

FORMAL COMPLAINT

JUN 11 1991

BEFORE ORIGINAL

PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRET

For Commission Use Only: C-913419 REF. # \_\_\_\_\_ UTILITY CODE <sup>500040</sup> \_\_\_\_\_  
 COMPLAINT DOCKET NO. \_\_\_\_\_  
 REPRESENTATIVE DANIEL L. ANDERSON VS. BESSEMER & LAKE ERIE RAILROAD CO.

PLEASE PRINT:

- YOUR NAME, ADDRESS AND TELEPHONE NUMBER.

Name Representative Dan Anderson  
 Street 4767 Route 8  
 City Allison Park State PA Zip 15101  
 County Allegheny Home Telephone-Area Code (412) 443-5686  
 Work Telephone-Area Code (412) 492-0110

- COMPANY YOU ARE COMPLAINING ABOUT.

Name BESSIMER & LAKE ERIE RAILROAD

- WHAT IS YOUR COMPLAINT (DESCRIBE PROBLEM).

The Deterioration of Rural Ridge Tunnel on Russelton Road in  
Indiana Township

RECEIVED

JUN 11 1991

DOCKETER

JUN 12 1991

COMMISSIONER'S OFFICE

(More Space On Back)

For Commission Use Only: DATE FILED 6/11/91 MONITOR \_\_\_\_\_ BUREAU ALJ

\_\_\_\_\_  
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(If You Need More Space Attach Paper)

4. WHAT DO YOU WANT US TO DO?  
MAKE THE NECESSARY REPAIRS I WOULD LIKE TO KNOW WHAT HAS TO BE DONE  
TO CORRECT THIS SITUATION AND PLEASE KEEP ME NOTIFIED OF ALL ACTION  
TAKEN RELATING TO RURAL RIDGE TUNNEL

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(If You Need More Space Attach Paper)

**YOU MUST SIGN HERE**



5.

*David A. Anderson*

Signature of complainant or attorney for corporate complainant

**PUT TODAY'S DATE HERE**



6.

JUNE 11, 1991

Today's Date

**DO YOU DO NOT NEED A LAWYER**

If you **DO** have a lawyer PLEASE PRINT the lawyer's name, address and telephone number below.

7. Lawyer's Name \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone Number-Area Code (       ) \_\_\_\_\_

THIS MUST BE COMPLETED BY NOTARY PUBLIC  
AFFIDAVIT (Natural Person)

COMMONWEALTH OF PENNSYLVANIA }  
Dauphin County } ss:

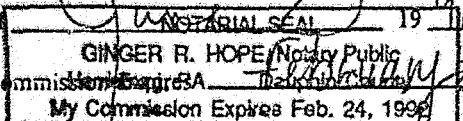
DANIEL L. ANDERSON, being duly sworn (affirmed) according to law, deposes and says that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects to be able to prove the same at the hearing hereof.

Daniel L. Anderson  
Signature of Affiant

Sworn and subscribed before me this we 11

day of September 1991

My Commission Expires February 24, 1992



Ginger R. Hope  
Signature of Official Administering Oath

AFFIDAVIT (Corporation)

COMMONWEALTH OF PENNSYLVANIA }  
\_\_\_\_\_ County } ss:

\_\_\_\_\_, being duly sworn (affirmed) according to law, deposes and says that he is \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ ; that he is authorized to and does make this affidavit

for it; and that the facts above set forth are true and correct; or are true and correct to the best of his knowledge, information and belief and he expects the said \_\_\_\_\_

\_\_\_\_\_ to be able to prove the same at the hearing hereof.

