

1. <u>REPORT DATE:</u>	January 28, 1983	2. <u>BUREAU AGENDA NO.</u>	
3. <u>BUREAU:</u>	Rail Transportation		MAR-83-TR-32R
4. <u>SECTION(S):</u>		5. <u>PUBLIC MEETING DATE:</u>	March 2, 1983
6. <u>APPROVED BY:</u>	Director: R. A. Peteritas 3-5941: Supervisor:		
7. <u>MONITOR:</u>	Shanaman		
8. <u>PERSON IN CHARGE:</u>	Rank 7-2687		
9. <u>DOCKET NO:</u>	FFS-83-789 C 20070		

10. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

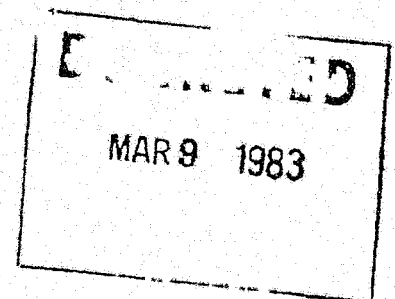
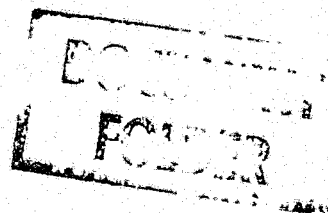
(a) Crossing AAR 140-6415. Installation of a high type modified rubber surface, at LR 23047, where a track of The Baltimore and Ohio Railroad Company crosses at grade in the borough of Darby in the County of Delaware.

(b) The improvements are to be installed under the Federal Highway Safety Act. 90% of the total cost is contributed by the FHWA and the remaining 10% by the Pennsylvania Department of Transportation.

(c) The Bureau of Rail Transportation recommends that the Commission ratify the action of the Director, Bureau of Rail Transportation, in approving and certifying the situation plan.

11. <u>MOTION BY:</u>	Commissioner Johnson	Commissioner Chr. Shanaman - Yes
		Commissioner Taliaferro - Yes
<u>SECONDED:</u>	Commissioner Cawley	Commissioner Jones - Yes

CONTENT OF MOTION: Staff recommendation adopted.



PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 20070

BOROUGH OF DARBY

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
DEPARTMENT OF TRANSPORTATION OF THE
COMMONWEALTH OF PENNSYLVANIA, SOUTHEASTERN
PENNSYLVANIA TRANSPORTATION AUTHORITY
AND COUNTY OF DELAWARE

EXTRA COPY

O R D E R

BY THE COMMISSION, FEBRUARY 20, 1974:

This matter is before us as a result of a complaint action filed June 29, 1973 by Borough of Darby, alleging that dangerous and hazardous conditions exist at the crossing, at grade, of the intersection of State Highway Route 23047 (Main Street) and Sixth Street, and the tracks of Southeastern Pennsylvania Transportation Authority, across the track of The Baltimore and Ohio Railroad Company, in the borough of Darby, Delaware County.

In the complaint, it is alleged that the at-grade crossing is hazardous and dangerous to all vehicular traffic and to pedestrians traversing the crossing, and as a result of such conditions, accidents have occurred causing personal injury and property damage to persons using Main Street.

The complainant requests that the railroad company be directed to eliminate the alleged dangerous condition, by the prompt repair of the crossing, at grade, and the continued maintenance of the crossing.

Southeastern Pennsylvania Transportation Authority, County of Delaware, The Baltimore and Ohio Railroad Company and Pennsylvania Department of Transportation each filed answer to the complaint, and a field conference, arranged by a Commission staff engineer and held August 24, 1973 at the site of the crossing, was attended by representatives of the above mentioned parties. Subsequently, the respondents entered testimony at the hearing held October 17, 1973. Leo F. O'Connor, a professional engineer for Pennoni Associates, Incorporated, engineer for Borough of Darby, testified at the hearing held October 17, 1973, that the track of the railroad company crosses Main Street, at an angle of approximately 45 degrees, and that traffic at the crossing is comprised of railroad trains, street cars, highway vehicles and pedestrians. Complainant's Exhibit No. 1, admitted at the hearing and consisting of a single sheet, is a sketch prepared by the Borough, showing the intersection of Main and Sixth Street, the two tracks of Southeastern Pennsylvania Transportation Authority (hereinafter referred to as SEPTA) and a single track of the railroad company. According to the borough's witness, concrete was placed between the tracks approximately one year ago, and within a short time thereafter, due to the movement of the track, the concrete had broken and had raised up. The concrete between the tracks is raised between three and four inches, which acts as a curb, and causes highway vehicular traffic to come to almost a complete stop. In addition, the curb-like effect of the raised concrete extends into the

pedestrian area. The raising of the concrete has created a hazard for vehicular traffic, in that there are several dips of three or four inches within the crossing area, and an accident-prone area for pedestrians, including school children, traversing the crossing.

In the opinion of the borough's witness, the concrete, which extends approximately two feet beyond each rail, has been lifted up by the vertical movement of the railroad track during the passage of freight trains. This has created an inadequate, unsafe crossing for trains, vehicles and pedestrian traffic. The witness testified that the area underneath the track, the track foundation, is the real basis for the problem, and in the opinion of the borough's witness, the crossing has a history of problems created by the failure of the area beneath the track, and some consideration should be given to the installation of a reinforced concrete base under the track structure, extending beyond the railroad track to stabilize the streetcar track connections.

In summary, the borough's witness testified that the crossing is dangerous at the present time, particularly to vehicular and streetcar traffic, because both have to come to an almost complete stop before crossing the train track, to avoid damage to the cars.

During cross-examination, the witness testified that the borough officials constantly receive the complaints arising from the condition of the crossing, and while it is not proper or practical for the borough to make foundation studies under the railroad track, its officials realize that there may be an overlap of responsibility. While they are not disposed to make improvements, they are not trying to shirk doing their share.

Mrs. Dolores P. Kirlin, Darby Borough Manager, testified, at the hearing held October 17, 1973, that she has held the position of borough manager and/or secretary for the past two years. The witness testified that there has been one accident in the last five year period, involving an automobile and a train, and three accidents reported to the borough which involved damage to automobiles in the crossing area. The witness testified further, that the crossing is slippery when it rains, and even more slippery during freezing weather. Even when the railroad company patches the crossing with black top material, the crossing remains rough because of the raised concrete, and according to the witness, the pot holes are most troublesome during periods of heavy rain. Because Main Street is the primary artery through the area, there is very heavy vehicular traffic during the peak hours, almost bumper to bumper, which is further slowed by having to stop at the railroad crossing.

The borough is willing to cooperate by providing police personnel during the time repairs are made, to handle detour traffic. In addition, the borough maintenance men are available to assist in making repairs. In fact, the borough maintenance crew presently does make emergency repairs, using black top material provided by the railroad company on a regular basis. In conclusion, the borough's witness testified that the intersection presently is in a hazardous, dangerous condition.

During cross-examination, the borough's witness testified that the crossing area does not drain readily, and is subject to water, or ice, laying in the crossing after rain storms are over.

Charles F. Sanders, Mayor of Borough of Darby, testified, at the hearing held October 17, 1973, that he has personal knowledge of the condition of the intersection at Sixth and Main Streets, and that at times the crossing has had holes as large as two feet in diameter and two feet in depth, that were repaired by the borough's street department. In addition, every time there is a snow storm, the area becomes icy and is very hazardous. The witness testified further that school children cross Main Street and the track at the same time, because it is the best possible way to cross, due to the angle of the tracks. In the opinion of the witness, the drains that were installed in 1968 are adequate to take care of the storm water during rain storms, and that the storm water does not run into the intersection. In conclusion, the witness testified that the intersection, in his opinion, is extremely dangerous with regard to all types of traffic.

James Anders, Division Engineer for The Baltimore and Ohio Railroad Company, testified at the hearing held October 17, 1973, that the railroad company has one track crossing the intersection of Main and Sixth Streets, at grade, over which approximately 24 freight train movements are operated daily. There are no scheduled passenger train movements.

crossing.

are required to permit the passage of streetcars over the install a timber crossing, not as long as the crossing frogs area. The witness testified that it was not feasible to maximum speed of trains is 30 miles an hour through this of the condition of the crossing frogs, although the authorized speed of 20 miles an hour through the crossing area, because witness testified that trains presently are operated at a During cross-examination, the railroad company's

area.

track, the crossing frogs, and the paving through the track existing agreement. The railroad company will maintain the will be borne by the railroad company and SEPTA, under an the cost of maintaining, or replacing the crossing frogs, could install a timber crossing. According to the witness, done, the crossing frogs could be removed, and the railroad were to be replaced by rubber tired vehicles. If this were cannot be changed physically, unless the streetcar service The witness testified that the present crossing

trains, during the past five year period.

at the crossing, involving highway vehicles and railroad the railroad company's witness, there have been no accidents railroad track at the same intersection angle. According to SEPTA are located in the body of Main Street, and cross the between curbs, and that two streetcar tracks operated by The plan also shows that Main Street is 34 feet in width, track crosses Main Street at an angle of 45 degrees 25 minutes. No. 1, consisting of a single sheet, shows that the railroad A plan, admitted at the hearing as B & O Exhibit

Frank Berdan, Manager-Operational Planning for Southeastern Pennsylvania Transportation Authority, testified, at the hearing held October 17, 1973, that SEPTA has no objection to the reconstruction of the crossing, and will make any necessary adjustments of its streetcar tracks to connect with the new crossing frog installation. In accordance with an agreement with the railroad company, SEPTA will agree to pay for 50 percent of the cost of the material furnished and work performed by the railroad company. According to the witness, SEPTA is concerned about the frequency of the complaint proceedings, and suggests that consideration be given to any measures which would prolong the life of the new installation.

The authority's witness testified that SEPTA is prepared to institute shuttle bus service during the construction period, so that maintenance of streetcar traffic will not be required.

During cross-examination, the transportation authority's witness testified that there are no plans to replace the trolley cars with rubber tired vehicles, in the foreseeable future, and that SEPTA plans to continue the use of streetcars to and through the borough of Darby.

John T. Salyer, Liaison Engineer for Pennsylvania Department of Transportation, testified at the hearing held October 17, 1973, that the average daily traffic on State Highway Route 23047 (Main Street) in the vicinity of the crossing consists of 10,710 highway vehicles of all types, with an expected growth of three percent a year.

the manufacturer.

of the crossing after new crossing frogs are delivered by repairs, at its initial cost and expense, pending reconstruction party, and the railroad company agreed to schedule temporary interest of public safety. There was no objection from any

for the purpose of expediting emergency repairs, in the Department of Transportation, was held on February 1, 1974, representatives of the borough, railroad company, SEPTA, and arranged by a Commission staff engineer and attended by also is in need of interim repairs. Accordingly, a conference, that the crossing is not only in need of reconstruction, but was inspected by Commission staff engineers, who determined reconstruction. Pursuant to the public hearing, the crossing existing railroad-highway crossing, at grade, is in need of proceeding, and note that it is the consensus that the We have carefully reviewed the record in this

the cost of future maintenance. agree to assume any portion of the cost of construction or altered by reconstruction, but that the county does not that the county agrees that the involved crossing should be Counsel for Delaware County stated on the record matter of drainage.

responsibilities, but that he had not investigated the testified that the department is not aware of any drainage During cross-examination, the department's witness points within two feet of the rails in the crossing. responsible for maintenance of the crossing approaches, to improvements at the crossing, since the department is only will not agree to perform any work or assume any costs for The witness testified further that the department

Upon full consideration of the matters and things involved, we find and determine that the reconstruction of the crossing, at grade, of State Highway Route 23047 (Main Street) and the streetcar tracks of Southeastern Pennsylvania Transportation Authority across the track of The Baltimore and Ohio Railroad Company, in the borough of Darby, is necessary, in the interest of the safety, convenience and accommodation of the public. Accordingly, we will sustain the complaint and order immediate interim repairs, and also order the reconstruction of the railroad-highway crossing; further, we will allocate the costs and expenses of the construction, and also allocate the responsibilities of future maintenance; THEREFORE,

IT IS ORDERED:

1. That the complaint be and is hereby sustained.
2. That the crossing, at grade, where State Highway Route 23047 (Main Street) and two streetcar tracks of Southeastern Pennsylvania Transportation Authority cross a track of The Baltimore and Ohio Railroad Company, in the borough of Darby, Delaware County, be altered, to the extent hereinafter indicated.
3. That The Baltimore and Ohio Railroad Company, forthwith, at its initial cost and expense, to effect repairs required to insure the safety of the public traversing the crossing, furnish all material and do all work necessary to adjust the profile of its track for the full graded width of Main Street, to conform with the elevation of the abutting highway paving, and to restore the paving of the portion of the existing highway disturbed thereby.

altered, in accordance with this order.
service during the time the at-grade crossing is being repaired or

do all work necessary to institute and operate shuttle bus
Authority, having agreed to do so, furnish all material and
7. That Southeastern Pennsylvania Transportation

accordance with numbered Paragraphs 3 and 4 of this order.

with the railroad track, repaired and reconstructed in
its tracks, in the bed of Main Street, to connect properly
and do all work necessary to realign and adjust the grade of
Authority, at its sole cost and expense, furnish all material

6. That Southeastern Pennsylvania Transportation
order issued November 13, 1967, at Complaint Docket No. 18281,
in accordance with numbered Paragraph 3 of the Commission

through the Main Street-Sixth Street intersection, installed
18-inch diameter pipe drain located parallel to its track

all work necessary to clean and restore to full service the
at its initial cost and expense, furnish all material and do

5. That The Baltimore and Ohio Railroad Company,

start of such work.

with not less than seven (7) days advance notice of the

provide Borough of Darby and Department of Transportation
not in excess of 2-1/2 inches in width; and before doing so,

railhead and the adjoining highway surface, with flangeways
provide a smooth, solid surface between the outside of the

and for a distance of 24 inches beyond the rails, so as to
material or other suitable material, solid between the rails

crossing, at grade, and to pave the crossing with bituminous
all work necessary to rehabilitate and reconstruct the

at its initial cost and expense, furnish all material and do
4. That The Baltimore and Ohio Railroad Company,

8. That Borough of Darby, at its sole cost and expense, furnish all material and do all work necessary to clean and restore to full service the open-mouth type inlets, and the appurtenant drainage facilities, located in Sixth Street and in Main Street, adjacent to the at-grade crossing, installed in accordance with numbered Paragraphs 10 and 11 of the Commission order issued November 13, 1967, at Complaint Docket No. 18121.

9. 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 and Southeastern Pennsylvania Transportation Authority, which may be required as incidental to the alteration of the at-grade crossing, be made by said public utility at its sole cost and expense, and in such manner as will not interfere with the reconstruction of the crossing, and such relocated or altered facilities thereafter be maintained by said public utility.

10. That Borough of Darby and Department of Transportation, in cooperation with each other, furnish all material and do all work necessary to establish and maintain any detours that may be required to accommodate properly borough and highway traffic during the time the at-grade crossing is being altered or repaired.

11. That The Baltimore and Ohio Railroad Company furnish all material and do all work necessary to complete the remainder of the work necessary to alter the railroad-highway at-grade crossing, in accordance with this order.

of this order.

company, in compliance with numbered Paragraphs 3, 4 and 5 cost of material furnished and work performed by the railroad a sum or sums of money equal to 50 percent of the actual

and as certified by Pennsylvania Public Utility Commission, Authority pay The Baltimore and Ohio Railroad Company, when 15. That Southeastern Pennsylvania Transportation

alteration of the crossing, in accordance with this order.

for property taken, injured or destroyed by reason of the pay all compensation for damages, if any, due to the owners 14. That The Baltimore and Ohio Railroad Company

or unnecessarily impeded.

highway crossing, the movement of traffic will not be endangered each other so that during the alteration of the railroad-

of Darby and Department of Transportation cooperate with Southeastern Pennsylvania Transportation Authority, Borough 13. That The Baltimore and Ohio Railroad Company,

performed in accordance with this order.

of actual completion of its respective portion of the work, and Borough of Darby each report to the Commission the date Company, Southeastern Pennsylvania Transportation Authority

on or before said date, The Baltimore and Ohio Railroad

to this Commission on or before November 30, 1974, and that reconstruction of the crossing be done in a manner satisfactory

12. That all work necessary to complete the

16. That upon completion of the railroad-highway crossing improvement and its opening to public use, each non-carrier utility, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its respective facilities within the limits of the project.

17. That upon completion of the railroad-highway crossing improvement, The Baltimore and Ohio Railroad Company, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its track and other facilities located on its right-of-way, and to maintain at all times in a smooth and satisfactory condition, the crossing paving located within the track area, and for a distance of at least 24 inches beyond each rail at the crossing, at grade, altered in accordance with this order.

18. That upon completion of the railroad-highway crossing improvement, Southeastern Pennsylvania Transportation Authority, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its tracks and other facilities located within the highway approaches to the crossing.

19. That upon completion of the railroad-highway crossing improvement, Borough of Darby, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the Sixth Street approaches to the crossing, and to maintain in a clean and properly functioning condition, the open mouth inlets and appurtenant outlet drain pipes, located in Sixth Street and Main Street, in the vicinity of the crossing.

ORDER ENTERED:

ORDER ADOPTED: February 20, 1974

Secretary

ATTEST:

Chairman

(signed) George I. Bloom

PENNSYLVANIA PUBLIC UTILITY COMMISSION

20. That upon completion of the railroad-highway crossing improvement, Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway approaches to the crossing.

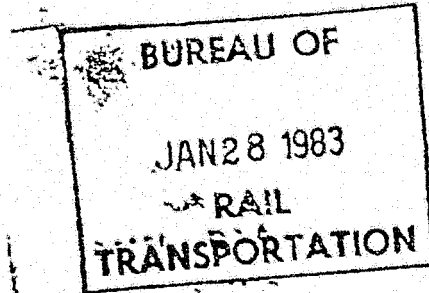
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Harrisburg
(717) 787-6934
January 27, 1983



IN REPLY REFER TO:

Delaware County
L. R. 23047
Borough of Darby
AAR No. 140 641 S
PUC C. 20070
Federal Aid Highway Act, 1976



Mr. R. A. Peteritas, P. E., Director
Bureau of Rail Transportation
Public Utility Commission
Harrisburg, PA 17120

Dear Mr. Peteritas:

Attached for your review and approval are four (4) copies each of a revised Situation Plan and corresponding Cost Estimate for the subject project.

This plan and estimate, submitted by The Baltimore and Ohio Railroad Company has been revised by this Department and we concur with the design, conditioned on agreements reached at the meeting held in Harrisburg.

Please return two (2) sets of each bearing your approval and certification. Upon receipt we will obtain funding approval from the Federal Highway Administration and subsequently notify the railroad to continue with design and ordering of material.

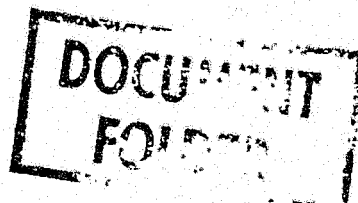
A detailed circuit plan will be submitted to you and your approval of same obtained prior to the start of construction.

Very truly yours,

KW Walker

For: Alfred F. Lyng, P. E.
Chief Highway Engineer

Attachments



BALTIMORE AND OHIO RAILROAD COMPANY
RAILROAD FORCE ACCOUNT ESTIMATE

SHEET NO. 1

LOCATION DARBY, PENNSYLVANIA DIVISION MARYLAND
DESCRIPTION REHABILITATE TRACK THROUGH GRADE CROSSING, RENEW RAIL CROSSING
WITH SEPTA, AND INSTALL TRACK SPAN RUBBER CROSSING AT LR 23047,
MAIN STREET (USDOT - AAR BO 140 641 S)
(AFE 23575)

ITEM

(1)	<u>PRELIMINARY ENGINEERING</u>		
	LABOR		
	<u>PLANS, ESTIMATES, MEETINGS, ETC</u>	\$	<u>1,200</u>
	SURCHARGE (<u>36.75</u> %)		<u>441</u>
	EXPENSES		
	<u>TRAVEL, TRANSPORTATION</u>		<u>250</u>
		TOTAL \$	<u>1,891</u>
(2)	<u>CONSTRUCTION AND INSPECTION ENGINEERING</u>		
	LABOR		
	<u>INSPECTION, SUPERVISION, LAYOUT, MEETINGS, ETC</u>	\$	<u>3,000</u>
	SURCHARGE (<u>36.75</u> %)		<u>1,103</u>
	EXPENSES		
	<u>TRAVEL, TRANSPORTATION</u>		<u>1,000</u>
		TOTAL \$	<u>5,103</u>
()	<u>SIGNAL WORK</u>		
	TEMPORARY		
	(Details Attached)	\$	
	PERMANENT		
	(Details Attached)	\$	
	AUTOMATIC PROTECTION, INTERLOCKING, ETC.		
	(Details Attached)	\$	
()	<u>COMMUNICATION WORK</u>		
	TEMPORARY		
	(Details Attached)	\$	
	PERMANENT		
	(Details Attached)	\$	

DOCKETED
FEB 7 1983
[Signature]

**DOCUMENT
FOLDER**

ITEM

DESCRIPTION - REHABILITATE TRACK, DRAINAGE WORK,
INSTALL TRACK SPAN RUBBER CROSSING

(3) LABOR.

