will have Fifth Street graded, paved and curbed, and proper sidewalks constructed (in the same manner and using same character of material as used in subway) from Lawrence Avenue to Glen Avenue without expense to the Railroad Company other than that designated in the fourth paragraph of this agreement.

DOCUMENT FOLDER

PA. PUBLIC UTILITY COMMISSION	
DOCKET NO. 8004953	FOLDER NO.
Bro	EXHIBIT NO. 3
HEARING AT Ellwood City	DATE 8/14/11
REPORTER	William G. King

SIXTH: The Borough agrees that it will make every reasonable effort to have the County of Lawrence construct a suitable public bridge leading from the north end of Fifth Street and substantially at the grade thereof, to College Avenue in the Borough of Hazel Fell, and will maintain the said Fifth Street in a good and proper condition for travel, and use reasonable efforts to have all travel from the north of the Borough to be in and upon the said Fifth Street.

SEVENTH: The Borough agrees to indemnify and save harmless, the Railroad Company from all claims for property damages on account of the altering of the grade on Fifth Street, made necessary by the construction of the said subway, and the construction and lowering of said sewers, and the Railroad Company agrees to indemnify and save harmless, the said Borough from any claims for damages to the property of the Railroad Company on account of the construction of the said subway and the other improvements incident thereto.

EIGHTH: All of said work is to be done under the supervision of the Engineers of the first and second parties. All work required to be done by both parties hereto shall be promptly begun after the execution of this contract, and shall be pushed to completion with all reasonable speed and diligence. In case of any difference or dispute between the parties hereto as to how the work shall be performed, said difference shall be referred to the Chief Engineer of the National Tube Company, whose decision after hearing of both sides of the question, shall be final and conclusive between said parties.

NINTH: The plans above referred to are more particularly described as bearing the following file numbers and dates:

- A-Plan of Fifth Street and Locust Way Storm Sewer, Nov. 1910.
- B-Profile of " " " " " " " " " "
- C-Plan, Improvement of Fifth Street from Lawrence Ave. to Spring Ave. November 1910.
- D-Plan of lots of Ellwood City, August 1907.
- No. 14337, Oct. 7, 1910-General Plan-Fifth Street Bridge
- No. 7954, Dec. 26, 1910-Masonry Plan- " " "

Said plans to be further identified by the signatures of the Chief Engineer of the Railroad Company and the Engineer of the Borough.

TENTH: The covenants herein contained are mutual and are made by each party in consideration of those made by the other. It is intended and agreed that the rights and duties hereby created shall be binding upon and enure to the benefit of the parties hereto, their successors, lessees and assigns, respectively.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers and their corporate seals to be hereunto affixed the day and year first above written. Executed in duplicate.

Attest
E. B. Moyer
Secretary.

Borough of Ellwood City,
By J. A. Golbach

Attest
G. W. Wolford,
Secretary.

Baltimore and Ohio Railroad Co.
By D. Hillard

- A. V. T.
- J. L. S.
- J. I. McC.
- H. T.
- E. A. P.
- P. D.
- H. R. T.
- H. R. P.

RECEIVED

DEC 27 1982

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S OFFICE
Public Utility Commission

In re: C-80041953 State Representative Ralph D. Pratt vs.
The Baltimore and Ohio Railroad Company, Pennsylvania
Department of Transportation, Borough of Ellwood City,
Lawrence County, etc. Enforcement of the Commission's
Order, as regards the Fifth Street underpass. Hearing.

Transcript of Proceedings

December 15, 1982

Ellwood City, PA

at 10:45 o'clock a.m.
to 11:05 o'clock a.m.

Pages 176 to 189

DOCKETED
DEC 28 1982

MOHRBACH & MARSHAL, INC.
27 North Lockwillow Avenue
Harrisburg, PA 17112

Pittsburgh Office
412-261-2892

DOCKETED
FEB 11 1983

1 INDEX

2

3 WITNESSES DR. CR. REDR. RECR.

4 FOR: Respondent - B & O

5 William Begg. 180

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8 EXHIBITS

9 NO. WITNESS DESCRIPTION IDEN. OFFR. ADM.

10 4-A-D Begg Photographs 182 189
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11

12 MOTIONS

13 By Mr. Gallagher - Page 185

14 By Mr. Gafunkel - Page 188

15 (Note: Copies of Exhibit 4-A-D not filed with original
16 transcript as this reporter not in receipt of same. If
17 received, reporter will mail them to Commission.)
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1 (The hearing commenced at 10:45 o'clock a.m.)