\_\_\_\_\_  
Signature of Affiant

Sworn and subscribed before me this \_\_\_\_\_

day of \_\_\_\_\_ 19\_\_\_\_

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Signature of Official Administering Oath



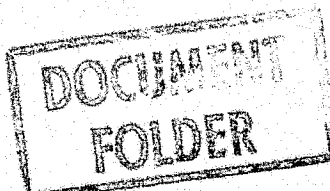
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P. O. BOX 3265, HARRISBURG, Pa. 17105-3265

June 13, 1991

IN REPLY PLEASE  
REFER TO OUR FILE

C-913419

BESSEMER & LAKE ERIE RAILROAD CO  
135 JAMISON LANE  
PO BOX 68  
MONROEVILLE PA 15146



Dear Sir:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by Representative Daniel L. Anderson

(the complaining party)

to defend yourself against the claims stated in the following pages, you must act within twenty (20) days, by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

AN ADMINISTRATIVE LAW JUDGE MAY REVOKE OR SUSPEND ANY CERTIFICATE OR PERMIT HELD BY YOU, OR IMPOSE A FINE, OR ANY OTHER APPROPRIATE PENALTY OR REMEDY AUTHORIZED BY THE PUBLIC UTILITY CODE. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service  
Pennsylvania Bar Association  
P.O. Box 186  
Harrisburg, Pennsylvania 17108  
(800) 692-7375

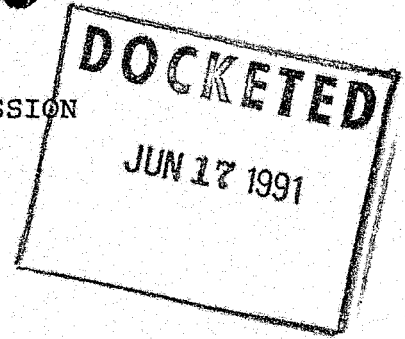
Very truly yours,

Jerry Rich, Secretary

*NRV*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

June 13, 1991



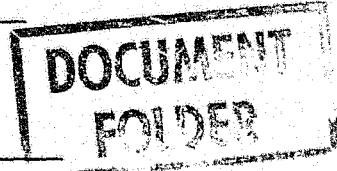
Representative Daniel L. Anderson :

Complaint Docket  
No. C-913419

v. :

Bessemer & Lake Erie Railroad

FORMAL COMPLAINT  
NOTICE TO RESPONDENT  
TO ANSWER OR SATISFY



TO: Bessemer & Lake Erie Railroad Company

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. Section 702 of the Public Utility Code, 66 Pa. C.S. §702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, an answer (original and two copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code §5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code §1.56(a).

2. If you fail to either satisfy this complaint or to file an answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rule of Administrative Practice and Procedure, 52 Pa. Code §5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorized termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with section 703(a) of the Public Utility Code, 66 Pa. C.S. §703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in this complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a

payment schedule or which authorizes termination of utility services. In the imposition of a penalty after hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.

A handwritten signature in cursive script, appearing to read "Jerry Rich".

Jerry Rich, Secretary

(SEAL)  
Certified Mail  
Return Receipt Requested

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

135 JAMISON LANE • P. O. BOX 68 • MONROEVILLE, PENNSYLVANIA 15146

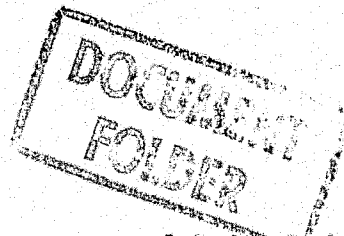
OFFICE OF GENERAL COUNSEL  
AND SECRETARY

**AMH**

June 28, 1991

VIA OVERNIGHT COURIER

Mr. Jerry Rich, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265



Re: Answer Filed on Behalf of the Bessemer and Lake Erie Railroad Company/Complaint Docket No. C-913419

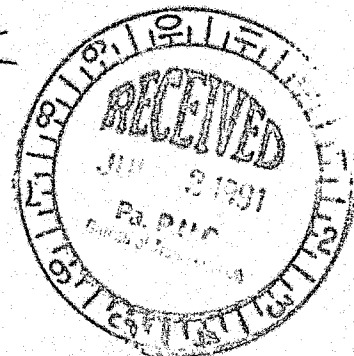
Dear Mr. Rich:

Enclosed please find for filing is an original and two (2) copies of the verified Answer of the Bessemer and Lake Erie Railroad Company ("B&LE") to the Complaint filed by Representative Daniel L. Anderson against the B&LE. Also enclosed is a Certificate of Service indicating that Complainant has been served with a true and correct copy of said Answer.