Remove Existing Bituminous Crossing	288 MH	2,880
Remove Grouted Ballast to Bottom of Tie	288 MH	2,880
Renew Crossing Timbers (Track)	288 MH	2,880
Renew Crossing Timbers (B+B)	144 MH	1,620
Surface Track	192 MH	1,920
Drainage Work - Install + Clean Pipes - Clean Ditch	288 MH	2,880
Install Track Span Crossing	192 MH	1,920
Grout Crossing Area (B+B)	144 MH	1,620
Watchmen - Nights + Weekends (OT)	800 MH	12,000
	SUB TOTAL	30,600
Detour Signing (Contract)		8,000
	SUB TOTAL	38,600
SURCHARGE (40.25 %) exc. Contract		12,317
		TOTAL
		50,917

(4) MATERIAL

8" x 12" Bridge Ties	2.292 MBM @ 610	1,399
Cross Ties MT	52 Ea @ 15.50	806
Tie Plates	104 Ea @ 4.32	449
Tie Pads	254 Ea @ 0.60	152
Spikes	4 Keys @ 52.00	208
8" Perf G.C.M. Pipe	10 LF @ 3.00	30
Track - Span Crossing (Fel-Pro)		43,500
Grout	100 Bags	600
Sand	8 Tons	200
Ballast	100 Tons @ 2.75	275
	SUB TOTAL	47,218
HANDLING (5 %) exc. Ballast		2,367
		TOTAL
		49,985

DESCRIPTION

5) <u>EQUIPMENT</u>			
Dump Truck - 10 Ton	16 Days @ 75.00		1,200
Passenger Bus -	16 Days @ 36.00		576
Truck Under 1 Ton	16 Days @ 25.00		400
Truck 2 1/2 Ton	6 Days @ 35.00		210
Air Compressor 175 CFM	16 Days @ 32.00		512
Burro Crane - 15 Ton	16 Days @ 259.00		4144
Tamper + Liner	3 Days @ 433.00		1314
Backhoe (Rental)	16 Days @ 300.00		4800
Pavement Breaker (Rental)	10 Days @ 400.00		4000
Gradall (Rental)	5 Days @ 700.00		3500
Mortar Mixer (Rental)	5 Days @ 50.00		250
		TOTAL	20,906
6) <u>TRANSPORTATION</u>			
Bridge Ties	4.6 T 254 Mi @ .03/TMI		35
Cross Ties	4.7 T 254 Mi @ .03/TMI		36
Ballast	100 T 176 Mi @ .03/TMI		528
Truck Span Crossings (Freight Bill)			2,500
		TOTAL	3,099
7.) <u>WORK TRAIN</u>			
3 Days @ \$ 1,020		TOTAL	3,060
8.) <u>SALVAGE</u>			
MISC OTM SCRAP	2 Tons @ 43.00		CR 86
		TOTAL	CR 86
SHEETS 2 & 3 SUB-TOTAL			127,891

ITEM DESCRIPTION

11) EQUIPMENT

Dump Truck - 10 Ton	3 Days @ 75.00	225
Passenger Bus	3 Days @ 36.00	108
Truck Under 1 Ton	3 Days @ 25.00	75
Air Compressor 175 CFM	3 Days @ 32.00	96
Burro Crane 15 Ton	3 Days @ 259.00	777
Truck Crane 15 Ton	3 Days @ 208.00	624
Backhoe (Rental)	3 Days @ 300.00	900

TOTAL 2,805

12) TRANSPORTATION

Crossing Frags 14 4 Tons	895 Mi @ .03/T.M.	337
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TOTAL 337

13) WORK TRAIN

1 Day @ \$1,020		1,020
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TOTAL 1,020

14) SALVAGE

Crossing Frags (Scrap)	13 T @ \$50.00	CR 650
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TOTAL CR 650

ITEM

(15) INSURANCE: FHPM 1-4-3, Paragraph 4b(1)

LABOR ON ITEMS 2, 3, 1/2 7, 9, 1/2 13, _____

COVERAGES:

PUBLIC LIABILITY -)	
PROPERTY DAMAGE -)	SINGLE LIMIT
EMPLOYERS LIABILITY -)	\$2,000,000

LABOR \$ 35,520; RATE \$11.00 PER \$100 LABOR

\$ 3,907

_____ \$ _____

_____ \$ _____

_____ \$ _____

(16) CONTINGENCIES 10% (EXCEPT SIGNALS, COMMUNICATIONS, AND INSURANCE)

\$ 21,235

GRAND TOTAL

\$ 237,496

DIVISION OF COST

AGENCY	\$ _____
	\$ _____
RAILROAD	\$ _____
TOTAL	\$ _____

OFFICE OF MANAGER - ENGINEERING

BALTIMORE, MARYLAND

DATE JANUARY 19, 1932 Day Nos 1737 & 1739



Delaware Co.
C-20070

ORIGINAL

BOROUGH OF DARBY

P.O. Box 351 · 821 Summit Street · Darby, Pennsylvania 19023

POLICE DEPARTMENT
586-1100

BOROUGH HALL
586-1102

September 10, 1981

Chessie Systems
John Rose - Attn 625
2 North Charles Street
Baltimore, Maryland 21201

Dear Mr. Rose:

We are following up our letter of August 5, 1981 (see enclosed) to check on the status of this reimbursement.

We would appreciate any aid you can give to speed up the reimbursement to the Borough.

Very truly yours,

Philip W. Gallagher
Philip W. Gallagher
Borough Administrator

FWG/mag

cc: PUC ✓

RECEIVED
PENNA. PUBLIC UTILITY COM. /
SEP 18 1981
Safety & Compliance
Field Division

RECEIVED

SEP 16 1981

Philadelphia Office
Bureau of Safety & Compliance

DOCKETED
OCT 2 1981
[Signature]

BUREAU OF
SEP 21 1981
RAIL
TRANSPORTATION

DOCUMENT
OLDER



C-20070

BOROUGH OF DARBY

P.O. Box 351 - 821 Summit Street - Darby, Pennsylvania 19023

SEP 30 2 50 PM '81

POLICE DEPARTMENT
586-1100

SECRETARY OFFICE
PUBLIC UTILITY
COMMISSION

BOROUGH HALL
586 1102

August 5, 1981

Chessie Systems
John Rose - Attn 625
2 North Charles Street
Baltimore, Maryland 21201

Dear Mr. Rose:

Back in 1974, the Baltimore & Ohio was ordered by the Public Utility Commission to maintain the crossing at 6th and Main Streets, Darby, Pennsylvania. This order has not been carried out. In the interest of pedestrian safety, the Borough of Darby has on numerous occasions, filled in the various potholes surrounding your rail-road tracks. Enclosed you will find pictures taken in April of this year showing the condition of your tracks.

The following is a breakdown of expenses the Borough of Darby has incurred and for which we are expecting reimbursement.

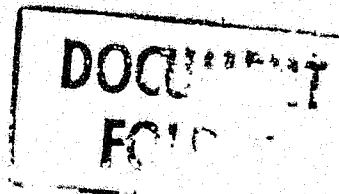
<u>DATE</u>	<u>HOURS WORKED</u>	<u>MEN AT \$5.98 per HR.</u>	<u>COLD PATCH</u>
7- 7-81	1	3 men x 1 Hr = \$17.94	1Yd = \$35.63
6-24-81	1	4 men x 1 Hr = \$23.92	1Yd = \$35.63
6- 5-81	1	4 men x 1 Hr = \$23.92	1Yd = \$35.63
5-29-81	1	2 men x 1 Hr = \$11.96	1Yd = \$35.63
5- 6-81	1	2 men x 1 Hr = \$11.96	1Yd = \$35.63
4-15-81	1	4 men x 1 Hr = \$23.92	1Yd = \$35.63
4- 8-81	1	3 men x 1 Hr = \$17.94	1Yd = \$35.63
3-19-81	1	2 men x 1 1/2 Hr = \$17.94	2Yd = \$71.26
TOTALS		\$149.50	\$320.67

We will be awaiting your prompt payment.

Very truly yours,

Philip W. Gallagher
Philip W. Gallagher
Borough Administrator

PWG/mag
Enclosure



January 3, 1978

620070

Mr. Robert W. Deaver, President of Council
Borough of Darby
44 North Ninth Street
Darby, Pennsylvania 19023

Dear Mr. Deaver:

This is in reference to your letter dated December 8, 1977, concerning the crossing, at grade, of Main Street over the tracks of The Baltimore and Ohio Railroad Company, in Darby Borough.

This crossing was reconstructed by the railroad company several years ago, using new rail materials, including new crossing frogs required because of the operation of streetcars across the railroad tracks. The bituminous paving in the crossing area does not hold for any length of time, partly because of the presence of the crossing frogs, in addition to wear due to railroad traffic and vehicular highway traffic. Unfortunately, the crossing frogs prevent installation of a timber crossing.

Under the 1973 and 1976 Federal Highway Acts, federal funds are available to assist in crossing safety programs, and this particular crossing has been included on a tentative list for crossing improvement. If approved, the railroad company and Pennsylvania Department of Transportation proposed to remove the bituminous paving and replace it with a more sophisticated paving material.

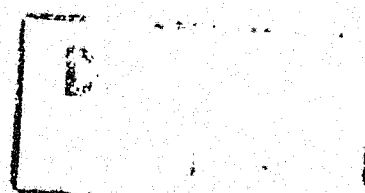
We will arrange to meet with railroad representatives to determine what can be done to improve the crossing area. The crossing seems to require very frequent bituminous patching, and it is fortunate that the Borough Highway Department is able to lend its assistance.

We appreciate your patience in this matter and will advise you of the outcome of our meeting with the railroad company.

Very truly yours,

R. A. Peteritas, Chief Engineer
Bureau of Transportation

cc: Mr. C. L. Robinson, Manager-Engineering
The Baltimore and Ohio Railroad Company
Two North Charles Street
Baltimore, Maryland 31301



WBC:k

February 24, 1976

.. 0070

Edward, Staff Counsel
Southeastern Pennsylvania
Transportation Authority
2028 City Building
12 South 12th Street
Philadelphia, Pennsylvania 19107

Borough of Tarby

v.

The Baltimore and Ohio Railroad Company, Department of
Transportation of the Commonwealth of Pennsylvania,
Southeastern Pennsylvania Transportation Authority and
County of Delaware

Car, Staff Counsel:

This will advise you that at the public
Meeting held February 16, 1976, the Commission, acting
upon a report of its Bureau of Transportation on
Statement of Construction Cost No. 1-Final, covering
expenses incurred by each of the parties in interest,
in compliance with the Commission's order of February 20,
1974, issued in the above entitled proceeding, approved
the report, and directed that the record be marked
closed.

We are transmitting herewith one copy of
the report, together with certification of the same.

Very truly yours,

for G. J. McIlwain
Secretary

enclosures

See attached list.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

BUREAU OF TRANSPORTATION

In re:

C. 20070

BOROUGH OF DARBY

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
DEPARTMENT OF TRANSPORTATION OF THE
COMMONWEALTH OF PENNSYLVANIA, SOUTHEASTERN
PENNSYLVANIA TRANSPORTATION AUTHORITY
AND COUNTY OF DELAWARE

REPORT

BY

BUREAU OF TRANSPORTATION

ON

STATEMENT OF CONSTRUCTION COST NO. 1-FINAL

PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION
Harrisburg

County Delaware Date January 29, 1976
City or Borough Darby Docket No. C. 20070
Township _____ Statement of Cost No. 1-Final

REPORT ON EXPENDITURES FOR CROSSING IMPROVEMENT

Description: Rehabilitation and reconstruction of the crossing, at grade, where the tracks of The Baltimore and Ohio Railroad Company cross the intersection of Main Street and Sixth Street in the borough of Darby, Delaware County. At this intersection the tracks of Southeastern Pennsylvania Transportation Authority cross the tracks of the carrier, at grade.

Order: of the Commission dated February 20, 1974 in this proceeding, provides that The Baltimore and Ohio Railroad Company, Southeastern Pennsylvania Transportation Authority and Borough of Darby furnish certain material and perform certain work in accordance with the approved plan.

Plans Prepared by _____ Date Plans Approved _____
Preliminary Estimate of Construction Cost _____ Estimate of Damages \$ None

Estimates submitted:

APPORTIONMENTS

Upon certification by Pennsylvania Public Utility Commission, Southeastern Pennsylvania Transportation Company is ordered to pay The Baltimore and Ohio Railroad Company 50 percent of the actual cost of material furnished and work performed to effect repairs required to insure the safety of the public traversing the crossing; furnish all material and do all work necessary to adjust the profile of its track for the full graded width of Main Street, to conform with the elevation of the abutting highway paving, and to restore the paving of the portion of the existing highway disturbed thereby; rehabilitate and reconstruct the crossing, at grade, and pave the crossing with bituminous material or other suitable material, solid between the rails and for a distance of 24 inches beyond the rails, so as to provide a smooth, solid surface between the outside of the railhead and the adjoining highway surface, with flangeways not in excess of 2-1/2 inches in width; and before doing so, provide Borough of Darby and Department of

County Delaware Date January 29, 1976
City or Borough Darby Docket No. C. 20070
Township _____ Statement of Cost No. 1-Final

APPORTIONMENTS (continued)

Transportation with not less than seven (7) days advance notice of the start of such work; and, in addition, furnish all material and do all work necessary to clean and restore to full service the 18-inch diameter pipe drain located parallel to its track through the Main Street-Sixth Street intersection, installed in accordance with numbered Paragraph 3 of the Commission order issued November 13, 1967, at Complaint Docket No. 18281.

Docket No. C. 20070 Order Date February 20, 1974Statement No. 1-Final Final Inspection Date November 19, 1974

ROADWAY AND APPROACHES

<u>Classification</u>	<u>Estimated Cost</u>	<u>Cost to Date</u>
WORK PERFORMED BY THE BALTIMORE AND OHIO RAILROAD COMPANY		
Labor		\$19,450.11
Equipment Rental		1,799.05
Engineering		629.82
Material		38,574.73
Scrap		(321.30)
Work Train		3,568.25
Total cost of work performed by The Baltimore and Ohio Railroad Company		<u>\$63,700.66</u>

EXPENDITURES AND ASSESSMENTS

<u>Name of Party</u>	<u>Total Expended to Date</u>	<u>Amounts Previously Authorized for Payment</u>	<u>Amounts Payable This Statement</u>
The Baltimore and Ohio Railroad Company	\$63,700.66		
Southeastern Pennsylvania Transportation Authority pay: The Baltimore and Ohio Railroad Company			\$31,850.33

Remarks: This improvement has been completed in compliance with the Commission's order of February 20, 1974 and in accordance with the approved plan.

The actual expense incurred by The Baltimore and Ohio Railroad Company amounted to \$63,700.66, which sum represents the cost of material furnished and work performed by The Baltimore and Ohio Railroad Company at the partial expense of Southeastern Pennsylvania Transportation Authority. As the Commission previously authorized no reimbursement, The Baltimore and Ohio Railroad Company is presently entitled to receive the sum of \$31,850.33.

It is respectfully recommended that this Statement of Construction Cost No. 1-Final be approved by the Commission, that Southeastern Pennsylvania Transportation Authority be authorized to pay The Baltimore and Ohio Railroad Company the sum of \$31,850.33 and that the record in this proceeding be closed.

I hereby certify that this estimate is correct and the payments apportioned in accordance with the Commission's order.

Approved;

Duane E. Dunkle
Public Utility Analyst

Meribol Jant
Director, Bureau of Transportation

WSE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 20070

BOROUGH OF DARBY

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
DEPARTMENT OF TRANSPORTATION OF THE
COMMONWEALTH OF PENNSYLVANIA, SOUTHEASTERN
PENNSYLVANIA TRANSPORTATION AUTHORITY
AND COUNTY OF DELAWARE

ORDER

BY THE COMMISSION, FEBRUARY 20, 1974:

This matter is before us as a result of a complaint action filed June 29, 1973 by Borough of Darby, alleging that dangerous and hazardous conditions exist at the crossing, at grade, of the intersection of State Highway Route 23047 (Main Street) and Sixth Street, and the tracks of Southeastern Pennsylvania Transportation Authority, across the track of The Baltimore and Ohio Railroad Company, in the borough of Darby, Delaware County.

In the complaint, it is alleged that the at-grade crossing is hazardous and dangerous to all vehicular traffic and to pedestrians traversing the crossing, and as a result of such conditions, accidents have occurred causing personal injury and property damage to persons using Main Street.

The complainant requests that the railroad company be directed to eliminate the alleged dangerous condition, by the prompt repair of the crossing, at grade, and the continued maintenance of the crossing.

RECORD
FOLDER

DOCKETED
COMPLAINT DOCKET
FEB 27 1974
ENTRY No. *H*

Southeastern Pennsylvania Transportation Authority, County of Delaware, The Baltimore and Ohio Railroad Company and Pennsylvania Department of Transportation each filed answer to the complaint, and a field conference, arranged by a Commission staff engineer and held August 24, 1973 at the site of the crossing, was attended by representatives of the above mentioned parties. Subsequently, the respondents entered testimony at the hearing held October 17, 1973. Leo F. O'Connor, a professional engineer for Pennoni Associates, Incorporated, engineer for Borough of Darby, testified at the hearing held October 17, 1973, that the track of the railroad company crosses Main Street, at an angle of approximately 45 degrees, and that traffic at the crossing is comprised of railroad trains, street cars, highway vehicles and pedestrians. Complainant's Exhibit No. 1, admitted at the hearing and consisting of a single sheet, is a sketch prepared by the Borough, showing the intersection of Main and Sixth Street, the two tracks of Southeastern Pennsylvania Transportation Authority (hereinafter referred to as SEPTA) and a single track of the railroad company. According to the borough's witness, concrete was placed between the tracks approximately one year ago, and within a short time thereafter, due to the movement of the track, the concrete had broken and had raised up. The concrete between the tracks is raised between three and four inches, which acts as a curb, and causes highway vehicular traffic to come to almost a complete stop. In addition, the curb-like effect of the raised concrete extends into the

pedestrian area. The raising of the concrete has created a hazard for vehicular traffic, in that there are several dips of three or four inches within the crossing area, and an accident-prone area for pedestrians, including school children, traversing the crossing.

In the opinion of the borough's witness, the concrete, which extends approximately two feet beyond each rail, has been lifted up by the vertical movement of the railroad track during the passage of freight trains. This has created an inadequate, unsafe crossing for trains, vehicles and pedestrian traffic. The witness testified that the area underneath the track, the track foundation, is the real basis for the problem, and in the opinion of the borough's witness, the crossing has a history of problems created by the failure of the area beneath the track, and some consideration should be given to the installation of a reinforced concrete base under the track structure, extending beyond the railroad track to stabilize the streetcar track connections.

In summary, the borough's witness testified that the crossing is dangerous at the present time, particularly to vehicular and streetcar traffic, because both have to come to an almost complete stop before crossing the train track, to avoid damage to the cars.

During cross-examination, the witness testified that the borough officials constantly receive the complaints arising from the condition of the crossing, and while it is not proper or practical for the borough to make foundation studies under the railroad track, its officials realize that there may be an overlap of responsibility. While they are not disposed to make improvements, they are not trying to shirk doing their share.

Mrs. Dolores P. Kirlin, Darby Borough Manager, testified, at the hearing held October 17, 1973, that she has held the position of borough manager and/or secretary for the past two years. The witness testified that there has been one accident in the last five year period, involving an automobile and a train, and three accidents reported to the borough which involved damage to automobiles in the crossing area. The witness testified further, that the crossing is slippery when it rains, and even more slippery during freezing weather. Even when the railroad company patches the crossing with black top material, the crossing remains rough because of the raised concrete, and according to the witness, the pot holes are most troublesome during periods of heavy rain. Because Main Street is the primary artery through the area, there is very heavy vehicular traffic during the peak hours, almost bumper to bumper, which is further slowed by having to stop at the railroad crossing.

The borough is willing to cooperate by providing police personnel during the time repairs are made, to handle detour traffic. In addition, the borough maintenance men are available to assist in making repairs. In fact, the borough maintenance crew presently does make emergency repairs, using black top material provided by the railroad company on a regular basis. In conclusion, the borough's witness testified that the intersection presently is in a hazardous, dangerous condition.

During cross-examination, the borough's witness testified that the crossing area does not drain readily, and is subject to water, or ice, laying in the crossing after rain storms are over.

Charles F. Sanders, Mayor of Borough of Darby, testified, at the hearing held October 17, 1973, that he has personal knowledge of the condition of the intersection at Sixth and Main Streets, and that at times the crossing has had holes as large as two feet in diameter and two feet in depth, that were repaired by the borough's street department. In addition, every time there is a snow storm, the area becomes icy and is very hazardous. The witness testified further that school children cross Main Street and the track at the same time, because it is the best possible way to cross, due to the angle of the tracks. In the opinion of the witness, the drains that were installed in 1968 are adequate to take care of the storm water during rain storms, and that the storm water does not run into the intersection. In conclusion, the witness testified that the intersection, in his opinion, is extremely dangerous with regard to all types of traffic.

James Anders, Division Engineer for The Baltimore and Ohio Railroad Company, testified at the hearing held October 17, 1973, that the railroad company has one track crossing the intersection of Main and Sixth Streets, at grade, over which approximately 24 freight train movements are operated daily. There are no scheduled passenger train movements.

A plan, admitted at the hearing as B & O Exhibit No. 1, consisting of a single sheet, shows that the railroad track crosses Main Street at an angle of 45 degrees 25 minutes. The plan also shows that Main Street is 34 feet in width, between curbs, and that two streetcar tracks operated by SEPTA are located in the body of Main Street, and cross the railroad track at the same intersection angle. According to the railroad company's witness, there have been no accidents at the crossing, involving highway vehicles and railroad trains, during the past five year period.

The witness testified that the present crossing cannot be changed physically, unless the streetcar service were to be replaced by rubber tired vehicles. If this were done, the crossing frogs could be removed, and the railroad could install a timber crossing. According to the witness, the cost of maintaining, or replacing the crossing frogs, will be borne by the railroad company and SEPTA, under an existing agreement. The railroad company will maintain the track, the crossing frogs, and the paving through the track area.

During cross-examination, the railroad company's witness testified that trains presently are operated at a speed of 20 miles an hour through the crossing area, because of the condition of the crossing frogs, although the authorized maximum speed of trains is 30 miles an hour through this area. The witness testified that it was not feasible to install a timber crossing, not as long as the crossing frogs are required to permit the passage of streetcars over the crossing.

Frank Berdan, Manager-Operational Planning for Southeastern Pennsylvania Transportation Authority, testified, at the hearing held October 17, 1973, that SEPTA has no objection to the reconstruction of the crossing, and will make any necessary adjustments of its streetcar tracks to connect with the new crossing frog installation. In accordance with an agreement with the railroad company, SEPTA will agree to pay for 50 percent of the cost of the material furnished and work performed by the railroad company. According to the witness, SEPTA is concerned about the frequency of the complaint proceedings, and suggests that consideration be given to any measures which would prolong the life of the new installation.

The authority's witness testified that SEPTA is prepared to institute shuttle bus service during the construction period, so that maintenance of streetcar traffic will not be required.

During cross-examination, the transportation authority's witness testified that there are no plans to replace the trolley cars with rubber tired vehicles, in the foreseeable future, and that SEPTA plans to continue the use of streetcars to and through the borough of Darby.

John T. Salyer, Liaison Engineer for Pennsylvania Department of Transportation, testified at the hearing held October 17, 1973, that the average daily traffic on State Highway Route 23047 (Main Street) in the vicinity of the crossing consists of 10,710 highway vehicles of all types, with an expected growth of three percent a year.

The witness testified further that the department will not agree to perform any work or assume any costs for improvements at the crossing, since the department is only responsible for maintenance of the crossing approaches, to points within two feet of the rails in the crossing.

