

**ORIGINAL**  
**BESSEMER** AND LAKE ERIE RAILROAD COMPANY

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000241

Office of  
Vice President - Law,  
General Counsel and  
Secretary

PROSECUTOR'S OFFICE

March 20, 1997

JLS

Pennsylvania Public Utility Commission  
New Filing Section  
Room B-20, North Office Building  
Harrisburg, PA 17102

Re: Anderson v. Bessemer and Lake Erie Railroad Company  
No. C-913419

Dear Sir/Madam:

Please accept and file the enclosed Brief on behalf of Bessemer and Lake Erie Railroad Company. An original and nine (9) copies of the Brief have been enclosed, along with a Certificate of Service evidencing that all Parties of Record have also been served. Please contact me should you have any questions.

Very truly yours,



Colette Ferris-Shotton  
Senior Attorney and  
Assistant Secretary

CFS:nt

Enclosures

cc: Honorable John H. Corbett, Jr.  
Parties of Record

DOCUMENT  
FOLDER

**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMPANY**

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PROSECUTOR'S OFFICE

IN RE:

No. C-913419

REPRESENTATIVE DANIEL L. ANDERSON

Petitioner,

v.

Judge John Corbett, Jr.

BESSEMER & LAKE ERIE RAILROAD COMPANY

Respondent.

Alleging requests necessary repairs be done  
to Rural Ridge Tunnel on Russelton Road,  
Indiana Township

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**BRIEF FILED BY  
BESSEMER AND LAKE ERIE RAILROAD COMPANY**

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**DOCKETED**  
MAR 25 1997

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**DOCUMENT  
FOLDER**

March 20, 1997

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## STATEMENT OF THE CASE

This proceeding commenced when former Representative Daniel L. Anderson filed a Complaint with the Pennsylvania Public Utility Commission ("Commission") on June 11, 1991 against the Bessemer and Lake Erie Railroad Company ("B&LE") alleging the Rural Ridge Tunnel on Russelton Road in Indiana Township, Allegheny County, (also referred to as the "Republic Arch") is in a deteriorated condition. The subject Arch provides a passageway for highway traffic to pass beneath the tracks of the B&LE. For relief, the Petitioner sought to have the Commission establish what repairs may be necessary and order B&LE to make those repairs to this structure.

B&LE filed an Answer and Amended Answer alleging it conducts annual inspections of the Republic Arch, which indicate that it is structurally sound. B&LE has conducted scaling activities to remove loose concrete. B&LE contends the Arch is in satisfactory condition and no repairs are necessary at this time.

This matter proceeded to a hearing on January 30, 1992. Subsequently, both B&LE and Indiana Township filed main briefs. B&LE filed a reply brief on April 14, 1992.

On July 15, 1992 Administrative Law Judge Corbett issued his five-point Recommended Decision which the Commission adopted in its Order dated September 3, 1992. In Paragraph one, the Commission ordered the B&LE, at its initial cost and expense, within six months of the date of service of the Commission's Order, to prepare and submit to the Commission and parties of record an in-depth inspection report of the structure.

In compliance with this Paragraph of the Order, B&LE contracted with Professional Services,

Inc., ("PSI") which performed an in-depth structural analysis of the Republic Arch. The inspection report was submitted to the Commission on January 29, 1993, entitled "Report of Compliance" (and was subsequently marked as BLE Exhibit 8) which confirmed the testimony of the B&LE's expert witness proffered at the January 30, 1992 hearing, who testified that the Republic Arch was structurally sound and that additional testing and analysis was not required.

Paragraph three of the Order required the B&LE, at its initial cost and expense, to furnish all materials and do all work necessary to maintain the structure and its facilities at the subject crossing in a safe and satisfactory manner, during the interim period until a further Order is issued. B&LE has complied with this aspect of the Order as evidenced in its June 24, 1996 Inspection Report which is included as a part of BLE Exhibit 7.

Finally, Paragraph five of the September 3, 1992 Order mandated that upon completion of the in-depth inspection report with recommendation, another hearing be held to resolve the remaining issues involved in this proceeding. This hearing was held on January 29, 1997 pursuant to which Administrative Law Judge Corbett has set this briefing schedule.

## SUMMARY OF ARGUMENT

This matter involves a six-year old Complaint filed by former Representative Daniel L. Anderson wherein the structural integrity of the Republic Arch was called into question. In accordance with the Commission's Order of September 3, 1992, at the initial cost and expense of B&LE, PSI, an outside contractor was engaged to perform an in-depth structural analysis of the Republic Arch. In its December 29, 1992 report, not only did the outside contractor find the structure sound, but it also found the concrete to be in excellent condition, free from moisture exposure for prolonged periods of time.