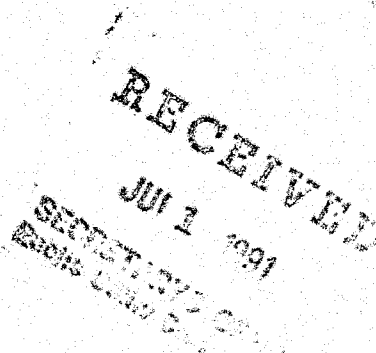
Please date stamp the enclosed copy of this letter and return it in the self addressed, stamped envelope.

Very truly yours,

Kimberly J. Gallagher  
General Attorney



KJG:nt  
Enclosures  
cc: Daniel L. Anderson  
J. P. Coessens  
D. E. Keefer



BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Representative Daniel L. Anderson )  
 )  
 v. )  
 )  
 Bessemer and Lake Erie )  
 Railroad Company )

Complaint Docket  
No. C-913419

RECEIVED  
JUL 1 1991

SECRETARY'S OFFICE  
Public Utility Commission

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ANSWER OF RESPONDENT  
BESSEMER AND LAKE ERIE RAILROAD COMPANY  
TO COMPLAINT DATED JUNE 13, 1991

---

DOCKET # 17  
JUL 08 1991  
DOCUMENT  
FOLDER

AND NOW, comes the Bessemer and Lake Erie Railroad Company ("Respondent") through its attorney, Kimberly J. Gallagher, Esquire, and hereby formally Answers the above-referenced Complaint in compliance with 52 Pa. Code § 5.61:

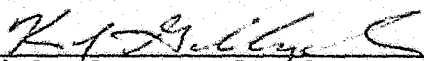
1. Respondent hereby states that it is without knowledge as to the exact name and address of the Complainant as set forth in Paragraph 1 of the Complaint.
2. Respondent hereby specifically denies that its lawful corporate name is "Bessimer & Lake Erie Railroad". By way of further answer, Respondent provides that its lawful corporate name is Bessemer and Lake Erie Railroad Company with its principal office located at 135 Jamison Lane, P. O. Box 68, Monroeville, PA 15146.
3. Respondent specifically denies that the tunnel located on Russelton Road in Indiana Township is in a condition of deterioration. By way of further answer, Respondent provides that conducts annual inspections of said tunnel with the last

inspection being done on March 20, 1991. The results of said inspection indicate that said tunnel is structurally sound. Respondent further provides that it has conducted scaling activities to remove loose concrete inside the tunnel as recently as March 19, 1991 and that it is Respondent's position that the tunnel is in satisfactory condition. Respondent further avers that it has never received, to the best of its knowledge and belief, any claims for damages to vehicles or individuals resulting from falling concrete.

4. Respondent specifically denies that any repairs are necessary at this time to the tunnel located on Russelton Road in Indiana Township. By way of further answer, Respondent maintains that nothing need be done to correct the situation as alleged in the Complaint and that Respondent has no legal obligation to notify said Complainant relating to any actions it has or will take to the tunnel unless so ordered.

WHEREFORE, Respondent prays that this honorable Commission will dismiss the aforementioned Complaint or in the alternative, requests that a hearing be held regarding this matter.

Respectfully submitted,


  
\_\_\_\_\_  
Kimberly J. Gallagher  
General Attorney  
Bessemer and Lake Erie  
Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA §

ALLEGHENY COUNTY §

Kimberly J. Gallagher, being duly sworn, affirmed according to law, deposes and says that she is the General Attorney of the Bessemer and Lake Erie Railroad Company; that she is authorized to and does make this Affidavit for it; and that the facts above set forth are true and correct; or are true and correct to the best of her knowledge, information and belief and that she expects the said Bessemer and Lake Erie Railroad Company to be able to prove the same at the hearing hereof.