2 ADMINISTRATIVE LAW JUDGE MICHAEL A. NEMEC: This
3 morning we have a case that's captioned State Representative
4 Ralph D. Pratt vs. The Baltimore and Ohio Railroad Company,
5 et al. It is now approximately 10:45 a.m. and we're holding
6 this hearing in the 2nd Floor Auditorium of the Municipal
7 Building in Ellwood City, Lawrence County. Present this
8 morning are Attorneys Stephen Dittman, representing the
9 Department of Transportation; Steven Garfunkel, representing
10 the Baltimore & Ohio Railroad Company; and John J. Gallagher,
11 representing the Commission Trial Staff. Representative
12 Pratt is not present nor is anyone from either the Borough
13 or the County. I've had contact with Representative Pratt's
14 office and have been advised that for some reason they were
15 not aware of the hearing, and apparently, other persons were
16 not aware. In any event, I've been also informed, both by
17 driving through the underpass prior to the hearing and seeing
18 that it had been painted, and also by an individual I talked
19 to in Representative Pratt's office, that a group of Ellwood
20 City volunteers apparently saw fit to paint the underpass
21 with white paint. Also, if he were present, Representative
22 Pratt would ask that the present complaint be dismissed
23 without prejudice on the basis that it is painted now. But
24 apparently, it is his position that he felt and feels that
25 the B & O should have painted it. That may well be his

1 position. In any event, he is not present, but my under-
2 standing is that the B & O does have some testimony to present.
3 Is that correct, Mr. Garfunkel?

4 MR. GARFUNKEL: Yes. We call Mr. William Begg as a
5 witness.

6 JUDGE NEMEC: Sir, were you previously sworn at the
7 other hearing?

8 MR. BEGG: Yes.

9 WILLIAM B. BEGG, called as a witness by the B & O
10 Railroad, having previously been duly sworn, was examined
11 and testified as follows:

12 JUDGE NEMEC: Let's have your full name first.

13 THE WITNESS: My name is William Begg. I work for the
14 Baltimore & Ohio Railroad. My business address is 12 Grant
15 Street, Pittsburgh, Pennsylvania.

16 DIRECT EXAMINATION

17 BY MR. GARFUNKEL:

18 Q. Sir, what is your title with the B & O?

19 A. I'm Engineer of Structures for the Pennsylvania
20 Division.

21 Q. What are your responsibilities in that position?

22 A. I'm in charge of construction and maintenance of
23 all structures including bridges and buildings and culverts.

24 Q. How many bridges do you have under your jurisdiction?

25 A. 1500.

1 Q. Are you familiar with the Order that the Commission
2 issued in the case that we're here about today?

3 A. Yes, I am.

4 Q. And are you familiar with the requirements concerning
5 the Fifth Street underpass?

6 A. Yes, I am.

7 Q. What were those requirements?

8 A. The requirements, we were ordered to paint the
9 Fifth Street underpass, which we believe we complied with the
10 Order by painting the structural steel.

11 Q. And when was that structural steel painted?

12 A. This summer. This last summer.

13 Q. Approximately June of 1982?

14 A. Yes, approximately, sir.

15 Q. What purpose is served by cleaning and painting
16 structural steel?

17 A. It's a protective coating on the steel to prevent
18 rust and deterioration, loss of section.

19 Q. What purpose would have been served by painting
20 concrete?

21 A. We feel that there is no benefit to painting
22 concrete.

23 Q. Did we paint the concrete portion of the bridge?

24 A. No, we did not.

25 Q. Have you become aware that that concrete has been

1 painted?

2 A. Yes, I am.

3 Q. When were you first made aware of that?

4 A. This morning. Approximately 9:30.

5 Q. Were you ever contacted by any representative of
6 the Borough of Ellwood City requesting permission to paint the
7 bridge?

8 A. No, I was not.

9 MR. GARFUNKEL: Mr. Examiner, we have photographs.
10 Unfortunatly, we don't have the requisite number for the
11 Commission and the parties. We can furnish them within the
12 next two or three days.