Moreover, from the time that this in-depth analysis was performed in 1992 to present, B&LE, the only party which made annual inspections of the structure, maintains that it is structurally sound today. Further, since the safety of the traveling public was the impetus for the initiation of this Complaint, the B&LE should not be compelled to perform repairs or alterations which are cosmetic in nature and contribute no measure of safety to the traveling public.

Additionally, the spandrel wall (also referred to as a "head wall" throughout these proceedings and "lip" in the January 30, 1992 proceeding) is not part of the structure itself; repairs or alterations to it are cosmetic in nature and are unnecessary to maintain the structural integrity of the arch. In fact, B&LE has received no complaints relative to the Republic Arch between December 29, 1992 and today.

Therefore, it is the position of the B&LE that the Republic Arch is structurally sound. With the exception of light scaling and brush removal which B&LE agrees to perform, along with annual inspections which it will agree to continue to perform, B&LE should not be ordered to make additional repairs or alterations to the structure or cosmetic repairs or alterations of any type.

## ARGUMENT

As set forth in its Main Brief filed on March 25, 1992, it is the position of the B&LE that the Republic Arch is adequate for the convenience and safety of the public (TR 49)<sup>1</sup>.

### Structural Soundness

The B&LE's Report of Compliance, In-Depth Inspection Report of Structure, (BLE Exhibit 8) prepared by PSI, supports the B&LE's position. As part of PSI's in-depth analysis of the structure, fifteen (15) cores were removed, fourteen (14) visually examined and tested for comprehensive strength and one (1) receiving a petrographic analysis by the Erlin Company (BLE Exhibit 8). The compressive strength of the concrete was found to vary from a low 2,890 psi to 8,750 psi, with an average psi of 5,280 (BLE Exhibit 8). The petrographic analysis results indicated "...that the concrete is in excellent condition and can be anticipated to perform as well in the future as it did in the past" (BLE Exhibit 8). Moreover, not only did the outside contractor find the structure sound, but it also found the concrete to be in excellent condition, free from moisture exposure for prolonged periods of time (BLE Exhibit 8). In fact, the results of the report demonstrated that the "...apparent relatively dry exposure has rendered the non-air-entrained and cyclic freezing sensitive durable because it did not become critically saturated" (BLE Exhibit 8).

In further compliance with the Commission's Order of September 3, 1992, a structural analysis of the Arch was performed by a registered professional engineer employed by B&LE (BLE Exhibit 8, Exhibit B). Results of this analysis revealed that maximum stress in the arch due to live load, dead load and temperature change was one-fourth the allowable stress for concrete with a

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<sup>1</sup>TR refers to page of original transcript.

comprehensive strength equal to that of the test core with the minimum comprehensive strength of 2,890 psi (BLE Exhibit 8). Therefore, it can be concluded that the arch has a structural failure safety factor of at least eight (8) (BLE Exhibit 8).

Accordingly, as the results listed in the Report of Compliance evidence, the Republic Arch is a sound structure, in need of no repairs or alterations in order to make it sound (BLE Exhibit 8).

Further, the B&LE avers that based upon its most recent annual inspection of the structure performed on June 24, 1996, the current physical condition of the substructure and superstructure of the Arch are good and have not changed since the Commission's Order of September 3, 1992 (TR 103). The Commission's witness, David A. Fischer, a civil engineer and consultant for the Bureau of Transportation and Safety, agrees with the B&LE's Report of Compliance (BLE Exhibit 8) which reveals that the structure is sound (TR 134). In addition, Mr. Fischer agrees with the content of June 1996 Inspection Report (BLE Exhibit 7), that, with the exception of minor scaling and spalling of concrete, the structure has remained the same since 1992 (TR 134).

Additionally, in the opinion of Martin L. Neaman, Bridge Inspector, Commonwealth of Pennsylvania, the B&LE's performance of an annual inspection of the Arch is sufficient since the Commonwealth of Pennsylvania is not inspecting the Arch annually, to the degree that the B&LE inspects (TR 123).