During cross-examination, the department's witness testified that the department is not aware of any drainage responsibilities, but that he had not investigated the matter of drainage.

Counsel for Delaware County stated on the record that the county agrees that the involved crossing should be altered by reconstruction, but that the county does not agree to assume any portion of the cost of construction or the cost of future maintenance.

We have carefully reviewed the record in this proceeding, and note that it is the consensus that the

existing railroad-highway crossing, at grade, is in need of reconstruction. Pursuant to the public hearing, the crossing was inspected by Commission staff engineers, who determined that the crossing is not only in need of reconstruction, but

also is in need of interim repairs. Accordingly, a conference, arranged by a Commission staff engineer and attended by

representatives of the borough, railroad company, SEPTA, and Department of Transportation, was held on February 1, 1974, for the purpose of expediting emergency repairs, in the

interest of public safety. There was no objection from any party, and the railroad company agreed to schedule temporary repairs, at its initial cost and expense, pending reconstruction of the crossing after new crossing frogs are delivered by the manufacturer.

Upon full consideration of the matters and things involved, we find and determine that the reconstruction of the crossing, at grade, of State Highway Route 23047 (Main Street) and the streetcar tracks of Southeastern Pennsylvania Transportation Authority across the track of The Baltimore and Ohio Railroad Company, in the borough of Darby, is necessary, in the interest of the safety, convenience and accommodation of the public. Accordingly, we will sustain the complaint and order immediate interim repairs, and also order the reconstruction of the railroad-highway crossing; further, we will allocate the costs and expenses of the construction, and also allocate the responsibilities of future maintenance; THEREFORE,

IT IS ORDERED:

1. That the complaint be and is hereby sustained.
2. That the crossing, at grade, where State Highway Route 23047 (Main Street) and two streetcar tracks of Southeastern Pennsylvania Transportation Authority cross a track of The Baltimore and Ohio Railroad Company, in the borough of Darby, Delaware County, be altered, to the extent hereinafter indicated.
3. That The Baltimore and Ohio Railroad Company, forthwith, at its initial cost and expense, to effect repairs required to insure the safety of the public traversing the crossing, furnish all material and do all work necessary to adjust the profile of its track for the full graded width of Main Street, to conform with the elevation of the abutting highway paving, and to restore the paving of the portion of the existing highway disturbed thereby.

altered, in accordance with this order.
service during the time the at-grade crossing is being repaired or

do all work necessary to institute and operate shuttle bus
Authority, having agreed to do so, furnish all material and
7. That Southeastern Pennsylvania Transportation

accordance with numbered Paragraphs 3 and 4 of this order.

with the railroad track, repaired and reconstructed in
its tracks, in the bed of Main Street, to connect properly
and do all work necessary to realign and adjust the grade of
Authority, at its sole cost and expense, furnish all material
6. That Southeastern Pennsylvania Transportation

order issued November 13, 1967, at Complaint Docket No. 18281.

in accordance with numbered Paragraph 3 of the Commission
through the Main Street-Sixth Street intersection, installed
18-inch diameter pipe drain located parallel to its track

all work necessary to clean and restore to full service the
at its initial cost and expense, furnish all material and do
5. That The Baltimore and Ohio Railroad Company,

start of such work.

with not less than seven (7) days advance notice of the
provide Borough of Darby and Department of Transportation
not in excess of 2-1/2 inches in width; and before doing so,

railhead and the adjoining highway surface, with flangeways
provide a smooth, solid surface between the outside of the
and for a distance of 24 inches beyond the rails, so as to

material or other suitable material, solid between the rails
crossing, at grade, and to pave the crossing with bituminous
all work necessary to rehabilitate and reconstruct the

at its initial cost and expense, furnish all material and do
4. That The Baltimore and Ohio Railroad Company,

8. That Borough of Darby, at its sole cost and expense, furnish all material and do all work necessary to clean and restore to full service the open-mouth type inlets, and the appurtenant drainage facilities, located in Sixth Street and in Main Street, adjacent to the at-grade crossing, installed in accordance with numbered Paragraphs 10 and 11 of the Commission order issued November 13, 1967, at Complaint Docket No. 18121.

9. 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 and Southeastern Pennsylvania Transportation Authority, which may be required as incidental to the alteration of the at-grade crossing, be made by said public utility at its sole cost and expense, and in such manner as will not interfere with the reconstruction of the crossing, and such relocated or altered facilities thereafter be maintained by said public utility.

10. That Borough of Darby and Department of Transportation, in cooperation with each other, furnish all material and do all work necessary to establish and maintain any detours that may be required to accommodate properly borough and highway traffic during the time the at-grade crossing is being altered or repaired.

11. That The Baltimore and Ohio Railroad Company furnish all material and do all work necessary to complete the remainder of the work necessary to alter the railroad-highway at-grade crossing, in accordance with this order.

of this order.

company, in compliance with numbered Paragraphs 3, 4 and 5 cost of material furnished and work performed by the railroad

a sum or sums of money equal to 50 percent of the actual

and as certified by Pennsylvania Public Utility Commission, Authority pay The Baltimore and Ohio Railroad Company, when

15. That Southeastern Pennsylvania Transportation

alteration of the crossing, in accordance with this order.

for property taken, injured or destroyed by reason of the

pay all compensation for damages, if any, due to the owners

14. That The Baltimore and Ohio Railroad Company

or unnecessarily impeded.

highway crossing, the movement of traffic will not be endangered

each other so that during the alteration of the railroad-

of Darby and Department of Transportation cooperate with

Southeastern Pennsylvania Transportation Authority, Borough

13. That The Baltimore and Ohio Railroad Company,

performed in accordance with this order.

of actual completion of its respective portion of the work,

and Borough of Darby each report to the Commission the date

Company, Southeastern Pennsylvania Transportation Authority

on or before said date, The Baltimore and Ohio Railroad

to this Commission on or before November 30, 1974, and that

reconstruction of the crossing be done in a manner satisfactory

12. That all work necessary to complete the

16. That upon completion of the railroad-highway crossing improvement and its opening to public use, each non-carrier utility, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its respective facilities within the limits of the project.

17. That upon completion of the railroad-highway crossing improvement, The Baltimore and Ohio Railroad Company, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its track and other facilities located on its right-of-way, and to maintain at all times in a smooth and satisfactory condition, the crossing paving located within the track area, and for a distance of at least 24 inches beyond each rail at the crossing, at grade, altered in accordance with this order.

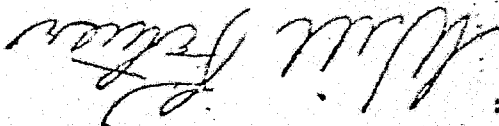
18. That upon completion of the railroad-highway crossing improvement, Southeastern Pennsylvania Transportation Authority, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its tracks and other facilities located within the highway approaches to the crossing.

19. That upon completion of the railroad-highway crossing improvement, Borough of Darby, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the Sixth Street approaches to the crossing, and to maintain in a clean and properly functioning condition, the open mouth inlets and appurtenant outlet drain pipes, located in Sixth Street and Main Street, in the vicinity of the crossing.

ORDER ENTERED: FEB 25 1974

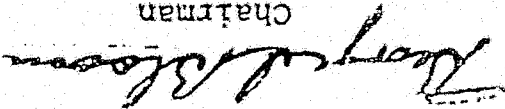
ORDER ADOPTED: February 20, 1974

Secretary



ATTEST:

Chairman



PENNSYLVANIA PUBLIC UTILITY COMMISSION

20. That upon completion of the railroad-highway crossing improvement, Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway approaches to the crossing.

Proof of Publication of Notice in Delaware County Daily Times

Under Newspaper Advertising Act. No. 587, Approved May 16, 1929

C 20070

State of Pennsylvania, }
County of Delaware, } SS.

Bernice Moore designated agent of CENTRAL STATES PUBLISHING, INC., being duly sworn, deposes and says that the DELAWARE COUNTY DAILY TIMES, a daily newspaper of general circulation as defined in the above-mentioned Act, published at 18-26 East Eighth Street, in the City of Chester, Delaware County, Pennsylvania, was established September 7, 1876, and issued and published continuously thereafter for a period of 84 years, and for a period of more than six months immediately prior hereto, (under the name Chester Times prior to November 2, 1959) in said City and County, and further says that the printed notice or publication attached hereto is an exact copy of a notice or publication printed and published in the regular edition and issues of the DELAWARE COUNTY DAILY TIMES on

the following dates, viz
October 1 and 8 A.D. 1973.

and that said advertising was inserted in all respects as ordered

Affiant further deposes that he is the proper person duly authorized by CENTRAL STATES PUBLISHING, INC. publisher of said DELAWARE COUNTY DAILY TIMES, a newspaper of general circulation, to verify the foregoing statement under oath and that affiant is not interested in the subject matter of the aforesaid notice or advertisement, and that all allegations in the foregoing statements as to time, place and character of publication are true.

Bernice Moore
8th
Sworn to and subscribed before me this day of October 1973.

Rufus F. Waller
NOTARY PUBLIC
CHESTER, DELAWARE COUNTY
MY COMMISSION EXPIRES OCT. 29, 1977
Statement of Advertising Costs
Borough of Darby,
Attn: Peter A. Dunn, Esq.,
P.O. Box 647, Media, Penna.

RECORDED
NOV 5 1973
INDEXED

TO CENTRAL STATES PUBLISHING, INC.	
For publishing the notice or publication attached	43.00
Hereto on the above stated dates	1.00
Probating same	
Total	44.00

Publisher's Receipt for Advertising Costs

CENTRAL STATES PUBLISHING, INC., publisher of the DELAWARE COUNTY DAILY TIMES, a newspaper of general circulation, hereby acknowledges receipt of the aforesaid notice and publication costs and certifies that the same have been duly paid.

CENTRAL STATES PUBLISHING, INC.
Publisher of Delaware County Daily Times

By.....

RECEIVED
1973 NOV -1 PM 3:30
SECRETARY'S OFFICE
PUBLIC UTILITIES
DEPARTMENT

NOTICE TO BE PUBLISHED

NOTICE is hereby given that a complaint having been filed with the Pennsylvania Public Utility Commission alleging dangerous and hazardous conditions existing at the crossing, at grade, where the tracks of the Baltimore and Ohio Railroad Company cross the intersection area of Main Street and Sixth Street, and the tracks of Southeastern Pennsylvania Transportation Authority, in the Borough of Darby, Delaware County, which proceeding is entitled "Borough of Darby versus The Baltimore and Ohio Railroad Company, Department of Transportation of the Commonwealth of Pennsylvania, Southeastern Pennsylvania Transportation Authority and County of Delaware" (C-2070), the Commission has fixed Wednesday, October 17, 1973, at 10:00 a.m. in the Total Building, Orange & Second Streets, Media, Pennsylvania, as the time and place for hearing.

All parties interested, including the owners of adjacent property, may appear and be heard in person or by counsel.

(S) PETER A. DUNN
Attorney for Borough of Darby

RECEIVED
1973 OCT -1 AM 10:00

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: COMPLAINT OF	:	
	:	
BOROUGH OF DARBY	:	
	:	
vs.	:	Complaint Docket
	:	
THE BALTIMORE AND OHIO RAILROAD,	:	No. 20070
DEPARTMENT OF TRANSPORTATION OF	:	
THE COMMONWEALTH OF PENNSYLVANIA,	:	1973
SOUTHEASTERN PENNSYLVANIA TRANS-	:	
PORTATION AUTHORITY, AND COUNTY	:	
OF DELAWARE	:	

ANSWER OF
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Comes now Southeastern Pennsylvania Transportation Authority, by its Attorney, and files the following answers to the above-captioned Complaint:

1. Admitted.
2. Admitted.
3. Admitted.
4. It is admitted that under an agreement dated

DOCKETED
COMPLAINT DOCKET
OCT 3 1973
ENTRY No. _____

RECORDED
INDEXED
FOLD

February 26, 1894, between the predecessors in interest of the Baltimore and Ohio Railroad Company and the Southeastern Pennsylvania Transportation Authority, the Baltimore and Ohio Railroad Company is responsible for maintaining the described crossing. It is further averred that said crossing was rehabilitated and reconstructed at a cost in excess of \$34,000 in 1968. Philadelphia Transportation Company, a

predecessor to the Southeastern Pennsylvania Transportation Authority, participated in the payment of such rehabilitation in accordance with an Order of the Public Utility Commission dated November 13, 1967.

5. Denied. Southeastern Pennsylvania Transportation Authority does not own, operate or maintain the grade crossing, and thus is without knowledge or information sufficient to answer the averment.

6. Denied. Southeastern Pennsylvania Transportation Authority is without knowledge or information sufficient to answer this averment.

7. It is admitted that the grade crossing should be kept in good repair.

8. Denied. Southeastern Pennsylvania Transportation Authority is without information or knowledge sufficient to answer this averment.

9. Admitted. The Public Utility Commission should instruct respondent Railroad as to the method of maintaining said crossing to prevent further deterioration in any rehabilitated crossing.

Respectfully submitted,

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION
AUTHORITY

By Kenneth G. Longo
Attorney

RECEIVED
1973 OCT -1 AM 10:01
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

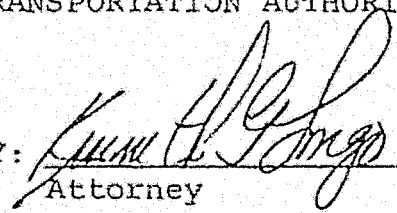
CERTIFICATE OF SERVICE

Complaint Docket No. 20070

In Re: Complaint of Borough of Darby vs. The Baltimore and Ohio Railroad, Department of Transportation of the Commonwealth of Pennsylvania, Southeastern Pennsylvania Transportation Authority, and County of Delaware

I hereby certify that I have this date served a copy of the foregoing Answer on all parties of record in the above-captioned proceeding by mailing such copy via First Class Mail, Postage Prepaid, dated at Philadelphia, Pennsylvania this 27th day of September, 1973.

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

BY: 
Attorney

August 21, 1973

(6. 2. 7)

Borough of Darby

v.

The Baltimore and Ohio Railroad Company, Department
of Transportation of the Commonwealth of Pennsylvania,
Southeastern Pennsylvania Transportation Authority
and County of Delaware

Francis P. Desmond, Esquire
Piloggi and Desmond
115 East Fifth Street
Chester, Pennsylvania 19013

Dear Mr. Desmond:

This is to advise that in executive session held August 17, 1973 the Commission directed that the motions filed on behalf of County of Delaware and Southeastern Pennsylvania Transportation Authority to dismiss and/or amplification of this proceeding, be denied, and directed that the parties file such answer to the complaint as they deem appropriate within ten days of service of notice of the Commission's action.

Very truly yours,

for Will Ketner
Secretary

COPIED

PROCESSED

Attachment

Certified Mail

ORDER

AUG 22 1973

ENTRY No. *H*

See attached list.

AMH:js

Robert O. Smith, Jr.
General Attorney
Law Department

RECEIVED
1973 AUG -3 AM 9:07

 Chessie System

2 North Charles Street
Baltimore, Maryland 21201
301 237 3830

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

August 1, 1973
File: L-2011-2-519

Re: Pa. PUC Docket No. 20070 - In re Complaint of Borough of Darby
vs. The Baltimore and Ohio Railroad Company, Department of
Transportation of the Commonwealth of Pennsylvania, Southeastern
Pennsylvania Transportation Authority and County of Delaware

Mr. Will Ketner, Secretary
Penna. Public Utility Commission
P. O. Box 3265
Harrisburg, Pa. 17120

Dear Mr. Ketner:

Enclosed for filing with the Commission are the original and two
(2) copies of the Answer of The Baltimore and Ohio Railroad Company
to the above captioned complaint.

I hereby certify that copies of this Answer were served on this date
on all parties of record indicated below.

Very truly yours,



Robert O. Smith, Jr.

cc: Messrs. Peter A. Dunn, Solicitor
Borough of Darby
107 West 3rd Street
Media, Pa. 19063

Francis P. Desmond, Esq.
115 East 5th Street
Chester, Pa. 19013

Edward H. Huss, Staff Counsel
SEPTA, 2028 PSFS Building
12 South 12th Street
Philadelphia, Pa. 19107

Robert W. Conliffe, Esq.
Deputy Attorney General
Penna. D.O.T.
Capital Associates Building
Harrisburg, Pa.



RECEIVED
1973 AUG -3 AM 9:07

BEFORE THE SECRETARY OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COMPLAINT DOCKET NO. C-20070

BOROUGH OF DARBY

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY
DEPARTMENT OF TRANSPORTATION OF THE
COMMONWEALTH OF PENNSYLVANIA
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION
AUTHORITY COUNTY OF DELAWARE

ANSWER OF THE BALTIMORE AND OHIO RAILROAD
COMPANY TO THE COMPLAINT

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

NOW COMES, The Baltimore and Ohio Railroad Company (B&O) through its undersigned Attorney, and makes answer to the above captioned complaint as follows:

1. B&O admits the allegations of paragraphs 1-3 inclusive of the complaint.
2. For answer to paragraph 4 and 5 of said complaint, B&O admits the responsibility for the maintenance of the subject crossing and states that the holes in the surface of the crossing referred to in said complaint are repaired as necessary. B&O further states that the major problem connected with the repair of said crossing involves the condition of the crossing frogs between the railroad and two tracks of Southeastern Pennsylvania Transportation Authority. New frogs were ordered by B&O on June 8, 1973. B&O has been advised that the plans for said frogs will

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AUG 8 1973
ENTRY No.

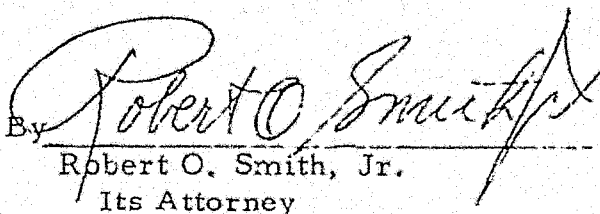
not be completed until about September 1, 1973 and the manufacture and supply of same will require about 30 weeks thereafter. New frogs will be installed promptly upon receipt of same from the manufacturer.

3. B&O is unable to either admit or deny the allegations of paragraphs 6 and 8 of the complaint and demands due proof of same.

4. B&O admits paragraphs 7 and 9 of the complaint.

Respectfully submitted,

THE BALTIMORE AND OHIO RAILROAD CO.

By 
Robert O. Smith, Jr.
Its Attorney

2 N. Charles Street
Baltimore, Md. 21201
August 1, 1973

CERTIFICATE OF SERVICE

I, Robert O. Smith, Jr., certify that a copy of the above answer was served on all known parties of record indicated below:

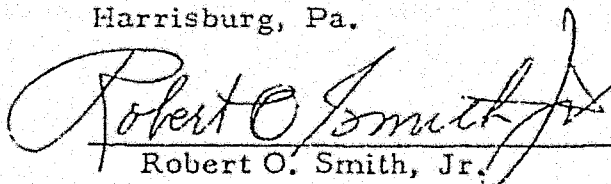
Peter A. Dunn, Solicitor
Borough of Darby
107 West 3rd Street
Media, Pa. 19063

Edward H. Huss, Staff Counsel
SEPTA, 2028 PSFS Building
12 South 12th Street
Philadelphia, Pa. 19107

Francis P. Desmond, Esq.
115 East 5th Street
Chester, Pa. 19013

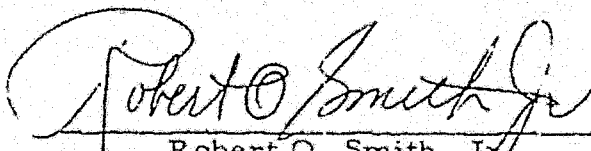
Robert W. Conliffe, Esq.
Deputy Attorney General
Penna. D. O. T.
Capital Associates Building
Harrisburg, Pa.

August 1, 1973

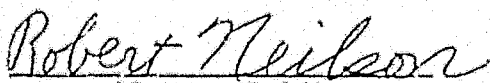

Robert O. Smith, Jr.

STATE OF MARYLAND :
CITY OF BALTIMORE : SS.

ROBERT O. SMITH, JR., being duly sworn according to law deposes and says that he is the Attorney for The Baltimore and Ohio Railroad Company in this proceeding; is authorized to file this affidavit on behalf of the Railroad and that the facts contained herein are true and correct to the best of his knowledge, information and belief.


Robert O. Smith, Jr.

Sworn to and subscribed
before me this 1st day of
August 1973.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Legal Bureau
August 1, 1973

IN REPLY REFER TO

Mr. Will Ketner, Secretary
Pennsylvania Public Utility
Commission
North Office Building
Harrisburg, Pennsylvania

SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

73 AUG 2 AM 10:47

RECEIVED

RE: County of Delaware
Answer of the Department
of Transportation
Complaint Docket No. 20070

Dear Mr. Ketner:

Enclosed for filing with the Commission are the original and two (2) copies of the Answer of the Department of Transportation of the Commonwealth of Pennsylvania to the above captioned Complaint.

I hereby certify that copies of this Answer were served on this date on all parties of record.

Very truly yours,

Lionel B. Gunnit
Lionel B. Gunnit
Assistant Attorney General

Enclosures

LBG:ka

PARTIES OF RECORD:

Borough of Darby
Baltimore and Ohio Railroad Company
Southeastern Pennsylvania Transportation Authority
County of Delaware

cc: Mr. Kenneth Walker, Grade Crossing
District Engineer #6-0

O.K.
W.P.
FILE

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: COMPLAINT OF :
BOROUGH OF DARBY :
VS. :
THE BALTIMORE AND OHIO :
RAILROAD, DEPARTMENT OF :
TRANSPORTATION OF THE :
COMMONWEALTH OF PENNSYLVANIA, :
SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY, and :
COUNTY OF DELAWARE :

Complaint Docket

No. 20070

1973

RECEIVED
73 SEP 4 AM 8:21
PENNSYLVANIA'S OFFICE
PUBLIC UTILITY
COMMISSION

ANSWER OF
COUNTY OF DELAWARE

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Comes now the County of Delaware, by its Attorney, and files the following answers to the above-captioned Complaint:

1. Admitted.
2. Admitted.
3. Admitted
4. Admitted. Respondent, Baltimore and Ohio Railroad Company is responsible for maintaining the described crossing. The County of Delaware, however, is without knowledge or sufficient information concerning the degree of disrepair of said crossing.
5. Denied. The County of Delaware does not own, operate, or maintain the right of way and is thus without knowledge or information sufficient to answer this averment.
6. Denied. The County of Delaware does not own, operate, or maintain the right of way and is thus without knowledge or information sufficient to answer this averment.