13 JUDGE NEMEC: That would be find.

14 MR. GARFUNKEL: The photographs which Mr. Begg is
15 handing me now will be marked as Respondent's collective
16 Exhibit 4, 4A-4D.

17 JUDGE NEMEC: These photographs will be marked as
18 B & O Exhibit 4, 4A-4D.

19 (Respondent, B & O Railroad, Exhibit 4, 4A-4D,
20 photographs, were so produced and marked for identification.)

21 Q. Mr. Begg, I'm handing you what has been marked for
22 identification purposes as Respondent's Exhibit 4. Will you
23 identify Exhibit 4.

24 A. This is a picture showing the south approach to
25 the Fifth Street underpass, showing the column steel on the

1 south edge of the bridge.

2 Q. Would you identify Exhibit 4A.

3 A. 4A is an additional picture of the south approach
4 to the underpass, just giving a general picture of the
5 substructure steel.

6 Q. And Exhibit 4B?

7 A. This exhibit is a closeup showing a column showing
8 the painting as it was completed. In addition, it shows the
9 painting of pier caps and the underside of the bottom flanges
10 of the girders on the superstructure.

11 Q. Exhibit 4C?

12 A. 4C is just another view of the column and caps and
13 the underside of the bottom flange of the girders of the deck.

14 Q. And Exhibit 4D.

15 A. 4D is an additional picture of the south approach
16 looking from east to west on the underside of the underpass
17 showing all phases of the steel that was painted.

18 Q. In addition to cleaning and painting the bridge in
19 June, was any other work performed by B & O forces?

20 A. Yes, we have a longitudinal deck joint that is
21 located in the center of the structure that runs from
22 abutment to abutment. We removed the ballast from the deck
23 and resealed this deck joint to prevent any further drainage
24 from the deck onto the roadway surface.

25 Q. Can you give us an approximation of the cost

1 expended by the B & O in performing this work?

2 A. An approximate figure for both labor and material
3 would be about \$10,000.00.

4 MR. GARFUNKEL: We have no further questions.

5 JUDGE NEMEC: Is it my understanding you intend to
6 submit 3 copies to the reporter?

7 MR. GARFUNKEL: That's right. We should have them
8 by Friday. We'll mail them out.

9 JUDGE NEMEC: Mr. Begg, when were these pictures taken?

10 MR. BEGG: These pictures were taken yesterday, Your
11 Honor. Tuesday, December 14th.

12 JUDGE NEMEC: They were taken after the concrete had
13 been painted then.

14 MR. BEGG: Yes, sir.

15 JUDGE NEMEC: Did the B & O do any painting underneath
16 the bridge? Or did it strictly do the columns and the caps.

17 MR. BEGG: Just the columns and caps, plus the underside
18 of the flanges. You can see the flanges that are on the
19 underside of the deck there, of the superstructure.

20 JUDGE NEMEC: Would you come up here and show me where
21 the flanges are, please.

22 MR. BEGG: These are the bottom side of the flanges
23 of the girders. We painted all steel that was exposed and
24 visible. These are the girders. This is the pier cap running
25 across.

1 JUDGE NEMEC: This has a very rough appearance, does it
2 not, on the flange bottoms?

3 MR. BEGG: The flanges are just the dark portions.
4 Between the flanges is concrete encasement.

5 JUDGE NEMEC: And was that painted by the volunteers
6 who did the painting?

7 MR. BEGG: It does not appear, sir, from what we saw
8 this morning that that was painted.

9 JUDGE NEMEC: What appears black in this photograph
10 then is the portion that the B & O painted.

11 MR. BEGG: B & O painted, that's right, sir.

12 MR. GALLAGHER: Your Honor, for the record, the
13 structure was inspected by Mr. Fleischer of the P.U.C. and
14 the structure was found, the work on the structure was found
15 to have been in compliance with our Order.

16 JUDGE NEMEC: Is Mr. Fleischer going to testify?

17 MR. GALLAGHER: Your Honor, due to the nature of the
18 proceedings today and the fact that the bridge has been
19 painted, I feel that we really have nothing more to add
20 except that I would move to have the complaint dismissed.