#### Cosmetic Repairs

In an attempt to submit a complete and thorough Report of Compliance, B&LE included a reference to the cosmetic repairs in its Report (BLE Exhibit 8, Exhibit C). In its interpretation of the

September 3, 1992 Order, B&LE believed it was to include potential cosmetic repairs, even though such repairs are unnecessary to maintain the structural integrity of the Arch (TR 112). Mere inclusion of the Cost Estimate for Cosmetic Repairs (BLE Exhibit 8, Exhibit C) in no way implies that the B&LE agrees that such repairs should be made or that such repairs are necessary. In fact, in its Report of Compliance, B&LE states that the "...Cosmetic Repairs are not needed to insure the structural soundness of the arch..." (BLE Exhibit 8, page 3). While cosmetic repairs may make the Arch look nicer, such cosmetic repairs in no way enhance safety. In light of budgetary concerns, such cosmetic repairs should not be a priority and are far from "recommended."

#### Spandrel Wall

The spandrel wall (also referred to as a "head wall" throughout these proceedings and "lip" in the January 30, 1992 ) is not an integral part of the Republic Arch. There is no testimony which disputes that the purpose of the spandrel wall is to merely "...keep the dirt from falling down on the road" (TR 68). It is undisputed that the spandrel wall is not "...a load bearing portion of the structure" (TR 68). It is also undisputed that any drainage from the spandrel wall does not affect the Arch (TR 68). As such, any repairs to the spandrel wall are cosmetic in nature and unnecessary to insure the structural integrity of the Arch (BLE Exhibit 8, page 3). Nonetheless, during the January 29, 1997 hearing, the Pennsylvania Department of Transportation ("PA DOT") chose to focus its questioning of the B&LE's expert witness, Richard J. Janus, on the spandrel wall (TR 107-108), as well as the questioning of its own witness, Martin L. Neaman (TR 121-126). Specifically, PA DOT fixated on movement of the spandrel wall. The 3 foot thick spandrel wall, which is not incident to the structural integrity of the 87 year-old Arch, allegedly moved slightly sometime prior to 1990 (TR

127), (BLE Exhibit 2). Since 1991, B&LE has monitored the spandrel wall annually and has detected no movement (TR 107). PA DOT admittedly does not monitor the spandrel wall and agrees with the assessment of Mr. Janus who testified that no movement of the spandrel wall has occurred since 1991 (TR 129).

Although the spandrel wall has not moved since the alleged slight movement prior to 1990, the Commission's witness, Mr. Fischer, recommends a semi-annual inspection of the spandrel wall to monitor movement (TR 136). If that were done, and no movement was detected, Mr. Fischer recommended that the spandrel wall would not need replaced or altered (TR 136). Beyond that, any repair, alteration or replacement of the spandrel wall would be based upon the size of any further movement and the speed within which the movement occurs (TR 136).

#### Conclusion

For the foregoing reasons, B&LE respectfully requests that the Pennsylvania Public Utility Commission agree that B&LE continue to inspect and maintain (i.e. minor scaling and removal of brush) the Republic Arch at its own expense, with the reservation of right to petition the Commission for allocation of costs in the future. At its sole cost and expense, B&LE agrees to inspect and monitor the spandrel wall annually and submit an inspection report to the Commission and/or another designated party. The B&LE does not concur with the suggestion of a semi-annual inspection of the spandrel wall because there exists no physical evidence to support the need for an additional inspection. In the event movement is detected, the B&LE reserves its right to petition the Commission for allocation costs relative to repair, alteration or replacement of the spandrel wall.

As set forth in its Reply Brief dated April 14, 1992, page 3, "...the B&LE does not and will not contribute to a personal injury or property damage claim due to failure to maintain the integrity

of the tunnel. The B&LE has represented that it will continue to inspect and scale the tunnel to serve both the benefit of the railroad and the traveling public. The B&LE does not and will not "turn a blind eye" to the concerns and safety of the residents and others members of the public."

Respectfully submitted,

  
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Dated: March 20, 1997

CERTIFICATE OF SERVICE

I, Colette Ferris-Shotton, do hereby certify that on the 20th day of March, 1997, I have served by first-class mail, postage prepaid, one copy of the foregoing Brief of the Bessemer and Lake Erie Railroad Company on the presiding Administrative Law Judge, John H. Corbett, Jr., and two copies of said Brief on the following parties of record:

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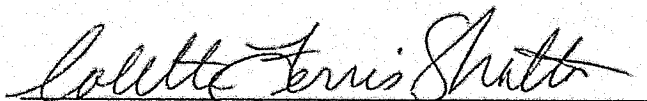
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