FILED

DOCKETED
COMPLAINT
SEP 7 1973
ENTRY No.

7. Admitted. If a dangerous condition exists, the parties responsible should promptly correct that condition.

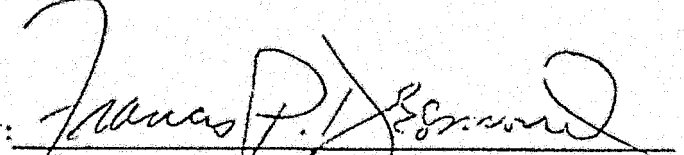
8. Denied. The County of Delaware is without information or knowledge sufficient to answer this averment.

9. Admitted.

Respectfully submitted,

COUNTY OF DELAWARE

By:


Francis P. Desmond, Esquire,
Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the parties in this proceeding with a copy of the foregoing document by placing the same in the mail, first-class, postage prepaid, addressed as follows:

Peter A. Dunn, Esquire
c/o Borough of Darby
107 W. 3rd Street
Media, Penna.

Edward H. Huss, Esquire
SEPTA
2028 PSFS Building
12 South 12th Street
Philadelphia, Penna.

Lionel B. Gumnit
Asst. Attorney General
Dept. of Transportation
Legal Bureau
Harrisburg, Penna. 17120

Robert O. Smith, Jr., Esquire
Chessie System
2 N. Charles Street
Baltimore, Md. 21201

Francis J. Dismore
Asst County Clerk
County of Delaware

COMMONWEALTH OF PENNSYLVANIA:

SS.

COUNTY OF DELAWARE :

FRANCIS P. DESMOND, being duly sworn according to law, deposes and says that he is Attorney for the County of Delaware in this proceeding; is authorized to file this affidavit on its behalf, and that the facts contained herein are true and correct to the best of his knowledge, information, and belief.

Francis P. Desmond
Francis P. Desmond

Sworn to and subscribed before me this *31st* day of *August* A.D. 1973.

Elizabeth R. Wall
NOTARY PUBLIC
NOTARY PUBLIC
Chester, Del. Co.
My Commission Expires
February 25, 1974

PENNSYLVANIA PUBLIC UTILITY COMMISSION

BOROUGH OF DARBY

vs.

THE BALTIMORE AND OHIO RAILROAD
COMPANY, DEPARTMENT OF TRANSPOR-
TATION OF THE COMMONWEALTH OF
PENNSYLVANIA, SOUTHEASTERN
PENNSYLVANIA TRANSPORTATION
AUTHORITY AND COUNTY OF DELAWARE

Complaint Docket No. 20070

ANSWER OF THE PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

- 1. Admitted.
- 2. Admitted.
- 3. Admitted.

4. Admitted. The aforesaid grade crossing does need maintenance work, however, we do not feel that it is in "such an extreme state of disrepair that its existence constitutes a hazard and danger to all vehicular traffic and to pedestrians using Main Street."

5. Denied as stated. While this section is in a state of disrepair, in an inspection made on behalf of the Pennsylvania Department of Transportation does not reveal holes as deep as three (3') feet and as wide as six (6') feet. The deterioration does exist in the track area approximately one (1') foot on either side of the rails. An examination of the track does not indicate that it is "extremely unstable."

SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

73 AUG 2 AM 10:47

RECEIVED

RECORDED
INDEXED

DOCKET NO.	20070
COMPLAINT NO.	1
AUG 8 1973	
ENTRY NO.	

6. Denied as stated. It is averred that the two year accident history of Main St. (L. R. 23047) at Station 26+26 is as follows:

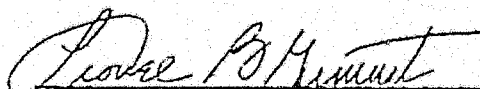
<u>Year</u>	<u>Type</u>	<u>Injury or Death</u>	<u>Damage</u>
1971	Fixed Object	None	Unknown
1972	Fixed Object	None	\$600.00
1972	Angle	None	\$500.00
1972	Rear End	One Injury	\$800.00
1972	Rear End	None	\$900.00
1972	Angle	None	Unknown

7. Admitted.

8. Denied. The Pennsylvania Department of Transportation is without information or knowledge sufficient to answer this averment.

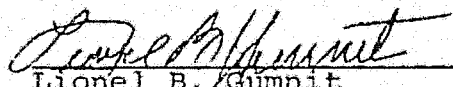
9. Admitted.

WHEREFORE, the Pennsylvania Department of Transportation respectfully requests that your Honorable Commission schedule a Field Conference to determine whether corrective measures are required prior to scheduling a hearing in this matter.



Lionel B. Gurnit
Assistant Attorney General

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF DAUPHIN : SS

Before me, the undersigned officer, personally appeared Lionel B. Gumnit, Assistant Attorney General, who being duly sworn according to law deposes and says that he is authorized to and does make this affidavit on behalf of the Commonwealth of Pennsylvania, Department of Transportation, and that the averments contained and set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.


Lionel B. Gumnit
Assistant Attorney General
Department of Transportation

Sworn and subscribed before me this
1st day of August, 1973.


Margaret I. Albright, Notary
My Commission Expires: 2/5/76

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
73 JUL 24 PM 1:14
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

BOROUGH OF DARBY :
vs. : Complaint
THE BALTIMORE AND OHIO RAILROAD COMPANY, : Docket No. 20070
DEPARTMENT OF TRANSPORTATION OF THE : 1973
COMMONWEALTH OF PENNSYLVANIA, SOUTHEASTERN :
PENNSYLVANIA TRANSPORTATION AUTHORITY AND :
COUNTY OF DELAWARE :

MOTION TO STRIKE OR DISMISS, OR, IN THE
ALTERNATIVE, FOR AMPLIFICATION

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Comes now, the Southeastern Pennsylvania Transportation Authority (SEPTA), pursuant to Rules 37 and 38 of the Rules of Practice of this Commission, and moves that the Complaint against it be dismissed, or, in the alternative, that Complainant be required to allege facts on which SEPTA could be found to have any liability in the matter complained of. In support of its motion, SEPTA respectfully represents as follows:


RECORD
FOLDER

DOCKETED
COMPLAINT DOCKET
JUL 20 1973
ENTRY No.

1. The Complaint does not allege any facts on which liability of SEPTA in the matter complained of could be based.

2. The Complaint sets out in paragraph 2 that the Baltimore and Ohio Railroad Company is the Respondent, in Paragraph 3 that the Baltimore and Ohio Railroad Company (Respondent) operates and maintains a railroad right-of-way through the Complainant Borough, which right-of-way and track intersects with and forms a grade crossing at Main Street and Sixth Street in the Borough of Darby, and in Paragraph 4 that the responsibility for the maintenance of the aforesaid grade crossing lies with the Respondent railroad company (Baltimore and Ohio Railroad Company).

WHEREFORE, SEPTA respectfully prays that this Honorable Commission grant its motion.



Edward H. Huss
Staff Counsel
Southeastern Pennsylvania
Transportation Authority
2028 PSFS Building
12 South 12th Street
Philadelphia, Pennsylvania 19107

COMMONWEALTH OF PENNSYLVANIA

:

SS

COUNTY OF PHILADELPHIA

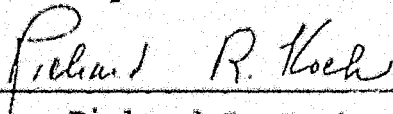
:

Edward H. Huss, being duly sworn according to law, deposes and says that he is attorney for the Southeastern Pennsylvania Transportation Authority; that he is authorized to make this Affidavit; and that the facts averred in this Motion are true and correct to the best of his knowledge, information and belief.



Edward H. Huss

Sworn to and subscribed
before me this 23rd day
of July, 1973.



Richard R. Koch
Notary Public

RICHARD R. KOCH

Notary Public, Philadelphia, Philadelphia Co.,

My Commission Expires April 10, 1975

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the parties in this proceeding by placing copies of the foregoing document in the mail, certified, first class postage prepaid, addressed as follows:

Francis P. Desmond, Esq.
Pileggi and Desmond
115 E. 5th Street
Chester, Pennsylvania 19013

Robert W. Conliffe, Esq.
Deputy Attorney General
Pennsylvania Department of Transportation
Capital Associates Building
Harrisburg, Pennsylvania

Baltimore and Ohio Railroad Company
Legal Department
Terminal Tower Building
Cleveland, Ohio 44101

Peter A. Dunn, Solicitor (Borough of Darby)
Fronefield, Daturia & Petrikin
107 West 3rd Street
Media, Pennsylvania 19063



Edward H. Huss
Attorney for SEPTA

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re Complaint of
BOROUGH OF DARBY

VS.

THE BALTIMORE and OHIO
RAILROAD, DEPARTMENT OF
TRANSPORTATION OF THE
COMMONWEALTH OF PENNSYLVANIA,
SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY and
COUNTY OF DELAWARE

Complaint Docket

No. 20070

1973

RECEIVED
1973 JUL 24 PM 2:44
SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

MOTION BY COUNTY OF DELAWARE
TO STRIKE OR DISMISS COMPLAINT
OF BOROUGH OF DARBY

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Comes now the County of Delaware, pursuant to Rule 37 of the Commission's Rules of Practice, and respectfully moves that the Complaint against said County be stricken or dismissed and in support thereof submits the following:

1. Complaint does not state any facts which establish any liability on the County of Delaware for the alleged dangerous condition at the grade crossing located at Main Street and Sixth Street in the Borough of Darby.

2. The County of Delaware does not own, operate or maintain the right-of-way and/or tracts which intersect with and form a grade crossing at Main and Sixth Streets nor is the County of Delaware responsible for the construction, repair or maintenance of Sixth Street or Main Street, said streets being Borough and State roads, respectively.

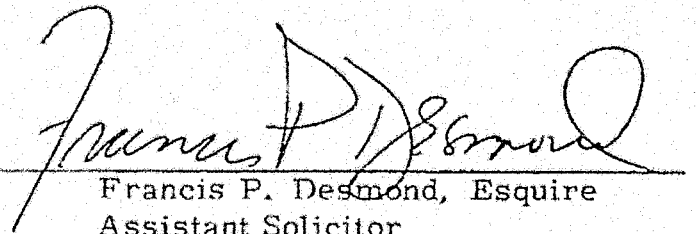
RECORD
INDEX

DOCKET
COMPLAINT DOCKET
JUL 20 1973
ENTRY NO.

3. Complainant fails to allege any facts which would establish any control or responsibility on the part of the County of Delaware for the grade crossing described in the Complaint.

4. Complainant fails to allege any facts which would establish that the County of Delaware should be party to this action.

WHEREFORE, the County of Delaware respectfully prays that this Honorable Commission grant its Motion to Strike or Dismiss the Complaint as to it.

A handwritten signature in cursive script, reading "Francis P. Desmond", is written over a horizontal line.

Francis P. Desmond, Esquire
Assistant Solicitor
County of Delaware
115 East 5th Street
Chester, Penn. 19013

CERTIFICATE OF SERVICE

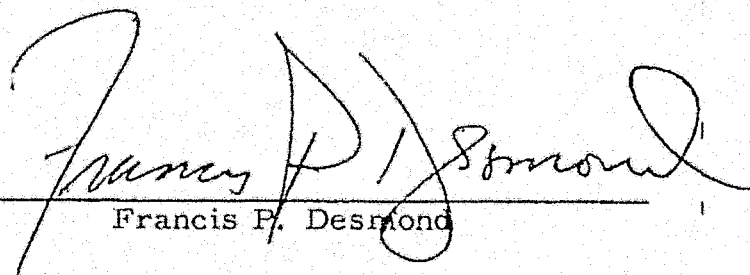
I hereby certify that I have this day served the parties in this proceeding with a copy of the foregoing document by placing same in the mail, first-class, postage prepaid, addressed as follows:

Peter A. Dunn, Esq.
107 W. 3rd Street
Media, Penna.

The Baltimore & Ohio RR. Co.
Terminal Tower Bldg.
Cleveland, Ohio 44101

Robert W. Conliffe, Esq.
Pa. Dept. of Transportation
Capital Associates Building
Harrisburg, Penna.

Edward H. Huss, Esq.
SEPTA
2028 PSFS Bldg.
12 South 12th Street
Phila., Penna. 19107


Francis P. Desmond

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG

In re Complaint of
Borough of Darby

Complaint Docket

The Baltimore and Ohio Railroad Company, Depart-
ment of Transportation of the Commonwealth of
Pennsylvania, Southeastern Pennsylvania
Transportation Authority and County of Delaware

No. 20070
19. 73

TO

G. S. Harris, General Manager - Central Region
The Baltimore and Ohio Railroad Company
12 Grant Street
Pittsburgh, Pennsylvania 15219

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission.

You are hereby required to satisfy the said complaint or to answer the same in writing, duly verified by affidavit, within TEN days from the date hereof.

In Witness Whereof, PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused its seal to be hereunto attached, duly attested by its Secretary, this TWELFTH day of JULY, 19 73

ATTEST:

WILL BETHNER

Secretary

NOTE:—Attention is called to Rule ... of the RULES OF PRACTICE before the Pennsylvania Public Utility Commission, reprinted on the reverse hereof.

Enclosure

Certified Mail
Receipt Requested
SIMILAR NOTICES: See attached list.

AMH:jg

DOCKETED
COMPLAINT DOCKET
JUL 12 1973
ENTRY No.

(over)

RULE

Complaints—Form

(a) All complaints must be by petition sworn to by the complainant. If complainant is a corporation or association, a duly authorized officer may execute the complaint. No particular form is required; the Commission will, upon request, furnish blank forms.

Contents

(b) The complaint must set forth the name and address of the complainant, and of his attorney, if any, the name and address of the public utility complained against, and the nature and character of its business; a concise statement of all the material facts upon which the complaint is founded; if a violation of any statute or ruling or order of the Commission is complained of, a reference to the section of the statute or particular ruling or order of the Commission must appear.

Additional Copies

(c) In addition to the original verified complaint three copies thereof shall be furnished and in case more than one public utility is named as respondent, an additional copy for each additional respondent.

Service

(d) A copy of the complaint will be forwarded by the Commission to each of the public utilities complained against, accompanied by a notice from the Commission calling upon each such utility to satisfy the complaint or answer the same, in writing under oath, within such time as may be specified in said notice.

Answer

(e) The answer, duly verified, must specifically admit or deny the material allegations of the complaint, and must clearly set forth the facts upon which respondent relies. Three copies of the answer shall be filed with the original, and one copy served by the respondent on the adverse party personally or by registered mail and due proof of such service filed with the Commission.

Demurrer

(f) Any respondent deeming the complaint insufficient to show a breach of legal duty or desiring to set up the absence of power or authority in the Commission to determine such complaint may, instead of answering, serve on the complainant as answers are required to be served and file with the Commission, within the time specified in the notice to satisfy or answer, its claim of insufficiency or absence of such power or authority and, for the purpose of disposing of the questions thereby raised, the facts stated in the complaint will be deemed to be admitted. Proof of service of the demurrer upon the complainant shall be filed with the Commission.

Hearings

(g) If, from a consideration of the complaint and answer, or otherwise, the Commission determines that reasonable ground exists for investigating the complaint and that a hearing is necessary, a time and place for hearing will be fixed and notice thereof given to the complainant and the respondent.

Evidence

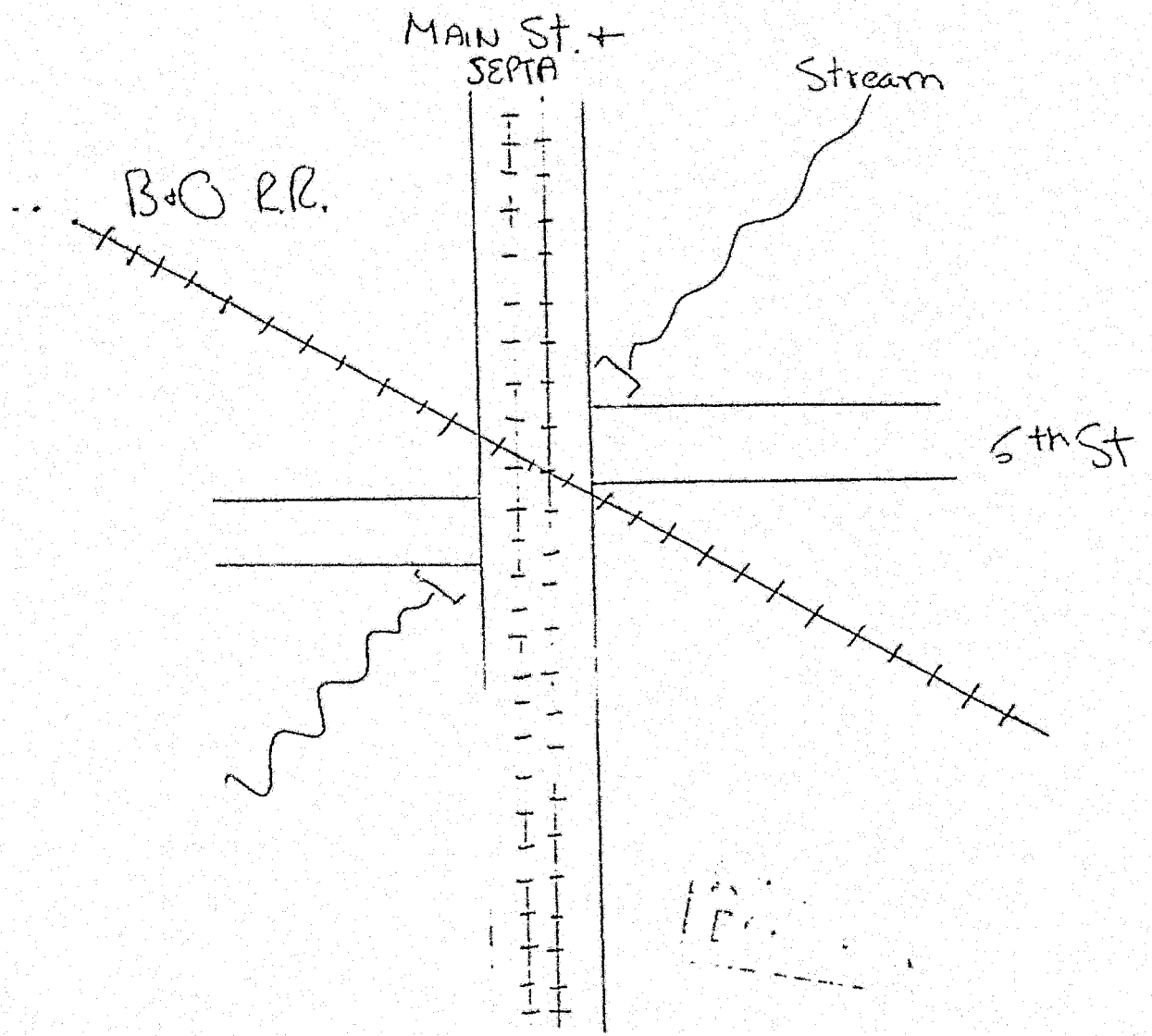
(h) The complainant must establish by evidence the facts alleged in the petition unless the respondent admits the same, except where the burden of proof is imposed by law upon the public utility complained against. Verified copies of all documents may be substituted for originals which have been offered in evidence.

Parties

Whenever complaint is made that any grade crossing is dangerous and should be abolished, or that any overhead crossing, subway or underpass is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, any township, borough, city or county concerned shall be named as a party and shall be given due notice by the Secretary of all hearings of such complaint.

JUL 1 2 1917

C. 20070



BEFORE THE PENNSYLVANIA PUBLIC UTILITIES COMMISSION

BOROUGH OF DARBY

: Docket No. 2070

vs.

BALTIMORE AND OHIO
RAILROAD COMPANY, Department of :
Transportation of the Commonwealth
of Pennsylvania, Southeastern Pennsylvania
Transportation Authority and County of
Delaware

COMPLAINT

RECEIVED

JUN 29 1973

SECRETARY'S OFFICE
PUBLIC UTILITY COMMISSION

TO THE PENNSYLVANIA PUBLIC UTILITIES COMMISSION:

1. The Complainant is the Borough of Darby, a Municipal Corporation, whose mailing address is 44 North Ninth Street, Darby, Delaware County, Pennsylvania.
2. Respondent is the Baltimore and Ohio Railroad Company, a Public Utility as defined by the Pennsylvania Public Utility Code, with offices located at Delaware Avenue and Wolf Street, Philadelphia, Pennsylvania.
3. The Respondent operates and maintains a railroad right-of-way through the Complainant Borough, which right-of-way and track intersects with and forms a grade crossing at Main Street and Sixth Street in the Borough of Darby.
4. The aforesaid grade crossing, the responsibility for the maintenance of which lies with the Respondent railroad company is in such an extreme state of disrepair that its existence constitutes a hazard and danger to all vehicular traffic and to pedestrians using Main Street and in particular to the citizens of the Borough of Darby.
5. There exists at the intersection and in the middle of the grade crossing holes as deep as three feet and as wide as six feet. In addition, the track itself is extremely unstable.

RECORDED
FOLDER

DOCKETED
COMPLAINT DOCKET
JUL 13 1973
ENTRY No. 1

6. As a result of the aforesaid dangerous condition existing at the said grade crossing, accidents have occurred, and persons using Main Street have sustained personal injuries because of the said dangerous condition, and persons, corporations and other users of Main Street have sustained damage to their property as a result of the aforesaid dangerous conditions.

7. To eliminate the dangers existing to the said grade crossing and to provide the users of Main Street and Sixth Street with a safe grade crossing, the grade crossing should be repaired so that a safe and dependable grade crossing exists.

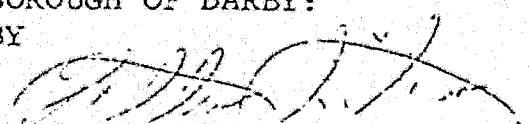
8. It is averred by Complainant that numerous complaints have been made by the officials of the borough and the Borough Engineer concerning the said condition but the said dangerous condition continues to exist.

9. It is averred that by the authority of the Public Utility Law, the Public Utility Commission has jurisdiction to hear this complaint and said Commission has the authority to grant the relief requested.

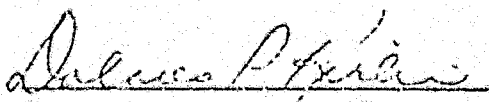
WHEREFORE, Complainant prays that Respondent be directed to immediately eliminate the said dangerous condition now existing at the Main Street and Sixth Street grade crossing; and that Respondent be directed to continue to maintain said grade crossing.