21 JUDGE NEMEC: I'll take your motion under advisement.
22 Do you have any questions for Mr. Begg?

23 CROSS-EXAMINATION

24 BY MR. GALLAGHER:

25 Q. Sir, why is concrete not painted on these structures?

1 A. We feel that there is no value to painting of
2 concrete other than just to prive a cosmetic effect,
3 architecturally change the color.

4 Q. The way the concrete members of this bridge are
5 located, would painting of those surfaces extend the useful
6 life of that concrete?

7 A. No, I do not feel it would.

8 MR. GALLAGHER: I have no further questions.

9 JUDGE NEMEC: Mr. Dittman, any questions?

10 CROSS-EXAMINATION

11 BY MR. DITTMAN:

12 Q. Mr. Begg, did you get any kind of permit from the
13 state to do work on the structure in that it involved a
14 legislative route? If you know.

15 A. I don't really know. I don't believe we did.

16 Q. Was there any safety problems you knew of at the
17 time the work was done? That is, the work you did.

18 A. No, as the work progressed we did work with the
19 city of Ellwood City and when it was necessary to be within
20 the lanes of the driving public, these were blocked off
21 during the time the painting was being done.

22 MR. DITTMAN: No further questions.

23 JUDGE NEMEC: Mr. Begg, in terms of the painting that's
24 been done by the volunteers from the Borough, would that
25 adversely affect the structure in any way?

1 MR. BEGG: I would not be aware of any adverse effect
2 to it, no, sir.

3 JUDGE NEMEC: Had the volunteers contacted you for per-
4 mission to paint at least the side walls?

5 MR. BEGG: No, sir, they did not.

6 JUDGE NEMEC: But had they contacted you for permission
7 to do that, to apply paint to the side walls, do you think
8 you would have been inclined to grant them permission?

9 MR. BEGG: Probably would have given permission with
10 the premise that we could see no benefit being done by it.

11 JUDGE NEMEC: Do you recall the testimony at the prior
12 hearing? You said earlier you attended the prior hearing.

13 MR. BEGG: Yes, sir.

14 JUDGE NEMEC: I didn't, but I read the transcript. Do
15 you recall testimony to the effect that some people thought
16 that the underpass was unusually dark and difficult, perhaps,
17 to see either pedestrians or other vehicles at certain times?

18 MR. BEGG: Yes, sir, I believe it was brought up.

19 JUDGE NEMEC: Would you agree or disagree that by
20 having the side walls painted white, it would increase the
21 amount of light available in that underpass and increase
22 visibility of pedestrians and other vehicles?

23 MR. BEGG: I believe this would be questionable. The
24 only way to truly improve the lighting situation in the
25 underpass would be to provide--

1 JUDGE NEMEC: --To provide lighting?

2 MR. BEGG: --to provide lighting to accommodate this.

3 JUDGE NEMEC: Has the B & O provided lighting under
4 any underpasses under any of its tracks that you're aware of?

5 MR. BEGG: We have not added lighting per se that I'm
6 aware of, sir.

7 JUDGE NEMEC: Any other questions of Mr. Begg?

8 (No Response.)

9 JUDGE NEMEC: Mr. Dittman, do you have a witness?

10 MR. DITTMAN: Your Honor, I have a witness but I'm not
11 sure there is any additional material he could add.

12 JUDGE NEMEC: All right. I take it nobody has anything
13 else to add.

14 MR. GARFUNKEL: Mr. Examiner, for the record, the
15 Respondent will be filing a supplementary motion concerning
16 the need for this hearing in the first place. We would like
17 to find out exactly when the Complainant knew that there was
18 no need for this hearing and why it is that when he knew there
19 was no need for this hearing a request was not made to dismiss
20 the complaint at that time so that all these parties who are
21 present today would not have been put to unnecessary expense.
22 That motion will be filed with the Commission.

23 JUDGE NEMEC: Fine. I suggest you put that in writing
24 and file it and serve it on all the parties.

25 MR. GARFUNKEL: We will.

1 JUDGE NEMEC: Any objection to B & O Exhibit 4, 4A-4D?

2 (No Response.)

3 JUDGE NEMEC: Without objection, B & O Exhibit 4,
4 4A-4D, is admitted into the record subject to the B & O
5 providing the court reporter with 3 copies of each of the
6 photographs.

7 (Hearing adjourned - 11:05 o'clock a.m.)

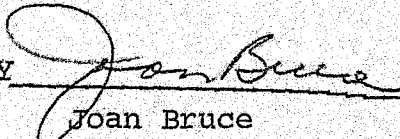
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10 CERTIFICATION

11 I, Joan Bruce, Court Reporter, duly qualified in and
12 for the Commonwealth of Pennsylvania, do hereby certify that
13 the foregoing typewritten pages contain a full, true and
14 correct transcription of my stenotype notes, taken upon the
15 occasion as set forth in the caption hereof, for the PENNSYL-
16 VANIA PUBLIC UTILITY COMMISSION, and as reduced to typewriting
17 under my direction.

18 MOHRBACH & MARSHAL, INC.

19
20 BY


Joan Bruce
Official Reporter



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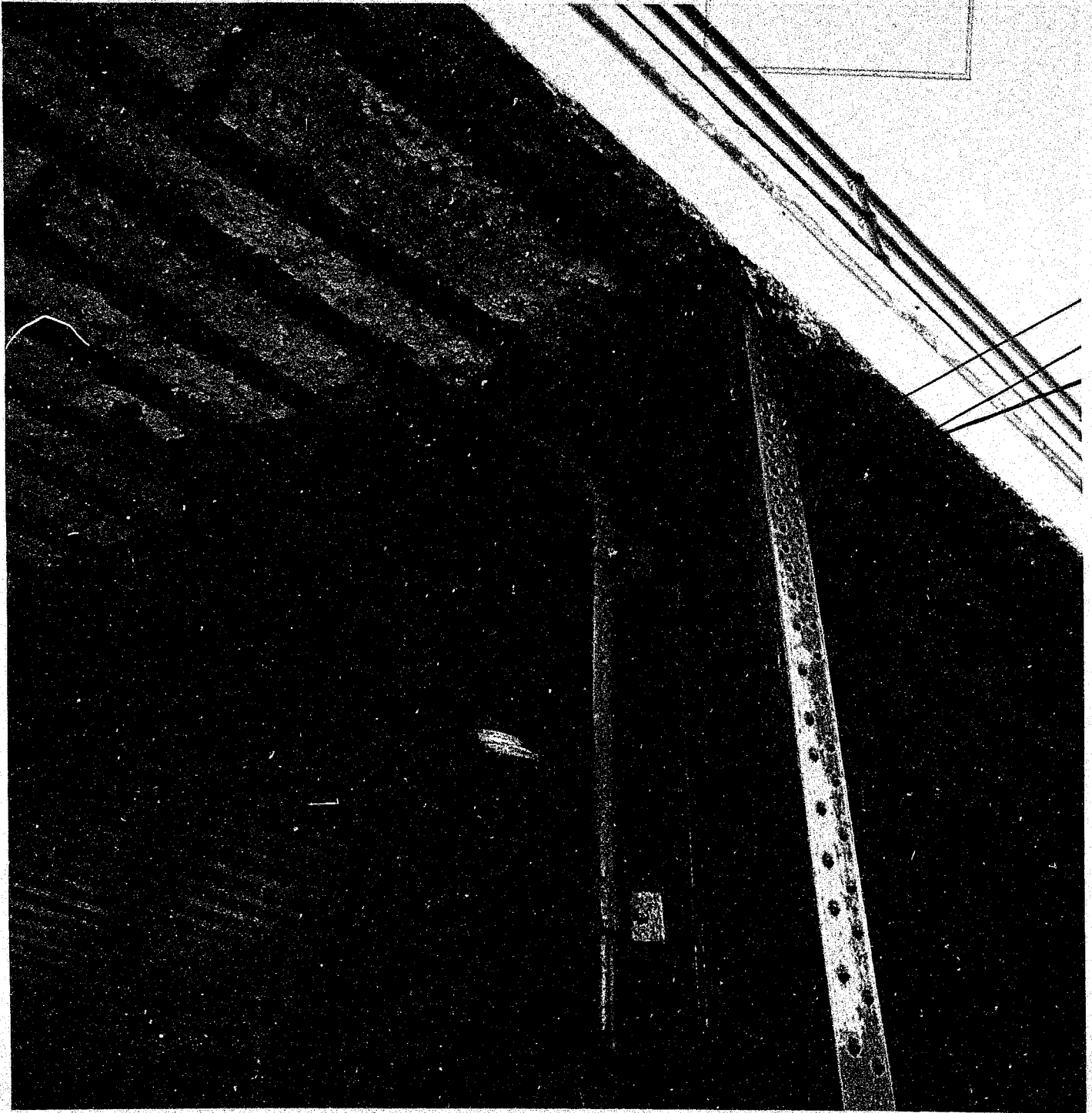
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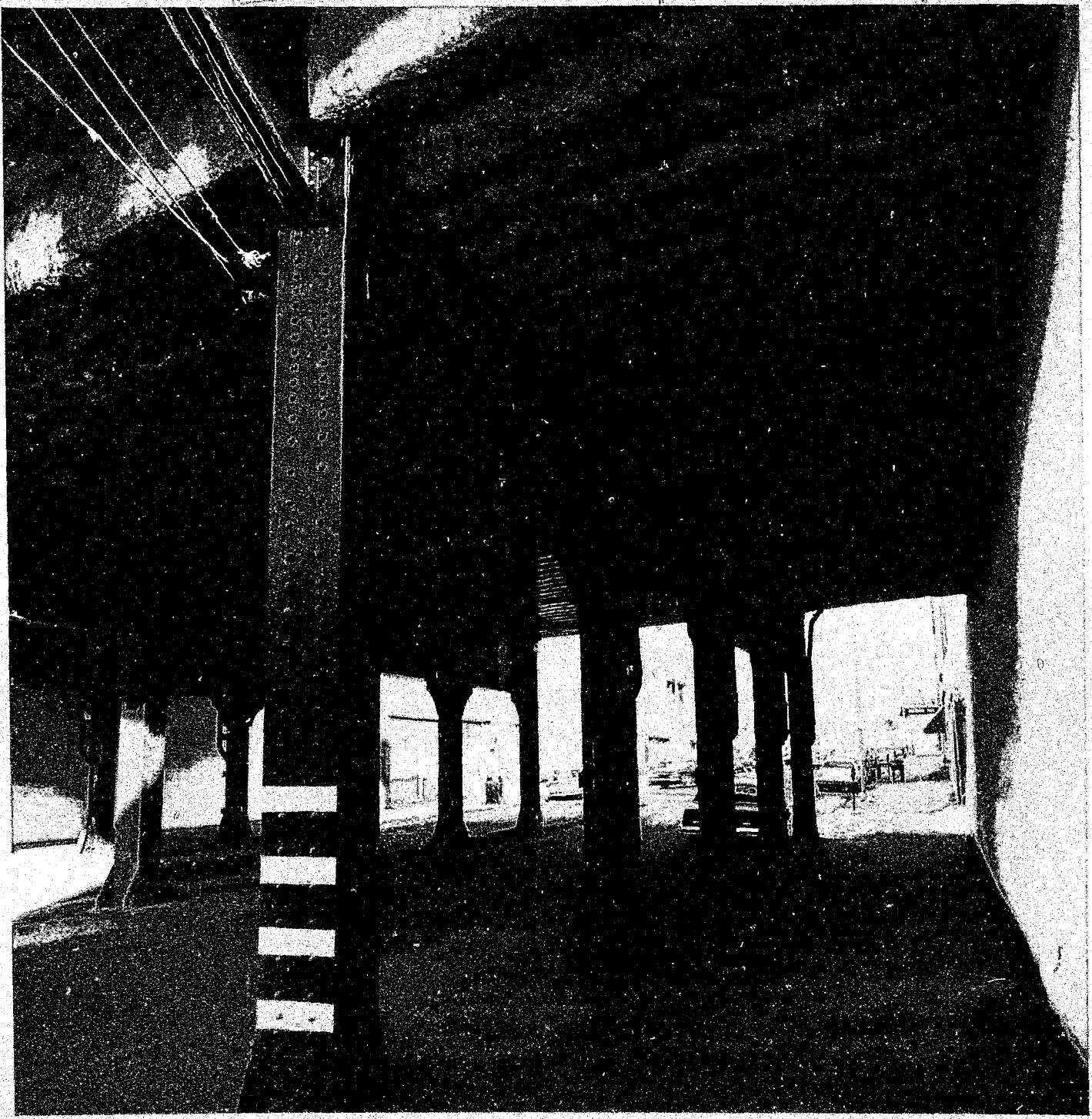
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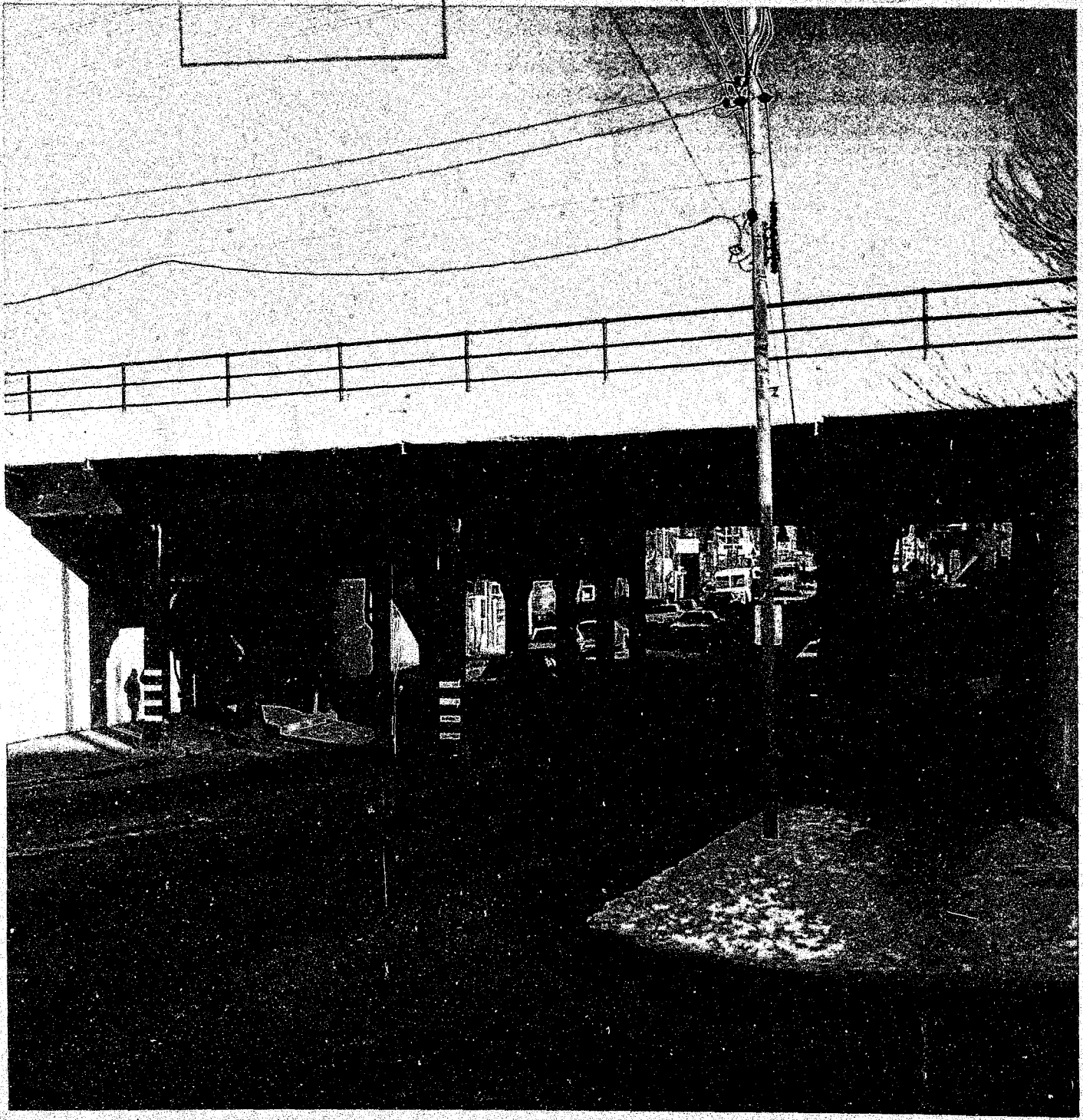
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