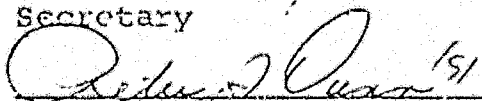
BOROUGH OF DARBY:

BY


President of Council

Attest:


Secretary


Peter A. Dunn, Esquire
Solicitor for Borough
of Darby

107 W. 3rd St., Media, Pa. 565-3100

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF DELAWARE :

DOLORES P. KIRLIN, being duly sworn according to law, deposes and says that she is the Secretary of the Borough of Darby; and that the facts set forth in the foregoing Complaint are true and correct to the best of her knowledge, information and belief.

Dolores P. Kirlin
Dolores P. Kirlin

Sworn to and subscribed

before me this 6th day

of June, 1973

Spencer D. Payne
Notary Public

BEFORE THE

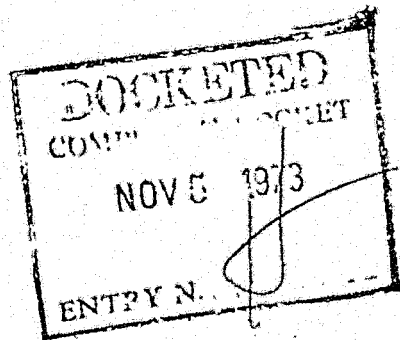
PENNSYLVANIA PUBLIC UTILITY COMMISSION

C. 20070 - Borough of Darby v. The Baltimore and Ohio
Railroad Company

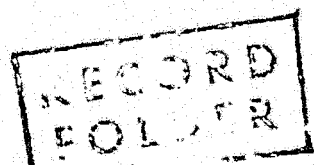
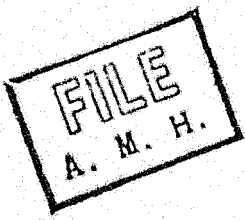
INITIAL HEARING

October 17, 1973

STENOGRAPHIC TRANSCRIPT
Media, Pennsylvania



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PENNSYLVANIA PUBLIC UTILITY COMMISSION



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CERTIFIED SHORTHAND REPORTERS
121 NORTH BROAD STREET
PHILADELPHIA, PA 19107

I N D E X

<u>COMPLAINANT'S TESTIMONY</u>	<u>Direct</u>	<u>Cross</u>	<u>Redr</u>	<u>Recr</u>
Leo F. O'Connor-----	7	24	--	--
Dolores Kirlin-----	35	46	52	54
Charles F. Sanders-----	55	63	--	--
Leo F. O'Connor (recalled)-----	66	--	--	--
 <u>TESTIMONY OF B&O RAILROAD COMPANY</u>				
James Anders-----	70	78	--	--
 <u>TESTIMONY OF SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY</u>				
Frank Berdan-----	86	92	--	--
 <u>TESTIMONY OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION</u>				
John T. Salyer-----	95	98	--	--
- - -				
<u>COMPLAINANT'S EXHIBITS</u>				
	<u>Marked</u>	<u>Received</u>		
C-1 / Sketch of Sixth and Main Streets with intersecting tracks-----	9	--		
C-2A and 2B Photographs-----	12	--		
C-2C and 2D Photographs-----	13	--		
 <u>B&O RAILROAD COMPANY'S EXHIBIT</u>				
B&O-1 / Blueprint entitled "Record Plan No. 53329-23281"-----	73	85		

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

- - -

C. 20070 - Borough of Darby v. The Baltimore and Ohio Railroad Company, Department of Transportation of the Commonwealth of Pennsylvania, Southeastern Pennsylvania Transportation Authority and County of Delaware - Alleging dangerous and hazardous conditions existing at the crossing, at grade, where the tracks of The Baltimore and Ohio Railroad Company cross the intersection of Main Street and Sixth Street, and the tracks of Southeastern Pennsylvania Transportation Authority, in the Borough of Darby, Delaware County.

- - -

BEFORE: CLAUDE O. LANCIANO, ESQ., Presiding Examiner

- - -

APPEARANCES:

PETER A. DUNN, ESQ.
107 West Third Street
Media, Pennsylvania

Counsel for Complainant

LIONEL B. GUMNIT, ESQ.
Transportation & Safety Building
Harrisburg, Pennsylvania

Counsel for Respondent Pennsylvania
Department of Transportation

APPEARANCES, continued:

ANTHONY R. SEMERARO, ESQ.
One South Olive Street
Media, Pennsylvania

Counsel for Respondent County of Delaware

JAMES M. SWEET, ESQ.
11th Floor Philadelphia National Bank Building
Philadelphia, Pennsylvania

Counsel for Respondent SEPTA

ROBERT O. SMITH, JR., ESQ.
2 North Charles Street
Baltimore, Maryland

Counsel for Respondent B&O Railroad Company

- - -

INITIAL HEARING held in the Toal Building
Second and Orange Streets, Media, Pennsylvania, on
Wednesday, October 17, 1973, beginning at 10:15 a.m.

- - -

P R O C E E D I N G S

MR. SEMERARO: If the Examiner will permit, the County of Delaware, as you know from the printed questions, is limited to questions 19 and 20. If it would be convenient, the County of Delaware would at this time request permission to file its Answer with respect to those two questions; that is, with respect to question 19, the County of Delaware replies yes, and with respect to question 20, the County of Delaware replies no.

THE EXAMINER: Permission is granted. We consider your statement a response.

MR. SEMERARO: Thank you.

THE EXAMINER: Does anyone desire to ask any questions with relation to this?

(There was no response)

THE EXAMINER: You are excused, Mr. Semeraro, if you wish to be excused.

MR. SEMERARO: Yes. Thank you very much.

(At this point Mr. Semeraro left the room)

THE EXAMINER: This is a hearing at Complaint Docket No. 20070, in which the Borough of

Darby is the Complainant, and the Respondents are the Baltimore and Ohio Railroad Company, the Department of Transportation of the Commonwealth of Pennsylvania, the Southeastern Pennsylvania Transportation Authority, and the County of Delaware.

The allegations of the Complaint allege dangerous and hazardous conditions existing at the crossing at grade where the tracks of The Baltimore and Ohio Railroad Company cross the intersection area of Main Street and Sixth Street, and the tracks of Southeastern Pennsylvania Transportation Authority, in the Borough of Darby, Delaware County.

This being an initial hearing, counsel is required to state for the record his name, his place of business, and the name of the entity he is representing. Would you do that, please?

MR. DUNN: If the Examiner please, my name is Peter Dunn, Solicitor for the Borough of Darby, 107 West Third Street, Media; telephone number, 565-3100.

I would like to offer into the record the notice of publication with the Delaware County Daily Times in Chester. This was, as requested, advertised twice; once on October 1st, '73, and once on October 8th,

'73. The notice was also published in the Delaware County Legal Journal. I am advised that it has been published. I have not yet received proof of publication. I will forward it to the Commission upon receipt.

THE EXAMINER: Thank you very much. It will be received on that condition. Upon receipt, you will forward it to the Secretary of the Commission.

MR. SMITH: My name is Robert O. Smith, Jr., 2 North Charles Street, Baltimore, Maryland, 21201. I represent the B&O Railroad, one of the Defendants here today.

MR. SWEET: My name is James M. Sweet, 11th Floor PNB Building, Broad and Chestnut, Philadelphia. I am representing SEPTA in this hearing.

THE EXAMINER: Thank you, sir.

MR. GUMNIT: My name is Lionel B. Gumnit, Transportation & Safety Building, Harrisburg, Pennsylvania. I represent the Pennsylvania Department of Transportation.

THE EXAMINER: Other counsel?

(There was no response)

THE EXAMINER: Now for the sake of accuracy, gentlemen, as you address any witness, you might begin by stating your last name so that the recorder can start

by indicating who counsel examining at the moment happens to be, at least until we get along a bit in the hearing.

The Complainant will call his first witness.

MR. DUNN: Thank you, Mr. Examiner. I call Mr. Leo O'Connor.

COMPLAINANT'S TESTIMONY

... LEO F. O'CONNOR, 2006 Walnut Street, Philadelphia, Pennsylvania, having been duly sworn by the Examiner, was examined and testified as follows ...

THE EXAMINER: What is your occupation?

THE WITNESS: An engineer. We are the engineer for the Borough of Darby.

THE EXAMINER: You are authorized to appear here for the Borough of Darby to testify?

THE WITNESS: Yes.

THE EXAMINER: Very good. Take your witness, Mr. Dunn.

DIRECT EXAMINATION

BY MR. DUNN:

Q. Mr. O'Connor, you are a registered engineer?

A. Yes, I am.

Q. With what firm are you associated?

A. The firm of Pennoni Associates, Incorporated.

Q. And your firm and you are the engineer for the Borough of Darby?

A. That is correct.

Q. Now I am going to address myself to certain questions that were posed by the PUC, and I am going to ask you to comment on them. Would you please describe the present existing logistics of the intersection with which we are concerned; Sixth and Main Streets in Darby?

THE EXAMINER: That is in connection with what question?

MR. DUNN: This is question one.

THE WITNESS: The crossing consists of the crossing of both Main Street and Sixth Street, and a crossing at approximately a 45 degree angle is the B&O Railroad and their tracks. In addition to this, there is the normal pedestrian traffic which is experienced along there in view of the children on their way to school. So that there is the crossing of the B&O Railroad, the SEPTA tracks, normal vehicular traffic and pedestrian traffic.

MR. DUNN: If the Examiner please, this might make it easier. This is very sketchily the existing situation with Main Street and SEPTA tracks, B&O Railroad tracks and Sixth Street.

THE EXAMINER: Do you propose to offer this?

MR. DUNN: Yes. I would ask that it be marked into evidence, and various witnesses can make reference to it, if they so desire. It is primarily for your benefit as the testimony is entered.

(Sketch of Sixth and Main Streets with intersecting tracks marked for identification as Complainant's Exhibit 1)

MR. DUNN: I would ask leave, if the Examiner please, to offer two more copies with the original, and I will photocopy them and send them to the Secretary.

THE EXAMINER: You will send them not to the Secretary but to this young lady, the reporter, and she will forward them. I will hand over the one you handed me.

BY MR. DUNN:

Q. Would you describe, Mr. O'Connor, the existing conditions at this intersection which, in the Borough's

opinion, renders the crossing dangerous and inadequate?

A. Yes. There are concrete patches which were placed between the tracks approximately a year ago. It was between October 24 and October 31, 1972. Within several weeks to a month after that, due to the movement of the tracks, they had been broken, and they are raised. The concrete presently between the tracks is raised between three and four inches, which actually causes the vehicular traffic crossing that to come to just about a complete stop, because it amounts to a three or four inch curb. Relative to the trolley traffic, which is possibly unrelated to that concrete which has been shifted out of position, the trolleys which also cross it come to just about a stop. I have witnessed them and the fact that they stop. Due to the variations in vertical alignment between coming up and varying and shifting considerably, the trolleys come to just about a stop to go across it.

Relating the same problem, since the pedestrian traffic also crosses at a 45 degree angle -- and that happens to be a school crossing; at the time I witnessed it, the school guard was on duty -- these variations in which you would expect to be a uniform

concrete pavement, when you get variations of three and four inches, it is like a curb. It is prone towards accidents. There are also the mothers with the school children.

So that it is the compounding of the automobiles, automobile and truck traffic, plus the trolley traffic from SEPTA, plus this pedestrian traffic, makes it sort of a multi-faceted hazard there.

Q. Now you have indicated that the concrete that was placed at the site approximately a year ago in October of 1972 has degenerated or come apart?

A. Yes.

Q. What is the resultant condition with regard to potholes or whatever that now exists as a result of that situation and that concrete coming apart?

A. Well, the concrete, in addition to having come apart -- which was very smooth at the time of pouring -- has been raised, portions of it raised as much as three and four inches. Due to this difference in vertical alignment, it means that vehicles going across it are confronted with two and three drops of three and four inches over the span of the tracks, which is between four and five feet. So that I think the situation now is not

as much potholes, because that is what happens when the blacktop just erodes and you drop in a hole. I would say the situation right now is not one of potholes but is one of concrete curbs jacked out of position. So that you are just going over bumps, about three or four bumps, each one of them being three, four, five inches.

Q. Do you know from your records when the last blacktop was applied to the site?

A. No, I don't. I have the photographs from our office which show the concrete job I had referred to, but I don't have the blacktop.

Q. I think the Mayor will be able to testify to that.

A. Yes.

MR. DUNN: If the Examiner please, I would ask that these merely be marked and not entered into evidence at this time. I will ask the witness to refer to them.

THE EXAMINER: Well, nothing has been offered yet, of course.

(Photograph marked for identification as Complainant's Exhibit 2A.

(Photograph marked for identification as Complainant's Exhibit 2B

(Photograph marked for identification as
Complainant's Exhibit 2C

(Photograph marked for identification as
Complainant's Exhibit 2D)

BY MR. DUNN:

Q. Mr. O'Connor, showing you what has been marked as C-2A, C-2B, C-2C and C-2D, would you please state what they purport to show. First of all, state when they were taken approximately.

A. Two of them were taken on October 24, 1972, and the other two were taken on October 31, 1972.

Q. What do the photographs taken on October 24 purport to show?

A. They show the excavation prior to pouring of concrete, which indicates clearing out of all the blacktop and material between the rails down to what appears to be the top of ties, since the ties are exposed, and also for a distance of approximately two feet on the other side of the rail preparatory to pouring of high early-strength concrete.

Q. What do the two photographs taken a week later purport to show?

A. They show a concrete surface which appears to be

approximately a half inch to an inch below the rail, which has just been smoothed out. Indicated on the back of them is the date 10/31, and after pouring high early-strength concrete.

Q. Now those photographs were taken by Mr. Gillespie, your associate?

A. Yes.

Q. And the concrete on those latter two pictures which were taken on October 31st, that is the concrete that you have described no longer exists or is damaged or in disrepair?

A. It is presently in there and is in a state of ill repair; right.

Q. How far from the edge of the tracks does the concrete extend?

A. Approximately two feet. As I had indicated, the concrete does down to the top of tie, and it is my opinion that, having watched freight trains going over there in the evening, that with the vertical movement up and down, evidently the ties have lifted that concrete and various other forces have pulled it up, which is leading to the question of what has to be done about it. I think that I am prepared to say that if any concrete is

provided on the surface, it would have to be tied to a substantial structural slab underneath that is not going to be torn loose by vertical movement of the ties which is related to freight traffic through there.

Q. Referring to question three, if the Examiner please, is it your opinion that the crossing is adequate so as to provide for safe passageway both for the trains on the tracks and for pedestrian and vehicular traffic crossing the tracks and for SEPTA traffic crossing the B&O tracks?

A. It is my opinion that it is not safe.

Q. I am going to address two questions to you, because there has been some evidence in the Pleadings that the B&O Railroad intends to install a crossing frog. Now assuming that the B&O will, in the relatively near future, install a crossing frog, will that, in your opinion, adequately provide for a safe crossing for all of the circumstances that you have just described; the vehicular and pedestrian and railroad traffic?

A. I have to say that depends. When we use the word "frog", I interpret that as meaning an interconnection between the rails. It is a rather general comment, and it does not specify specifically what is going to be done with the underneath and the foundation, which I

think is the real basis for the problem here.

I see the foundation as the most critical item, and the second which I think is quite serious is the alignment with the SEPTA tracks, because the present connections are approximately two feet away, which causes what I would consider a serious deviation in the vertical alignment of the SEPTA tracks. To say per se to put a frog in will be adequate, I think that I would like to qualify that by saying that it will be adequate if the foundation and the related connection to the SEPTA tracks is made properly. This is what I would like to request that attention be paid to by the B&O and by the SEPTA people.

Q. We were handed this morning by the B&O canned testimony and what appears to be a daily plan. Have you had a chance to briefly examine the daily plan that was submitted with that testimony?

A. I looked at it for about a minute, and I did notice that -- if you would hand it to me, I could discuss it a little more.

Q. Here you are.

A. Thank you. I do notice that attention is being paid to the general item of the foundation, which

indicates ballast underneath the main ties plus 12 by 12 -- I imagine they are 12 by 12 -- timbers, and then 8 by 12, which are probably timbers in there surrounded by ballast, which would indicate 20 inches of stone under the ties. I am not sure -- and frankly, I don't know, because I think one of the problems there which has probably plagued all of the people related to this hearing is: Is the foundation situation adequate. That is what I question here. I can only question has adequate analysis been made of the foundation situation there to be satisfied that this will be adequate. What I was envisioning there is due to the history of problems here. I refer to history that is a matter of record, that this patching was done in '72; and prior to that, it was approximately five years earlier, relatively substantial repairs were done. It was that period of five years where potholes occurred. The reports I have heard is that sticks could be placed in three feet into the ground. So I am concerned that there could be some failure of this ballast, which could fall into whether they be drainage sewers or whatever.

I was picturing, quite frankly, a concrete base across there. The other item which concerned me

was the tie-in with SEPTA. I was picturing a more substantial concrete lateral distribution. I think that by making this suggestion, I recognize that the Railroad people here do have expertise, and that we do intend to rely on the Railroad people's expertise and their engineering of it. But I would urge that they give serious consideration to the fact that the history has been one of failure here, and that there is always the concern where you can go a little heavier or a little lighter than you would normally do. I would urge that a little more consideration be given to the foundation for both the rail and the SEPTA tracks; I would suggest there the consideration be given to reinforced concrete.

Q. Do you feel then that a reinforced concrete base would be necessary -- not merely desirable, but necessary -- in order to avoid the long term problems that this intersection has historically caused?

A. Yes, that is my opinion.

Q. Now with regard to the width of concrete or repair from the tracks, do you have any recommendations as to what should be done in order to provide safety in that respect?

A. Looking at the drawing which I see here, I don't

see any dimensions giving the details as to the distance from the tying back into the SEPTA rails. My observation in the field is that the present linkage and the present joints are approximately -- and they do even show in the photograph -- they are approximately three feet back from the B&O rails.

Q. Is that adequate, in your opinion, and will it be adequate in the future?

A. Well, my opinion is that the splice itself is not as significant as the foundation tying the two together. I would like to see this extended to more like ten feet to give us half a chance for future stability, since there has been experienced a tremendous lack of stability in the past. I don't think a few feet is adequate. I think that we should be involved here in at least ten feet away from the railroad track into the SEPTA track.

Q. Have you been present at the intersection when trains have gone through?

A. Yes, I have.

Q. What have you observed, if anything, about the tracks themselves? What happens when the train goes by?

A. I have observed vertical movement of at least two

to three inches. The way I observe this actually is I was standing directly by the protective arm rail, so that I was lined up and observing, and I could see the track movement directly prior to going into the street and the actual street itself. I didn't observe quite that much movement. I thought that there it was just tantamount to vibration. It appeared to be less than an inch. Immediately approaching it, which is probably typical of areas where the ballast and the track was spanning the more substantial center of the street onto its other foundation, there was movements of definitely between up around three inches.

Q. Does this movement, in your opinion, constitute a hazardous condition?

A. I think on a one-time shot, it is not hazardous. But the effect of movements of several inches has the effect of moving everything that it is related to, which causes the hazardous condition. I think that this movement does have to controlled or else any improvements -- and this is my fear with the present recommendation here, and I think it is only subject to mild modification -- I think that it will have to be brought under control.

Incidentally, I guess that I should add

further -- and again, this is more a specific railroad problem, and it is maybe getting into detail -- but the movement indicates to me that there is a hollow spot in the ballast removed from the street, which means the rail is doing a spanning which holds fine until the load hits it, and then it varies, which might mean an extension of the ballast back some 50 feet or just a repair of the ballast. I do not see that as a big thing.

Again, I do not think that it is an expensive-type thing, but I think attention has to be paid to this.

Q. Now getting back to the second half of the question, assuming that the B&O will install the crossing frog that it has suggested that it will install, what should and can be done in the meantime in order to provide for an adequate and safe crossing?

A. Point one, we have to assume what we mean by "the meantime". By the correspondence we have seen, we could be talking about a month and by the previous commitments on these lines. I recognize there can be shipment and construction problems. I think quite realistically we could be talking about -- and perhaps I should not be hazarding guesses -- but with the Christmas season, we

could conceivably be talking about three or four months. I hope that is not the case.

But I would think for a month's period of time, I would like to see that concrete taken out, which is the immediate problem, and be replaced with actually IFD 2 would be ideal for the surface. But I think that probably blacktop down to the six inch level of the track but not going below the ties. But remove the immediate obstacle and replace with a blacktop or black base. I would expect that that would not have satisfactory duration of more than three months. That is why I say that if the meantime extends to over three or four months, it is conceivable that it might even have to be repaired within a few months.

Q. Does the construction which you have just suggested constitute a time-consuming procedure?

A. I would think not. I think that is more of a maintenance-type thing which could be done let's say within two days; a day to go out and chop out the serious areas, and a day to patch the other.

Q. Is this a relatively expensive or inexpensive procedure? I know that it is a difficult question.

A. I would say relatively inexpensive certainly

compared with the other things, both with what the Railroad contemplates and with what I am suggesting.

Q. Finally, Mr. O'Connor, what is your opinion with regard to the danger that crossing has right now at the present time; danger to pedestrians, to vehicular traffic and to railroad traffic?

A. I think it is dangerous, particularly from what I have observed. It is not dangerous from the point of view of the rails themselves, the train traffic. From the point of view of both the automobile and the SEPTA traffic, the danger is that they have to just about stop on the train tracks; and that plus some damage which could be done to cars.

On the pedestrian side, I think there is possibilities of injuries, and I know there have been a few injuries. So I would say it is dangerous.

With the possibility that the permanent repairs could be quite a while off, I would suggest that we push quite firmly to have these temporary repairs done.

MR. DUNN: Thank you. Cross examine, please.

THE EXAMINER: May I ask before you launch into cross examination whether you have any evidence as to the accident record as posed by question number two.

MR. DUNN: Yes, your Honor. I will present testimony from the Borough Manager and from the Mayor of the Borough as to question two and other related aspects.

THE EXAMINER: Very good. He is available for cross examination now.

CROSS EXAMINATION

BY MR. SWEET:

Q. I have a couple questions and comments, Mr. O'Connor. This is a general comment, Mr. O'Connor. You mentioned that trolleys must stop or trolleys do stop. Well, by State law, they are required to stop. So that is why they come to a stop there.

A. Well, in my observance of it, I think that stop by State law usually is before the trolleys cross the track. Therefore, for safety, they stop and they look, and then they cross.

Q. And they open their doors.

A. Now a trolley has a front truck and a back truck, a combination of wheels. As that individual truck goes across, they stop between.

While I had discussions with township

officials and with the crossing guard, I didn't have any discussions with trolley operators. My suspicion there and my assumption was that they were -- I don't know if it is derailment or what, but it is quite a bump. That is why they stop at each truck.

Q. I think it has to do with passenger comfort.

A. I would not be surprised. I think it has to do with the cars.

Q. As a general question, are you familiar with the drainage situation in the area of the crossing and along the B&O tracks, and do you know what part of this responsibility is borne by the Borough of Darby? Do you know the drainage setup in general? Can you give us an overall picture of this and how it relates to any possible decomposition of the crossing itself?

A. I have reviewed that drainage situation. I have not prepared a plan. Frankly, I didn't. I have not done instrument surveys along there. It was my hope and intention in this that this situation would be resolved. I do not have a detailed analysis of the drainage is really what that amounts to.

Q. Do you know what responsibilities the Borough of Darby bears for the drainage or, in general, for which

drains they are responsible?

A. Yes. There are inlets on Main Street, and there are also inlets on Sixth Street, and most of them drain in what appears to me to be the railroad right of way. There are drains along that direction. From my field observations, I could see where there were culverts going directly along parallel to the railroad which would cross under SEPTA'S tracks, and I am not sure whether there are drains there. My feelings of the Township's responsibilities is that inlets which are placed along that street are most likely the Township's responsibility. In your case, particularly with PennDot, I do have a question in my mind whether those drains really -- like if the Pennsylvania Department of Highways was to repair that road, they would normally provide the drainage related to it. So I think that some of those inlets and drains probably are joint responsibility between PennDot and the Borough.

Q. Do you have any idea of the relative axle loading of the freight cars as opposed to SEPTA trolley cars, the relative weight?

A. I don't have any figures on that, no.

MR. SWEET: That is all the cross examination

I have, Mr. Examiner. Thank you.

THE EXAMINER: Any further cross examination?

MR. SMITH: Yes, sir.

BY MR. SMITH:

Q. Mr. O'Connor, how long has your company been engineer for the Borough of Darby?

A. Approximately a year and a half.

Q. And was the Damon firm your predecessor?

A. I believe so.

Q. Are you aware of the record made before this Commission some years ago at this same crossing involving similar complaints?

A. Certainly not in detail.

Q. Have you read any part of it or examined any part of it?

A. No, I have not.

MR. SMITH: Mr. Examiner, I think a proper consideration of this case by the Commission cannot be made unless that former record were incorporated in this case by reference, and I so move. I am trying to find a reference to the Docket Number here, and I cannot. But it was a case approximately five, six, seven years ago, where we met in this same room, and there was considerable

controversy at that time about the drainage problems that Mr. Sweet has brought up. There was no resolution by the Borough's engineer at that time. He refused to submit prints that the Hearing Examiner, Mr. Earle, asked him to submit. It was just generally an unsatisfactory hearing, and I do not remember how it came out. But at that time the railroad spent thousands of dollars, which is evident in that record, to grout and put in the kind of a base that Mr. O'Connor has just been talking about. I think that record will bear out amply that the real problem at this crossing is not so much what is done as what is going on in subterranean surface waters to erode and destroy what the railroad and SEPTA has done in past years. Now until these drainage problems are faced up to and so long as one body keeps passing the responsibility off to another, no matter what the railroad and SEPTA do under this track, the water is going to erode and wash out what we try to do. There is evidence in that former record about these drains near the track, about them being stopped up and the water running right over the tracks in flood stage almost. I think that a proper review of that record will add a considerable light to the problems we now face.

THE EXAMINER: I think there is merit in your argument, but I cannot agree with you that this is the time to raise the issue or at least to raise it in the fashion that you are raising it. I would suggest to you that, as we get along with the hearing, there will be an appropriate place where you can raise that. You will have to identify the hearing number or by date or in some fashion.

MR. SMITH: I will be able to, I am sure.

THE EXAMINER: Which will permit the staff up there to get it out and make it part of the record in this case by reference. Do you agree with that?

MR. SMITH: Yes. I was trying to determine if Mr. O'Connor had any prior knowledge of that case, and maybe I got carried away with argument.

MR. EXAMINER: Apparently he has not had prior knowledge in the sense that he examined the record and is fully informed as to what transpired at the time; is that correct, Mr. O'Connor?

THE WITNESS: That is correct.

THE EXAMINER: Under the circumstances, there is a correct and better way of getting it in the record, and I think it is in line with the suggestion I

just made. If you approve of it, you might use that when you get to it.

MR. SMITH: I have maybe one or two other questions of Mr. O'Connor.

THE EXAMINER: Go ahead.

BY MR. SMITH:

Q. Mr. O'Connor, do you have any experience that would lend support to your belief that filling in these voids when the concrete is taken out with blacktop would be a practical solution in view of the railroad traffic and SEPTA traffic over this crossing? Have you ever done that kind of thing before?

A. No, I have not. I have witnessed a number of crossings and the way they have been treated, and it is my feeling that what we want to do is get something in there with some flexibility. I was never specifically -- and I think that quite often that is treated as a patching problem. In witnessing the general treatment of all of these rights of way along SEPTA where blacktop has been put in to replace many of the bricks which are in there which just provide kind of a rough road, it is for this reason that I suggest that. I am certainly open to any other alternatives along those lines.

Q. The relative loads that SEPTA puts on its rails and loads that the railroad puts on its rails are quite different, are they not?

A. I believe so, yes.

Q. Do you have any photos to show the present condition today?

A. No, I do not.

Q. Have you made any examination of the subsurface below the rails to see what is under there?

A. No, I have not.

MR. SMITH: That is all I have.

MR. EXAMINER: May I for the record ask whether you are informed as to whether pedestrians use any part of the surface for crossing?

THE WITNESS: Yes, they do. I have witnessed them. Do you mean are they allowed to or do they? They do, yes. As a matter of fact, it is a school crossing, which is why I noticed that.

THE EXAMINER: What is the condition, if you know, of the surface as it has existed up until the present time in inclement weather, rain or any precipitation followed by extremely cold weather that might result in icy formation? Is there any element of

danger to pedestrians crossing and using that surface, particularly children?

THE WITNESS: Yes. I would say it is very difficult. I was not there when it was icy. It was difficult without the ice and without the water. Perhaps, you know, in the spirit of this thing -- and I don't know what flexibility the Borough has -- that maybe the crossing should be changed. It is always a trick crossing a track. If you put it at a 45 degree angle and two crossings, it is a little trickier, and if you corrugate the surface with three or four inch bumps, it is trickier even without the ice. Maybe this is something the Borough can try to work out, to change the crossing a little bit. But it would definitely be dangerous there, without a doubt.

Could I add one other thing relative to Mr. Smith's question?

THE EXAMINER: Go ahead.

THE WITNESS: Both the question of the subterranean exploration and the question of drainage and the whole area of mixed responsibility here. I think that the Borough is the one which always feels -- you know, it is the Borough's people that come really to

the Mayor and start rattling his cage and complaining. This is why the Borough has brought it up. I don't think it is proper for the Borough to go doing explorations under the rails of Penn Central, which it could put itself in the position of extreme liability. You know, there become responsibilities here. For that reason, the Borough has certainly not done underground exploration.

The question also of drainage, I think there is overlapping here with the Pennsylvania Railroad, just as the Highway Department would. Anyone that puts in a facility becomes responsible for the designing of drainage. Inference would seem to be left with me after our last little changes that maybe the Borough should take care of drainage and the Railroad would put the rails in. This is not true. The main facet of both highway design and railroad design is to provide for drainage. Now the fact that we intersect here is an overlapping of responsibility.

I urge, and I think that the Railroad, in planning its situation through here, has to be aware of the drainage. I do not see the grades written really on this plan, and I think that somebody does have to

plan and design the interchange improvements. I do not think that they can be done in a vacuum. I think that the Railroad -- and admittedly, it is an operation to change that -- should make the related recommendations toward drainage, because certainly it is draining the railroad underdrain. I think if, in making such a study, they feel that the Township should do certain things related to drainage, I would urge the Railroad to suggest so. While the Borough does not feel disposed to make improvements, I do not think they are trying to shirk doing their share.

THE EXAMINER: Cross examination from any other source?

(There was no response)

THE EXAMINER: I hear no response, so I will excuse the witness. Thank you very much, sir.

(Witness excused)

MR. DUNN: May I call my next witness?

THE EXAMINER: Call your next witness.

MR. DUNN: The Borough will call Mrs. Kirlin.

... DOLORES P. KIRLIN, 119 North Third Street, Darby, Pennsylvania, having been duly sworn by the Examiner, was examined and testified as follows ...

THE EXAMINER: What is your place of residence?

THE WITNESS: My home address?

THE EXAMINER: Your home address or place of business.

THE WITNESS: My place of business is 44 North Ninth Street, Borough of Darby.

THE EXAMINER: What community?

THE WITNESS: Darby.

THE EXAMINER: What is your occupation?

THE WITNESS: Borough manager.

THE EXAMINER: All right. The witness has been sworn.

MR. DUNN: Thank you.

DIRECT EXAMINATION

BY MR. DUNN:

Q. Mrs. Kirlin, what is your home residence?

A. My home residence is 119 North Third Street, Darby.

Q. For how long a period of time have you been a resident of the Borough of Darby?

A. Twelve years.

Q. You have indicated that you are presently the Borough manager?

A. Yes.

Q. What other office in the Borough do you hold?

A. Borough secretary.

Q. For how long a continuous period of time have you been either Borough secretary or Borough manager or both?

A. Two years, the end of September.

Q. Referring to question two of the Questions and Procedure, are you aware of any motor vehicle accidents in the past five years; specifically, the past one year, involving a railroad train at the intersection that we are here discussing?

A. There was one specific case involving one of the trains -- I think it happened the end of September of '71 -- where a woman was crossing the area, had to come to a very slow stop and the car stalled. Luckily there was a police car behind her. They were able to save her, because at the same time there was a train coming. She got out just in the nick of time, because the train at

the train stop did hit the car at that particular time. Officer Richard Gibney was the officer at the particular time.

Q. Where is Officer Gibney at the present time?

A. He is in a hospital.

Q. So he is not here testifying today?

A. Right.

Q. Are you aware of any other accidents occurring in the last five years involving railroad trains at the intersection?

A. No, I don't know of any other.

Q. Are you aware of any other specific accidents involving motor vehicles at this crossing at Sixth and Main?

A. I have three particular cases with me, yes, although there have been many others. There is one that occurred April 12, 1973, where a car went over, broke the frame of his car.

There was another on May 9 of 1972, and the damage there was a rear axle broken. Then there was another one where I believe it was a tire that had blown out.

Q. Now these are three specific complaints that have

been made to the Borough and submitted to the Borough's insurance carrier?

A. Yes.

Q. Do you know whether litigation has resulted in any of these three claims?

A. No, I don't know.

Q. And are you aware from your own personal experience as Borough manager and on the receiving end of complaints as to other problems that exist with regard to motor vehicles at this intersection?

A. Yes, we do receive many complaints about the area of crossing, even to the point where one of our crossing guards -- of course, this was not a motor vehicle accident. Do you want that one?

Q. Yes.

A. The crossing guard at the crossing was crossing the children and caught her ankle in the raised area, sprained her ankle, and was out for a couple of weeks, collecting compensation. So it was as a result of the injuries sustained at the time.

Q. Do you recall when this occurred?

A. Around March of last year, the last school year, 1973.

Q. Now there has been some testimony as to the existence of a school crossing area here. Given the circumstances and given the logistics of this area, is there any other place that a school crossing can be made for people coming from the west side of the tracks toward the elementary schools and the high school, junior and senior high school, that are on the east side of the tracks?

A. Not unless they really go completely out of their way. Both corners where they would have to cross would be involved with the tracks. They would really have to go almost a block out of their way, either way, you know, if they were going to cross at the corner.

Q. And at this specific corner, there is no other way of crossing, is there?

A. No.

Q. Other than directly across these tracks as they have been doing for years?

A. Right; that is correct.

Q. Now this is with regard to question two. I think that is the closest question to which this question can be referred. Do you have personal knowledge of the conditions of this site when it rains or snows or there

is other inclement weather?

A. Very much so, because I drive over it everyday.

Q. Can you describe them for the Examiner?

A. Yes. When it rains, it is very slippery. Of course, when it freezes, it is a lot slipperier. But when it does rain, it is completely filled with water, the area there, and extremely hazardous.

Q. Is it hazardous because of the ice that is formed in the pockets where the rain water collects?

A. Between that and then, like I would say, on the tips of the concrete there, as you would go over, yes, as well as the track area. I think even tracks when they are wet, you get caught on them.

Q. Do you recall the site conference that occurred at this site approximately six weeks ago?

A. Yes.

Q. When prior to that site conference was the last time that blacktop was applied or any other maintenance was applied to the crossing by the B&O maintenance crew?

A. Well, that particular day, like when I had gone to work, there had been none. But by the time of that hearing, there had been blacktop patches.

Q. So you are suggesting that blacktop was applied

two or three days prior to --

A. It had been applied two or three days prior to that, and then also that morning. But prior to that, yes, I guess it would have been about two or three days.

Q. Prior to the application of blacktop by the B&O maintenance crew, what was the condition of that crossing with regard to potholes and any other conditions that you may have noticed, from your own personal knowledge?

A. Well, from my own personal knowledge, it would have been as the engineer described; right immediately in the track, I guess where they join. The concrete pulled away and raised so that you more or less go into a rut and then have to come up again. So you would have to come to a complete stop as you are crossing. You try to kind of go over on the side to find a smooth spot, but there are not any.

Q. There are not any?

A. There are not any smooth spots where you can actually cross. Even when it is freshly blacktopped, you still have that raise of the concrete. It is even. It is not smooth as you are going along it, even when it is blacktopped.

Q. Was there a condition that we would commonly

describe as potholes that existed prior to the most recent patchwork by the B&O maintenance crew?

A. Oh, yes. This is a standard thing, you know.

Q. What season of the year do these potholes become the most problem?

A. I would say like when the heavy rains come, you know, it is difficult keeping the blacktop in there. Especially, I would say, in the summertime for filling them. The flowing, when the rain comes. They are real heavy and whatever.

But then in the wintertime -- of course, last year we did not have that much snow or ice or that much rain, I don't believe. But I would say in the summertime.

Q. For the record, this is a State highway, is it not?

A. Yes, it is.

Q. I presume that there will be -- and I know there will be, because it is in other testimony that has been submitted already by the other parties -- but this is a well traversed highway, is it not?

A. Yes, it is.

Q. And this highway, Main Street, is the primary artery into Southwest Philadelphia and the G.E. Plant

and all the industry down in Southwest Philadelphia?

A. Yes, it is; right.

Q. What are traffic conditions like in rush hour both in the mornings and in the evenings?

A. Extremely heavy, extremely heavy. Almost to where it would be bumper to bumper through the area from one end of Darby to the other.

Q. In your opinion, does this condition where the cars have to stop at the crossing contribute to the traffic problem that Darby faces?

A. Oh, I think so, because it would slow it up completely.

Q. And you are suggesting that no matter how slow the traffic is, it still has to stop completely at the intersection?

A. Right.

Q. Referring to question four of the Questions and Procedure, are you empowered today to suggest to what extent the Borough can help financially with regard to the solution to the problems that exist?

A. I think the only authority I would have at this time would be that I do know the Borough will cooperate in any way as far as supplying police personnel at the

time when the repairs are being done, handle any detour traffic and whatever. Also any of the highway men, the Borough maintenance men, if they were needed to assist in any way. I don't think to do any major work, but I really think that we would be willing to have them assist in any way whatsoever in order to get the job done.

Q. In other words, you are suggesting that the Borough will provide whatever police protection is necessary, whatever additional manpower is necessary to provide the traffic direction around the construction site?

A. Yes.

Q. When and if necessary, and also that the Borough maintenance crew will be there to help assist in whatever way possible in major construction?

A. Yes. Actually now the Borough maintenance crew does cooperate with the blacktop. The B&O leaves the blacktop, so much supply there, and if it becomes an emergency situation where the Railroad is unable to get up there and we see it, our men go out and take care of it.

Q. Has, in fact, the Borough maintenance crew on a regular basis patched the intersection?

A. They do. They go out a good couple times a week

and check it. If it is in a state where they have not come out, the Railroad has not come out, well, then they will put the blacktop in. The B&O will furnish the blacktop. They have it in a supply right next to the track area.

Q. And you have been a resident of the Borough for twelve years?

A. Yes.

Q. Has this condition or hazardous condition existed or least an annoyance existed at that intersection for the period of time that you have resided in Darby?

A. Yes, it has.

Q. Is it any better or worse than it has been in the past?

A. I find -- maybe it is because I am traveling constantly on it -- that it is worse. When I first moved out there, I was not working in that area, and I didn't use it as often as I do now.

Q. In your opinion, does the intersection constitute a hazardous intersection and dangerous?

A. Yes, it does, extremely so.

MR. DUNN: Cross examine, please.

MR. GUMNIT: PennDot would like to ask

questions of Mrs. Kirilin.

CROSS EXAMINATION

BY MR. GUMNIT:

Q. Mrs. Kirilin, have you had an opportunity to be at this crossing as a pedestrian at any time?

A. Yes, I have.

Q. And what was the purpose of your being at the intersection as a pedestrian?

A. Crossing, going into the shopping area.

Q. At any time since you made a crossing as a pedestrian, did you stop and observe the traffic; that is, the motor vehicle traffic at the intersection?

A. Yes and no. Kind of out of the side of my eyes, because it does stop. But I was more or less concerned with my own crossing, because as a pedestrian, you have to go slowly so that you do not get your heels caught in the area.

Q. But you have never actually stopped to look --

A. Yes, I have. I will say yes. Maybe not at the particular time that I was walking down, but I have stopped, yes.

Q. As a pedestrian?

A. Yes.

Q. Have you had an opportunity as a pedestrian to observe the motor vehicles and determine what percentage of the vehicles -- and I am not asking for an actual count, but an approximate count -- what percentage of the vehicles actually come to a complete stop at any time as they approach the rails or as they go over the rails?

A. Coming to a complete stop, I would say at least 50%. Coming to almost a complete stop, I would say at least 85, 90%. I have seen people who continue their normal rate of speed and fly over them almost (indicating).

Q. And the witness indicates with her hand that they go up in the air.

A. Right.

Q. Is that a correct indication?

A. Yes, it is.

MR. GUMNIT: No further questions.

MR. SWEET: SEPTA has several questions of Mrs. Kirlin.

BY MR. SWEET:

Q. Are you familiar, Mrs. Kirlin, with the hearing in the same subject in 1968?

A. No, I am not.

Q. Have you read the record?

A. No, I have not seen it at all.

Q. You say that annoyances existed for twelve years.

Are you aware of any improvement in the period of 1968?

A. I am not aware. I am aware from hearsay, you know, from general knowledge.

Q. But you do not recall going over the crossing in 1968?

A. No, I can't recall it. I probably did, but I could not recall specifically.

Q. Do you recall any major detours or any detours at all in the area of the crossing in the last twelve years?

A. I don't recall any, although, like I say, it could have been.

Q. Are you responsible for overseeing City services or Borough services?

A. Yes.

Q. Are you aware of the drains at the corners of Sixth Street on both sides of the street and on Main Street on both sides of those streets?

A. Not directly. I am through the highway superintendent. It is a shame. I never thought to bring John Graci.

Q. He is the Borough highway superintendent?

A. He is the Borough highway superintendent and extremely familiar with the area, yes.

Q. Is he in charge of the Borough's responsibilities that exist under this?

A. Yes.

Q. Is he with us today?

A. No, he is not.

Q. Do you know if the drains on Sixth Street and on Main Street are the Borough's responsibility or are they not?

A. I could not answer that for certain. I know that along Lansdowne Avenue, which becomes Main Street in Darby, there are twelve drains or inlets or whatever that are State-controlled or State-operated, belong to the State. In fact, they are out there at the present time cleaning them out and taking care of them. But I could not say which ones at Sixth Street.

Q. Is Sixth Street a Borough street or a State street?

A. Sixth Street is a Borough street.

Q. You said now that you have crossed it on numerous occasions, and it has been hazardous when it rains or is wet. Are you crossing on Sixth Street or on Main

Street?

A. Either way.

Q. When you come down Sixth Street, you say that there is a great deal of water and ice that form. Now this is --

A. On Main Street at the intersection.

Q. At the intersection of Main and Sixth?

A. Right.

Q. Now does water flow down north Sixth Street across the tracks?

A. Gee, I don't know. I guess a little bit of drainage would go down that way.

Q. But it slopes. The grade is from the tracks up north Sixth Street.

A. I guess a certain amount would, but I never noticed a particularly heavy load that would be going down there.

Q. Well, is it just water that is just falling and laying flat or is it running water?

A. No. It is laying flat more or less during the time of rain, in the actual rainfall. After the rain stops, then it sits there.

Q. It does not drain?

A. No.

Q. It does not drain off the crossing?

A. Right.

Q. It does not drain off Sixth Street either?

A. Well, that I could not say. I would have to check that. I am just talking about the intersection right in the track area.

Q. What is the Borough highway superintendent's name?

A. John Graci.

Q. Do you know if there is a regular maintenance and inspection schedule for the Borough-maintained drains?

A. Yes, there is. I know the highway superintendent has it. He has a regular schedule on all the inlets in the Borough.

Q. And it is maintained?

A. Yes, it is.

MR. SWEET: I have no further questions.

THE EXAMINER: We will recess.

(Brief recess taken)

MR. DUNN: I have one further question of Mrs. Kirlin.

REDIRECT EXAMINATION

BY MR. DUNN:

Q. Can you give us a very brief history, as brief as possible, of correspondence that you have as secretary - manager with the B&O Railroad Company in Maryland? We do not need specific dates, but just give us general information.

A. Mostly mine have been -- we have written several letters to the B&O. In fact, when Mr. Rose was Borough manager last year, he had written several. I have done a lot of phone calling. I have had contact on the phone with Mr. Scott -- are you speaking in regard to the particular problem with the frog and whatever?

Q. Yes.

A. Yes. In fact, I had three specific phone calls last March where I called. At that time we were under the impression or I was informed that the frog had been ordered, and that this work would have been done by now. I know I called about two weeks later, and about three days after the second call. But there have been many letters written back and forth. The engineer has also sent correspondence regarding the frog; specifically,

that he stated if there was any part in that correspondence that was not agreeable with the B&O, that they should contact us. We never heard from them.

Q. Is it not true that specific promises were made that a frog would be installed by August of 1973?

A. Oh, yes. In fact, last November when they were doing the repaving of Main Street, this promise was made that this was going to be ordered at that time. Then after a few months I finally called when nothing was being done and was advised that the frog had been ordered. That was in March. At the hearing, if you recall the site hearing, or even from the Answer to the Complaint, I believe, that the work had just been done in June, the preliminary work.

Q. You are aware of a letter received by me with a carbon copy to the Mayor, advising that the B&O placed an order for the frog crossing on August 31?

A. Yes.

Q. This is contrary to the other advice that you had, that it already had been ordered and, in fact, would be installed by August?

A. Yes.

MR. DUNN: No further questions.

THE EXAMINER: Do you have any knowledge as to whether or not the B&O is presently undergoing reorganization?

THE WITNESS: No, I don't.

THE EXAMINER: In the Federal Courts?

THE WITNESS: No, I don't.

THE EXAMINER: All right.

RE CROSS EXAMINATION

BY MR. SMITH:

Q. Mrs. Kirlin, are you aware that the Pennsylvania Commission has jurisdiction over this work, and it could not be started without their prior approval?

A. No, I am not aware of that either. I was not informed of any of that.

MR. SMITH: That is all I have.

THE EXAMINER: I have no further questions. Does anyone else wish to cross examine as to the recent statement?

(There was no response)

THE EXAMINER: Apparently not. Thank you, Mrs. Kirlin.

(Witness excused)

MR. DUNN: I call Mayor Sanders, please.

... CHARLES F. SANDERS, 1025 Tyler Avenue,
Darby, Pennsylvania, having been duly sworn
by the Examiner, was examined and testified
as follows ...

THE EXAMINER: Where is your place of
business?

THE WITNESS: 44 North Ninth Street,
Borough of Darby.

THE EXAMINER: What is your occupation?

THE WITNESS: Pertaining to this hearing,
I am Mayor of the Borough of Darby. I have another
occupation.

THE EXAMINER: Go ahead.

DIRECT EXAMINATION

BY MR. DUNN:

Q. For the record, Mayor Sanders, 44 North Ninth
Street is the Borough Hall; is that right?

A. Borough Hall.

Q. What is your residence?

A. I reside at 1025 Tyler Avenue.

Q. For how long a period of time have you resided in the Borough of Darby?

A. 45 years. I am maybe giving away my age.

Q. How long have you been Mayor of Darby?

A. On January 5th of 1970 I was sworn in as Mayor of the Borough of Darby.

Q. Prior to becoming Mayor, were you an official of the Borough in another capacity?

A. I was a councilman for six years previous to that.

Q. So you have then personal knowledge of the conditions that have existed over the past number of years at this intersection at Sixth and Main?

A. Basically, yes.

Q. While you were Mayor, do you have any personal knowledge of conditions that exist in inclement weather?

A. Back in 1971 we had not a severe snowstorm but it was a snowstorm. At the particular time this crossing had potholes that were approximately two foot in diameter and about two foot deep, and there were numerous of these at this intersection. At this particular time I had to call out the highway crew, because we had numerous motorists; in particular, these new sports cars with the small diameter wheels. About everyone that

came through that intersection got stuck at that crossing, right in the track area. Our highway crew had to remove each one of these. This was an extremely hazardous condition. We had to temporarily block traffic there with police until we could fill in those holes and get traffic moving in there safely.

Q. Other than the specific accident or problems that you described, is there a generally icy condition that exists at the intersection in the wintertime?

A. Yes. Every time we have rain or snow, the area does ice up considerably, and it is extremely hazardous.

Q. Now there has been testimony from Mrs. Kirilin that there exists a school crossing here at this intersection and that the children have to cross Main Street and cross the tracks at the same time. Is there any other way that children or pedestrians can get across Main Street at the area of Sixth Street?

A. In my opinion, due to the physical layout of the streets and the railroad, I would say no. The way we are crossing is the only and best possible way to cross.

Q. Is this because of the angle of the railroad tracks and also the right of way itself and the banks on it?

A. Yes.

Q. So there is only one way you really can get across at that point?

A. Yes. That is my opinion, yes.

Q. Are you aware of the relative elevation of Main Street and Sixth Street, and can you describe them for us?

A. Unqualified as I am from an engineering standpoint, but just physically observing this area over the years, Sixth Street itself is at a higher elevation than Main Street itself at the particular crossing. Main Street itself as it comes to Sixth heading towards Fifth does take a dip there and becomes a lower elevation. In my opinion, I would say the drainage there, to me, is adequate. I have observed during the rainstorms that the water does run off, and it is not running into the intersection, contrary to some things I have heard here. I have spent considerable time at this intersection because, as the Mayor of the town, when things happen, I am the individual that everybody comes to and puts their fists right in your face and says "what are you going to do about it?" And I have observed during snowstorms, during rainstorms, that the water, in my opinion, adequately drains off of this intersection and

is not draining in and leading us to believe that there is a lake of water there.

Q. Has this intersection been plagued with what we would describe as potholes over the past number of years?

A. I can go back to this in 1959. That is previous to getting elected to council. I was elected in November of 1963. I used to attend council meetings, every council meeting, and numerous complaints were brought before council, both in writing and verbally, complaining about this intersection then. This has continued up until the present day.

Q. Describe some of the potholes that have existed, for example, within the last two years.

A. Especially in the last two years. I have just described the basic dimensions of the potholes I have observed there in '71 as approximately two feet in diameter and two feet deep.

Q. And these potholes exist right next to the tracks?

A. Right next to the track area.

Q. Are you aware of a PUC hearing that took place in 1968 and to which there has been some testimony in reference here today?

A. I have vague knowledge of it. If I may interject

this, at the particular time I was part of this government, but I was the minority representation, the other party having control of this. And you know how things go in government. The person who is not in the majority party is not advised or not informed of what is going on. But I was aware of it, and I didn't remember it until it was brought up here today.

Q. Since then, there has been a change in all of the functional levels of government in the Borough, all of the personnel involved?

A. Yes.

Q. To the best of your recollection, however, subsequent to this hearing that took place in 1968, are you aware of any expenditures that the Borough made with regard to drainage in the area?

A. I think it was -- and I am not positive -- after the 1968 hearing that there was an agreement entered into by the B&O, SEPTA, PennDot and the Borough. I think the approximate figure was \$3500 that the Borough did put towards installing a new drainage system there. That I know was done. This was done. The exact date, I do not have. But I think -- in fact, I am positive our Borough minutes will bear that out. The Borough did

spend these expenditures toward that drainage problem.

Q. Can you give us any further insight on accidents, specific accidents, that have occurred at the intersection other than what Mrs. Kirlin has already described on the record?

A. No, I have no other ones other than the normal motorists who will drive down to my house after he has changed that tire, bang on my door and take me outside and show me the blown tire and ask me what I am going to do about it. And the broken springs; I get numerous complaints on these.

Q. From your personal observation, do you consider this intersection to be a dangerous and hazardous one?

A. Extremely dangerous.

Q. And it is extremely dangerous with regard to pedestrians, vehicular traffic?

A. Pedestrians, vehicular traffic, train and trolley, in my opinion.

Q. At what approximate speed, to the best of your ability to judge, do the trains travel when they come into the intersection at Darby and what has been the history?

A. The history of this has been -- I will give you an

example. It was approximately a couple years ago that we had a water main break. Naturally I was called out on that, and with the highway department and the water company, we called B&O and asked them to shut their trains, that they were not allowed through there. We had a real serious condition there. When we got the water main repaired and shut off, the engineer from the B&O -- I forget the gentleman's name -- he called in. We were going to let the trains proceed through at a slow rate, which we did. So the next train going through, I had asked the engineer approximately what speed is the train coming through here. He said they come through here at an approximate speed of 45, 50 miles an hour. We have record here recently where the trains have now been ordered to come through here at 25 miles an hour, which indicates to me that even the B&O recognizes that we have a dangerous intersection here when B&O is doing this themselves.

MR. DUNN: Cross examine, please.

THE EXAMINER: Cross examination.

MR. SWEET: I have several questions for Mayor Sanders.

CROSS EXAMINATION

BY MR. SWEET:

Q. Mayor Sanders, have you had a chance to look briefly at this B&O plan that was presented this morning?

A. You are talking about the one you are holding?

Q. Yes, this one here. Do you have a copy of it here?

A. I just looked at it briefly.

Q. Here is a copy. See if you can answer a few questions.

A. I will try to. I am not qualified in the areas of engineering.

Q. I know. This will not be an engineering-related question.

You stated that it was your knowledge after this 1968 hearing that the Borough of Darby agreed to pay \$3500 -- I think that is what they undertook -- for new drainage in the area --

A. Yes, that is in conjunction with the B&O, SEPTA and Pennsylvania Department of Highways.

Q. Could you look at this and tell us which drain this is on here?

A. In specifics, no.

Q. You do not know which drainage responsibilities the Borough undertook at that time?

A. No, I could not give you an answer on that.

MR. DUNN: I am going to, if the Examiner please, recall very briefly the Borough engineer --

MR. GUMNIT: Not until cross examination is finished.

MR. SWEET: May I finish?

MR. DUNN: Yes.

BY MR. SWEET:

Q. You also stated that the water does not drain off the crossing?

A. It does.

Q. Where does it drain to?

A. As I stated previous to that statement, as you are proceeding from Sixth towards Fifth, Main Street does go down to a lower elevation, and the drainage seems to go down Main Street towards Fifth.

Q. Does it accumulate on Sixth Street north of the crossing?

A. I have never observed that accumulating there, even in the heavy rainstorms.

Q. So that it drains there also?

A. I would say it drains adequately off of that intersection. You know, if I may add to this, I stated that for one reason: Within the Borough, we have had a number of flooding problems not only pertaining to the creek but a number of areas. Never, to my recollection, of all the years I have been in government, have I ever been involved in a flooding problem in that area. That is why I did want to bring that point up. Never have we had a flooding problem there.

MR. SWEET: I have no further questions.

THE EXAMINER: Any further cross examination from any other source?

MR. GUMNIT: No.

THE EXAMINER: Let me ask you this question: Are you informed as to whether or not the E&O is presently in the process of reorganization?

THE WITNESS: I have no knowledge of that, sir.

THE EXAMINER: That is all. I will excuse the witness if there are no further questions.

Thank you very much. You are excused, sir.

(Witness excused)

THE EXAMINER: Any further testimony?

MR. DUNN: Yes. I would like to recall Mr. O'Connor again very briefly.

THE EXAMINER: All right. Mr. O'Connor, you have already been sworn.

... LEO F. O'CONNOR, 2006 Walnut Street, Philadelphia, Pennsylvania, having been previously sworn, was examined and testified further as follows ...

DIRECT EXAMINATION

BY MR. DUNN:

Q. Mr. O'Connor, you have been sworn. You have heard the testimony as to drainage conditions and manholes and inlets, etc. Are you able to tell us where these inlets exist and whose alleged responsibility they are?

A. Yes. What I have done really, just since previous discussion, I have looked further at the Railroad's plan. I did not pick up before the fact that -- I noticed the ends of the pipe. In my field observation, I didn't recognize the proper beginnings and ends. But the Railroad plan does show an 18 inch, and I believe that that means that that is already in place. There is an

18 inch pipe going along parallel to the railroad. It does not indicate immediately which way it drains. It is relatively flat in there. But I believe it drains to the left, which is going down to Cobbs Creek. In other words, it flows towards Baltimore.

In Main Street itself, I did observe a few inlets, and I have spoken just in the last half an hour with Mr. John Graci, who is the superintendent of highway maintenance for Darby. He brought me up to date on the inlets in Main Street. There are two inlets which are State highway inlets, and they are owned by them and to be maintained by them.

MR. GUMNIT: I am sorry. Who maintains them?

THE WITNESS: They are owned by the Pennsylvania Department of Highways.

MR. GUMNIT: I will object to this as hearsay and ask that it be stricken.

THE EXAMINER: Where did you get that information from?

THE WITNESS: I got that information from Mr. John Graci, who is the superintendent of highway maintenance in Darby.

THE EXAMINER: Here this morning in this hearing?

THE WITNESS: I got this by phone about ten minutes ago. I called him. I didn't recognize that drainage was going to be of such paramount importance, and I gave him a call to get comments from him.

THE EXAMINER: Well, it is hearsay, and I will sustain your objection.

MR. GUMNIT: Thank you, sir.

MR. DUNN: I have no further questions. I recognize that it is clearly hearsay.

THE EXAMINER: You are excused, sir.

(Witness excused)

THE EXAMINER: Do you have any further testimony?

MR. DUNN: That is the Borough's case, if the Examiner please.

THE EXAMINER: Does anyone else wish to be heard?

MR. SMITH: Yes. Shall we put the Railroad on first, since we were named as the first Defendant?

THE EXAMINER: Suit yourself, sir.

TESTIMONY OF B&O RAILROAD COMPANY

MR. SMITH: I offer now our canned testimony and three copies of one Exhibit. I would ask the Exhibit be marked an appropriate number.

THE EXAMINER: All right. I will consider that motion, and it will be entered into the record as though delivered here orally under oath, after your witness takes the oath.

MR. SMITH: Mr. Anders, will you take the stand, please.

... JAMES ANDERS, Camden Station,
Baltimore, Maryland, having been duly sworn
by the Examiner, was examined and testified,
as follows ...

THE EXAMINER: Mr. Anders, what is your
place of business?

THE WITNESS: Camden Station, Baltimore,
Maryland.

THE EXAMINER: What is your occupation, Mr.
Anders?

THE WITNESS: Division engineer, Baltimore

& Ohio Railroad.

THE EXAMINER: Are you the individual who is going to testify to what is in this canned testimony?

THE WITNESS: Yes, sir.

THE EXAMINER: All right. Now then, a motion has been made to receive this as though delivered here orally under oath, subject to cross examination. Any objection to receiving it in this fashion?

MR. GUMNIT: No, sir.

MR. DUNN: No objection.

THE EXAMINER: There being no objection, it will be so received. Go ahead.

DIRECT EXAMINATION

BY MR. SMITH:

Q. Mr. Anders, specifically what questions in the Commission's outline of procedure do the B&O questions relate to? What numbers?

A. I believe it is 5 through 10.

Q. Inclusive?

A. Yes, sir.

Q. Several questions have been raised here this morning about the status of B&O. To the best of your

knowledge, is the E&O presently in any form of reorganization in the Courts?

A. None to my knowledge.

(The prepared direct testimony of James Anders is as follows:

Q. The Baltimore & Ohio Railroad Company (hereinafter referred to as B&O RR Co.) shall submit testimony as to the exact corporate name of the owner and the operator of the line of railroad involved in this proceeding.

A. The Baltimore and Philadelphia Railroad Company.

Q. B&O RR Co. shall submit testimony as to the number of tracks presently located at the site of the at-grade crossing, and the volume, class and approximate speed of all trains operated daily over its tracks, in vicinity of the Main Street crossing.

A. The Baltimore and Philadelphia Railroad Company has one track crossing Main and Sixth Streets at grade. Present timetable speed is 30 m.p.h. The speed has been reduced to 20 m.p.h. by authority of Superintendent's Bulletin No. 191, dated September 28, 1973.

During a 24-hour period an average of 24 trains operates over this crossing consisting of 13 manifest and 11 other freight trains. There are no

scheduled passenger trains over this crossing.

Q. B&O RR Co. shall submit testimony describing in detail the existing crossing, including the roadway widths, sidewalk widths, type of paving, intersection angle and the general physical condition of the highway through the crossing area.

A. The existing crossing, including the roadway widths, type of paving, intersection angle and the general physical condition of the highway through the crossing area are as shown on attached drawing number D.E. 666, dated March 7, 1967 and revised to October 15, 1973.

Q. B&O RR Co. shall submit testimony as to the accident record involving highway vehicles and railroad trains for the past five years, at the crossing involved in this proceeding.

A. There have been no accidents at this crossing involving highway vehicles and railroad trains during the past five years.

Q. B&O RR Co. shall submit testimony whether, in its opinion, the crossing and/or the approaches thereto should be altered or reconstructed, to effectuate the prevention of accidents and to promote the safety of the traveling public.

A. The present crossing cannot be physically changed without the expenditure of a considerable sum of money. If the present street car service could be replaced by rubber tired vehicles, thereby permitting the retirement of the crossing frogs, the Railroad could install a timber crossing. This would provide a smooth and level plane for passage of vehicular traffic.

Q. B&O RR Co. shall submit testimony indicating what portion of the work it will agree to perform; what portion of the cost it will agree to assume; and what portion of the completed work it will agree to maintain in the future, in the event the instant complaint is sustained, and the alteration or reconstruction of the crossing is ordered by the Commission.

A. The cost of the crossing frogs and other track work at Main Street will be borne by the Railroad and the Southeastern Pennsylvania Transportation Authority under their agreement. The Railroad will maintain track, crossing frogs and roadway surface thru the track area.

(End of prepared direct testimony of James Anders)

(Blueprint entitled "Record Plan No. 53329-23281" marked for identification as B&O Exhibit 1)

MR. SMITH: I have no other testimony of Mr. Anders, but I would like at this point, Mr. Hearing Examiner, to make a point that was discussed a little earlier, make a request, and move that the docket in Complaint 18287, which was heard in 1968 and involved a similar complaint at this same crossing, a similar complaint by the Borough of Darby, be incorporated into this docket by reference hereto.

THE EXAMINER: Any objection?

MR. DUNN: I would object, if the Examiner please, for the record. I do not know of what relevance a hearing of 1968, some five years ago, would have to the present existing condition and the future existing condition, if it continues to exist. I fail to see the relevance.

MR. SMITH: May I respond briefly, sir?

THE EXAMINER: Yes.

MR. SMITH: The problems that were elucidated and discussed in that record are numerous concerning drainage in the area and the inability of the Railroad and SEPTA -- at that time it was the Philadelphia Transportation Company -- to maintain subsurface under the rails because of a soggy condition, a subterranean

drainage condition that could not be delineated and a finger put on it. There ~~was~~ considerable discussion in that record about drains north of the railroad on Sixth Street that were being covered up by debris, and the water was coming down over the street.

This record is, in my opinion, most germane to this issue here, and I think that the Commission, if they tried to decide this case on the basis of the brief record made here today without looking at that prior complaint, would be dealing in a vacuum, because there is much more substance in the previous hearing than today.

THE EXAMINER: Your objection is overruled. You are granted an exception.

MR. SMITH: One other point, if you would indulge me, sir. In the prior complaint, to the best of my recollection, there were numerous requests made by the Commission and by parties participating therein for information about the drains located in and around this crossing, and no plans were ever submitted by the Borough's engineer at that time, even though they were requested. I would again renew my request that the Borough furnish the Commission with some definitive plans

of these various drains, as to where they go, where there is, in fact, an outlet, and whether they are contributing to the drainage problems under the tracks.

MR. DUNN: If I may respond to that --

THE EXAMINER: Yes, you may respond.

MR. DUNN: If the Examiner please, there has been major reconstruction of this whole intersection on at least one occasion and maybe more since that hearing some five years ago. There is no way that I can cross examine a record. There is no way that I can cross examine a past Order by the PUC. I think if the Defendant Railroad wanted to present testimony as to the drainage condition, it could have presented its engineer and still can present testimony as to the existing drainage condition. I do not know that I can be expected to cross examination a record and an Order.

THE EXAMINER: I do not think you can be so expected. This time I will overrule your motion, Mr. Smith, and grant you an exception. I will sustain your objection. I believe it important to let the entire record of a prior hearing in by reference, but it will have to speak for itself. You are in the area of argument, which you can make either in your brief or

orally, if you choose to do it. That would be the appropriate time to make this argument. But I have let the record in so that the Commission will have as much possible information that it can garner in deciding this.

The witness is available for cross examination.

MR. SWEET: Mr. Examiner, may I submit and introduce into evidence the Order of the Public Utility Commission on Complaint Docket number 18281, dated November 13, 1967. I was not aware until several minutes ago that I had a copy of this with me.

THE EXAMINER: Well now, is this the same thing that was just admitted?

MR. SWEET: No. I believe Mr. Smith just asked that the record be admitted. This is the subsequent Order of the Commission ordering the parties to perform certain tasks.

THE EXAMINER: That will be part of that record.

MR. SWEET: Then that is fine, sir.

MR. SMITH: May I correct myself to the extent of saying the 1968 hearing should have been 1967?

THE EXAMINER: The record will show your

correction.

MR. SWEET: I have several questions of the witness.

THE EXAMINER: Go ahead.

CROSS EXAMINATION

BY MR. SWEET:

Q. Mr. Anders, you are aware of the parties that had duties to perform subsequent to the PUC hearing of 1967. Are you aware of those duties of the Borough of Darby and the Pennsylvania Department of Transportation were carried out, especially in the area of drainage facilities that were to be constructed in and integrated into your drainage?

A. I am not aware of it.

Q. You are not aware of it?

A. No.

Q. Could you tell me the approximate Axle loading of the trains passing over the crossing?

A. No, sir, I have no such data.

MR. SWEET: I have no further questions.

THE EXAMINER: Any cross examination from any other source?

MR. GUMNIT: No cross examination.

MR. DUNN: Yes, I have a couple of questions of Mr. Anders.

BY MR. DUNN:

Q. Mr. Anders, I note from your testimony that the speed of the trains going through the grade crossing has been reduced in the past number of months. What is the speed now that the trains are permitted to go through the intersection?

A. 20 miles per hour.

Q. Why is that?

A. Because of the condition of the crossing frogs.

Q. What is the condition of the crossing frogs that causes the reduction in train speed?

A. They are poor. The connections between the street car rails and the connections to our frogs are worn, loose, just in bad condition.

Q. There exists in the Borough at grade crossing at Fifth Street a timber crossing. At least, to my knowledge, there does not seem to have been in the past number of years any problem whatever with regard to that crossing.

THE EXAMINER: What does that have to do

with the issue in this hearing?

MR. DUNN: I am going to ask whether or not Mr. Anders feels that a timber crossing at Sixth and Main, the intersection that we are talking about, might alleviate much of the problem that exists, whether it is feasible.

THE EXAMINER: Why don't you ask that question?

BY MR. DUNN:

Q. Do you think, Mr. Anders, that a timber crossing would have any effect on the existing circumstances at that intersection?

A. It would give a smooth and plain surface for the vehicular traffic, yes. It would be desirable.

Q. Does the railroad have any plans to implement such a timber crossing?

A. No. So long as the crossing frogs that are required to permit passage of railroad and streetcar traffic by there, there is no way to anchor such a timber crossing that I know of. It is just not feasible. The base plates for the various frogs anchored to the timber that support them is such that we cannot anchor a timber crossing.

Q. You are not aware, are you, of any work that the Borough may have done subsequent to a 1967 or '68 PUC hearing?

A. I have been told by our track supervisor that they do place the amacite patching material at this crossing.

Q. And the Borough has cooperated in that respect?

A. They have.

Q. Are you aware of any drainage work that the Borough has done at the intersection in the past five years?

A. I am not.

THE EXAMINER: This is not to say that it was not done.

THE WITNESS: I have no information.

BY MR. DUNN:

Q. Are you able to update us as to the crossing frog that had been ordered and, according to correspondence of September 6, 1973, was due to be installed in the month of November, 1973?

A. The only information I have is from the chief engineer's office; that the order was placed with a certain company in Cincinnati. I have nothing more than that.

Q. Does the Railroad claim any plan for any interim maintenance until the time that it is able to install the crossing frog to alleviate the situation that you have just described with regard to the existing condition?

A. Do you refer to the bolted connection or the connection between the streetcar?

Q. Yes.

A. Our supervisor has removed the macadam there and attempted to make such repairs, and the thing is in such condition that probably the answer is no.

Q. It has no plans at the present time?

A. That is right; other than patching, surface patching.

Q. Now you are an engineer, I take it?

A. I am a surveyor.

Q. Well, you heard the Borough engineer suggest a possible solution for the interim maintenance, however long that interim, as to a bituminous mixture to be placed in the crossing that would take approximately two days to install and would be relatively inexpensive. Now I am not going to pin you to expense or inexpense, but is this a feasible solution for the interim

arrangements, in your opinion?

THE EXAMINER: The question in my mind is to whether the witness is qualified or considers himself qualified to answer that question. After all, we all know pretty generally what the functions of a surveyor are. He is not an engineer. He concedes that. He is a surveyor. While a surveyor may concern himself with contours of land, measurements, linear measurements of land, interior measurement of land within prescribed limits, I still question whether or not he would be qualified to give you the opinion of an engineer in connection with that. The witness is completely fair.

Let me ask you this question, if I have to make a ruling: Do you consider yourself qualified to pass upon engineering problems?

THE WITNESS: Limited.

MR. SMITH: Might I say, Mr. Examiner, that I could have gone into detail about his educational background, but I did not choose to, because he is not a registered engineer nor has he a degree from an institution in engineering.

THE EXAMINER: I did not point my question as to whether he was a registered engineer or not.

MR. SMITH: But I would like to ask the witness how long he has been engaged in railroad engineering, as a division engineer.

THE EXAMINER: He just answered the question for me. He states that he considers himself to possess a limited competence. I am going to ask him if he can clarify that for us for the record.

THE WITNESS: I would not want to engage in design problems, either in building design or structural.

THE EXAMINER: Now we have an objection?

MR. SMITH: No. Only yours, sir.

MR. DUNN: I will withdraw the question so that there will be no confusion on the record.

BY MR. DUNN:

Q. Have you made any personal observation of this site?

A. I have.

Q. On how many occasions?

A. Two.

Q. Did either of those occasions involve the observation of the intersection in inclement weather?

A. No.

Q. So then you have no personal knowledge of conditions

that exist when it rains or when it snows or when the ice forms?

A. That is correct; I do not.

MR. DUNN: I have no further questions.

THE EXAMINER: Any further cross examination from any source?

MR. GUMNIT: No.

THE EXAMINER: Thank you very much, sir.

(Witness excused)

MR. SMITH: Mr. Examiner, I would like to move the admission of one Exhibit that B&O witness tendered; namely, the map.

THE EXAMINER: Any objection to receiving that into evidence?

(There was no response)

THE EXAMINER: They are received in evidence.

MR. SMITH: Thank you.

THE EXAMINER: Any further testimony from any source?

MR. SWEET: SEPTA wishes to put Mr. Frank Berdan on the stand.

TESTIMONY OF SOUTHEASTERN
PENNSYLVANIA TRANSPORTATION AUTHORITY

... FRANK BERDAN, 2028 PSFS Building,
12 South 12th Street, Philadelphia, Pennsylvania,
having been duly sworn by the Examiner, was
examined and testified as follows ...

MR. SMITH: Excuse me, Mr. Examiner, and
pardon me, Mr. Sweet. Would it be permissible for my
witness to be excused?

THE EXAMINER: Yes, indeed. He is excused
from the hearing room.

MR. SMITH: Thank you.

THE EXAMINER: Off the record.

(Discussion off the record)

THE EXAMINER: And your occupation is what?

THE WITNESS: I am manager, operational
planning for SEPTA.

THE EXAMINER: All right. He is your
witness.

DIRECT EXAMINATION

MR. SWEET: Mr. Examiner, I would like to

move for the admission of the canned testimony that you have in front of you.

THE EXAMINER: All right. We will consider your motion that this be entered on the record as though delivered here under oath orally.

BY MR. SWEET:

Q. Mr. Berdan, if you were called on to testify today, would your testimony be the same as that which is before you now?

A. Yes.

Q. To which points in the agenda do your answers relate?

A. Directly to questions 13 and 14.

(The prepared direct testimony of Frank Berdan is as follows:

Q. What is your name?

A. Frank Berdan.

Q. What is your business address?

A. 2028 PSFS Building, 12 South 12th Street, Philadelphia, Pa:

Q. By whom are you employed?

A. Southeastern Pennsylvania Transportation Authority.

Q. Is SEPTA a party of interest in this proceeding?

A. Yes.

Q. How long have you been employed by SEPTA and its predecessor?

A. 27 years.

Q. What is your position with SEPTA?

A. Manager, Operational Planning.

Q. Would you briefly describe your duties as Manager of Operational Planning?

A. I am responsible for the supervision of operational planning and route schedule development; in other words: the design of new transportation routes, desirable or necessary changes in existing routes both as to locations, pattern and mode, as found desirable by the Authority or as the result of activities of others. I also serve as SEPTA representative before regulatory bodies, such as the Pennsylvania Public Utility Commission, in carrying out the Authority's participation in proceedings involving adjustments in facilities of SEPTA.

Q. Are you authorized to appear in this proceeding on behalf of SEPTA?

A. Yes.

Q. Does SEPTA have any objection to the reconstruction of the crossing?

A. No, it does not.

Q. What portion of the proposed construction will be performed by SEPTA?

A. SEPTA will make necessary adjustments through its trackage approaching the crossing in order to properly connect with the railroad's new crossing installation.

Q. What portion of construction and maintenance costs will SEPTA agree to pay?

A. As per agreement between SEPTA's and the railroad's predecessor companies, dating back to 1894, SEPTA will agree to pay for one-half of the cost of the railroad's procurement, installation, and maintenance of the new crossing. However, this proceeding now underway is actually the third one in ten years relating to this particular crossing. SEPTA is concerned enough about the frequency or difficulties here to request that the parties and the commission consider alternatives to present railroad procedures in the next crossing replacement which is the subject of this proceeding, namely, installation of removable access covers in the crossing itself so as to make possible easy maintenance without removal of the present asphalt filler paving, as well as virtual elimination of the broken asphalt

situation which has been one of the prime causes of today's proceedings. We also propose that the railroad arrange for periodic inspection of the new installation and its component parts and make adjustments as necessary, in order to prolong the life of the new installation.

We trust that the above proposal will be considered favorably by the parties and the commission and, assuming such is acceptable to the parties and the commission, SEPTA stands ready to do its part in supporting the new installation.

(End of prepared direct testimony of Frank Berdan)

THE WITNESS: I would like to add a comment with respect to questions 11 and 12, which should have been in the prepared testimony.

THE EXAMINER: All right. You may do so orally.

THE WITNESS: SEPTA's two tracks in the bed of Main Street in Darby cross the single track of the B&O with a streetcar daily traffic of 140 movements of a single vehicle, eight wheels, two trucks, each day in each direction. The physical condition of the crossing, as far as SEPTA is concerned, is that it is

rough by reason of wear of the parts of the frogs; that it is safe, but at anything other than slow speed, it is very uncomfortable for passengers in the streetcars by reason of the vertical irregularities in the surface of the sections of the tracks through the frogs.

BY MR. SWEET:

Q. Mr. Berdan, if construction is necessary, does SEPTA have plans to somehow circumvent the tracks in the area?

A. Yes. It is our opinion that the reconstruction of the crossing, physically an obligation of the B&O Railroad, will necessitate a total closure of the intersection for some short period, and SEPTA is prepared to institute a temporary shuttle bus service through the Borough of Darby during that period of time so that maintenance of streetcar traffic will not be required.

THE EXAMINER: You speak of a relatively short time. Would you venture a guess as to how long a period of time?

THE WITNESS: In '68 it was about a week.

MR. SWEET: Mr. Examiner, Mr. Berdan for SEPTA has now addressed himself to the extent that he is

open and available for cross examination.

THE EXAMINER: Cross examine.

MR. GUMNIT: No questions from PennDot.

MR. SMITH: None from B&O.

MR. DUNN: I have a few.

CROSS EXAMINATION

BY MR. DUNN:

Q. Mr. Berdan, you have heard testimony from the B&O, and it will be part of their sworn testimony, that there does exist a problem even right now with the connection between the SEPTA and B&O tracks. Does SEPTA have any plans for the reconstruction of the crossing?

A. SEPTA itself will only participate in an incidental fashion. If you will examine my testimony, I point out the comment that we will make necessary adjustments to its trackage approaching the crossing in order to properly connect with the railroad's new crossing installation for a few feet back from the ends from what are known as the arms of the frogs, which are the short sections of track integral with the frogs. It will be necessary to adjust up or down a fraction of an inch the existing elevation of the SEPTA rails, and

this would be done in coordination with the Railroad at the actual time of work.

Q. Does SEPTA have any plans for the installation of rubber-tired vehicles in replacement of trolleys?

A. As a permanent thing for this particular routing, no. The routing is offered the advantage of a limited access, if you will, right of way, into the center of Philadelphia to City Hall via a two-mile long tunnel, which dodges the most congested area of the route; namely, near downtown Philadelphia. The use of that tunnel by rubber-tired vehicles is impractical; and therefore, we would expect in the foreseeable future streetcars -- not necessarily the same vehicles, but perhaps newer ones shortly -- would continue the same pattern of operation on two rails in the Borough of Darby on that route.

Q. Do you know whether or not your trolley car drivers, operators, have any instructions with regard to stopping more than they would ordinarily do when they reach the B&O crossing?

A. The only instruction is that of prudence because of the signs, I believe, posted by the Borough relating to rough crossing; and to be on the alert for unusual movements of automobiles. Other than the fulfillment of

the normal legal requirement that a few feet short of the crossing proper, the doors are opened and the motorman examines let's say the right of way ahead looking for a train or something like that, the only other instruction is to be prudent because of what it is admittedly at the present time a crossing which is in need of upgrading.

Q. Do you have any knowledge as to how long it has been since the existing frog has been replaced?

A. It was done early in the calendar year 1968.

Q. Does SEPTA have any recommendations as to what can be done to improve the intersection in the interim before the crossing frog is installed by the B&O?

A. No. I think the B&O has addressed that, and we have nothing further to add.

MR. DUNN: I have no further cross examination.

THE EXAMINER: Any further cross examination from any source?

(There was no response)

THE EXAMINER: Thank you, Mr. Berdan.

(Witness excused)

TESTIMONY OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

... JOHN T. SALYER, 45 Briar Road, Wayne, Pennsylvania, having been duly sworn by the Examiner, was examined and testified as follows ...

BY MR. GUMNIT:

Q. State your full name?

A. John Thomas Salyer.

Q. By whom are you employed, sir?

A. Pennsylvania Department of Transportation.

Q. In what capacity?

A. I am District Liaison Engineer.

Q. Are you a professional engineer?

A. Yes, I am.

Q. And you are a registered engineer?

A. Yes, sir.

Q. And you are authorized to testify on behalf of the Department of Transportation today?

A. Yes, sir.

Q. In answer to the Commission's Questions and Procedure, questions 15 through 18A were addressed to PennDot. If I asked you the questions today, would your

answers be the same as they are recorded?

A. They would.

THE EXAMINER: I consider that a motion to receive the evidence as though given here orally under oath, subject to cross examination. What questions does that cover?

MR. GUMNIT: 15 through 16A, sir. 18 has two parts to it, 18 and 18A.

THE EXAMINER: Well, I cannot find 18A.

MR. GUMNIT: The question is "Are there any further comments" and we say no, we have no further comments, sir.

(The prepared direct testimony of John T. Salyer is as follows:

Q. Will you describe the type and estimated daily volume of highway traffic traversing the crossing involved herein, and estimate the future anticipated highway traffic?

A. The total A.D.T. (Average Daily Traffic) that crosses the railroad tracks is 10,710.

A vehicle type classification is not available for this location. The estimated traffic growth is expected to be 3% a year.

Q. Will you please describe in detail the type, graded width, paved width, alignment, grades and general physical conditions of the highway approaches?

A. The highway approaches consist of reinforced concrete pavements 34 feet wide. The approaches carry the tracks of SEPTA and intersect the crossing created by the tracks of the Baltimore and Ohio RR Company at approximately a 45 degree angle. The highway approaches are relatively level and are in good condition.

Q. In the opinion of the PennDot, what can be done to the highway approaches to effectuate the prevention of accidents and to provide for the safety of the traveling public?

A. In the opinion of the PennDot, the alteration or reconstruction of the highway approaches to the crossing will not, appreciably effect the prevention of accidents and provide for the safety of the traveling public.

Q. In the event the Commission orders an improvement at the subject crossing, what portion of the work will the PennDot agree to perform, what portion of the cost will the PennDot agree to assume, and what portion of the completed work will the PennDot agree to maintain?

A. PennDot will not agree to perform any work or assume any costs ordered by the Commission for improvements at the subject crossing. PennDot's only maintenance obligation relative to this crossing is to maintain the roadway approaches to within two feet of the nearest rail of the crossing.

Q. Do you have any further testimony to offer at this time?

A. No, I do not.

(End of prepared direct testimony of John T. Salyer)

THE EXAMINER: Any further questions before the witness is open for cross examination?

MR. GUMNIT: No, sir.

THE EXAMINER: Cross examine.

MR. SWEET: I have just one question.

CROSS EXAMINATION

BY MR. SWEET:

Q. Mr. Salyer, are there any responsibilities in the area of drainage owing to the Pennsylvania Department of Transportation of which you are aware?

A. I am not aware of any drainage responsibilities.

Q. You are not aware then of any integration between B&O responsibilities and PennDot responsibilities in the area of drainage at the crossing?

A. No, sir.

MR. SWEET: I have nothing further.

MR. SMITH: Nothing from B&O.

THE EXAMINER: Anything from any other source?

MR. DUNN: Yes, if the Examiner please.

BY MR. DUNN:

Q. With regard to this drainage problem, does there exist on Main Street any manholes or inlets near the intersection of the B&O crossing that would be the responsibility of PennDot?

A. To be honest with you, I don't know anything at all about the drainage. At the field conference that was held several weeks ago, six weeks, it was not brought up to me that the drainage was any problem at all; and therefore, I just don't know anything at all about it.

Q. We do not contend that there is any drainage problem either, but I just wanted to know whether you had any thoughts in that regard.

Now it is indicated in the sworn canned testimony that it is PennDot's responsibility to provide

for maintenance to within two feet of the nearest crossing. Now at the field crossing conference, did you observe personally a condition other than smooth highway surface beyond two feet of the intersection?

A. No, I didn't.

Q. You did not observe the existence of, as has been described, a rough condition and potholes --

A. Outside of a two-foot limit?

Q. Outside of a two-foot limit.

A. No, sir.

Q. You did observe the condition between the tracks, however?

A. Yes.

Q. And would you be able to describe that for us?

A. Only that I thought it was in poor condition.

Q. Did you feel that it was hazardous and perhaps dangerous?

A. It is hazardous.

THE EXAMINER: Where does a thing cease being hazardous and become dangerous?

THE WITNESS: That is a good question.

MR. DUNN: I will limit my question to hazardous and leave out the dangerous.

BY MR. DUNN:

Q. And it is your opinion then in your sworn testimony that there is nothing PennDot can do to the highway approaches that would appreciably affect prevention of accidents to the traveling public?

A. That is true.

Q. If it were to be determined, as a finding of fact, that the potholes existed or a rough condition existed two feet beyond the tracks, would your opinion then change as to PennDot's responsibility for the approaches to the tracks?

MR. GUMNIT: I will object to the question.

THE EXAMINER: I will sustain the objection. He has already stated that he observed nothing outside the two-foot limit that would be hazardous or dangerous; is that correct?

THE WITNESS: It was hazardous, yes, sir.

MR. DUNN: No further questions.

THE EXAMINER: Any questions from any other source?

(There was no response)

THE EXAMINER: Thank you. You are excused, sir.

(Witness excused)

THE EXAMINER: Anything from any other source?

MR. SMITH: No, sir.

THE EXAMINER: Now I notice that we have covered everything but one question. I will read it. "Query whether any of the interested parties or any other party desire to submit any additional relevant testimony".

MR. GUMNIT: We have answered that by question 18A, sir.

MR. SMITH: None from B&O, sir.

THE EXAMINER: Well, apparently there is nothing in addition.

MR. SWEET: None from SEPTA, sir.

MR. DUNN: I do not think the Exhibits that were marked would be of any real relevance to the Board, so I will not move their admission into evidence.

THE EXAMINER: Is there any reason why the record should not be closed?

(There was no response)

THE EXAMINER: Now do you desire to file briefs?

MR. GUMNIT: PennDot does not desire, except that we are required to as a matter of reply.

MR. SMITH: I do not desire to. In the first instance, I think it is up to Mr. Dunn.

MR. DUNN: I think that the Borough's testimony has been clear enough on the record. No legal brief per se.

MR. SMITH: I agree.

THE EXAMINER: That means no brief. Do you wish to make oral argument?

MR. SMITH: None.

MR. DUNN: I have none.

THE EXAMINER: No oral argument. Very well. The record is closed.

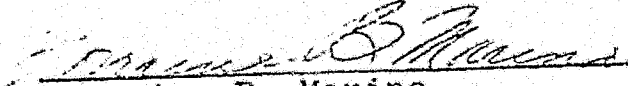
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(Hearing concluded at 12:25 p.m.)

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REPORTER'S CERTIFICATE

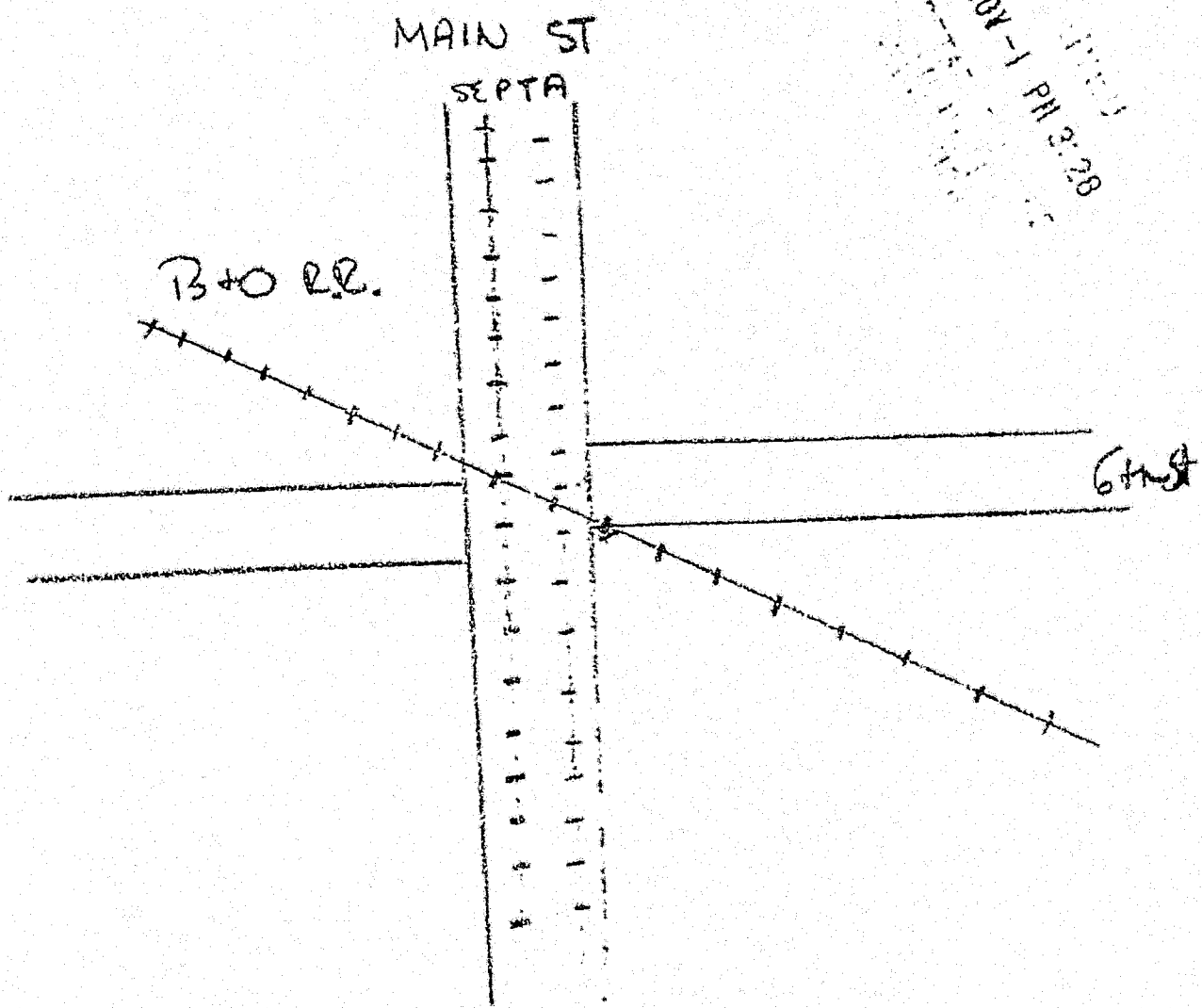
I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the notes taken by me on Wednesday, October 17, 1973, upon the foregoing hearing before the Public Utility Commission, and that this is a correct transcript of the same.


Lorraine B. Marino
Certified Shorthand Reporter
and Notary Public

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