  
\_\_\_\_\_  
Kimberly J. Gallagher  
General Attorney

Sworn and subscribed before me  
this 28th day of June, 1991.

My Commission Expires 10-17-94

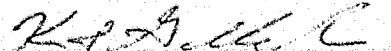
  
\_\_\_\_\_  
Signature of Official Administering Oath

Notarial Seal  
Nancy A. Titov, Notary Public  
Monroeville Boro, Allegheny County  
My Commission Expires Oct. 17, 1994

CERTIFICATE OF SERVICE

I, Kimberly J. Gallagher, do hereby certify that on this 28th day of June, 1991, that I have served by first class mail, postage prepaid, one copy of the foregoing Answer to the Complainant listed below:

Representative Daniel L. Anderson  
4767 Route 8  
Allison Park, PA 15101

  
\_\_\_\_\_  
Kimberly J. Gallagher

ORIGINAL  
BESSEMER AND LAKE ERIE RAILROAD COMPANY

135 JAMISON LANE • P. O. BOX 68 • MONROEVILLE, PENNSYLVANIA 15146

OFFICE OF GENERAL COUNSEL  
AND SECRETARY

July 3, 1991

VIA OVERNIGHT COURIER

Mr. Jerry Rich, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

RECEIVED

JUL 3 1991

Re: Amended Answer Filed on Behalf of the Bessemer and Lake Erie Railroad Company/Complaint Docket No. C-913419

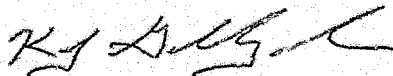
Dear Mr. Rich:

Enclosed please find for filing is an original and two (2) copies of the verified Amended Answer of the Bessemer and Lake Erie Railroad Company ("B&LE") to the Complaint filed by Representative Daniel L. Anderson against the B&LE. The original Answer contained an erroneous date which has been corrected in the Amended Answer. Also enclosed is a Certificate of Service indicating that Complainant has been served with a true and correct copy of said Amended Answer. The Answer along with the Amended Answer shall together act as the Answer of the B&LE to the foregoing Complaint.

As information, the Amended Answer was originally mailed on July 1, 1991, but returned to the undersigned as the address was incorrect. However, Mr. Anderson was served via first class mail on July 1, 1991, as is set forth in the Certificate of Service. I apologize for any inconvenience this may have caused.

Please date stamp the enclosed copy of this letter and return it in the self addressed, stamped envelope.

Very truly yours,




Kimberly J. Gallagher  
General Attorney

KJG:nt  
Enclosures  
cc: Daniel L. Anderson  
J. P. Coessens  
D. E. Keefer



WHEREFORE, Respondent continues to pray that this honorable Commission will dismiss the aforementioned Complaint or in the alternative, requests that a hearing be held regarding this matter.

Respectfully submitted,

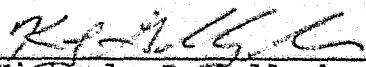
  
\_\_\_\_\_  
Kimberly J. Gallagher  
General Attorney  
Bessemer and Lake Erie  
Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA §

ALLEGHENY COUNTY §

Kimberly J. Gallagher, being duly sworn, affirmed according to law, deposes and says that she is the General Attorney of the Bessemer and Lake Erie Railroad Company; that she is authorized to and does make this Affidavit for it; and that the facts above set forth are true and correct; or are true and correct to the best of her knowledge, information and belief and that she expects the said Bessemer and Lake Erie Railroad Company to be able to prove the same at the hearing hereof.

  
\_\_\_\_\_  
Kimberly J. Gallagher  
General Attorney

Sworn and subscribed before me  
this 1st day of July, 1991.

My Commission Expires 10-17-94


  
\_\_\_\_\_  
Signature of Official Administering Oath

Notarial Seal  
Nancy A. Titov, Notary Public  
Monroeville Boro, Allegheny County  
My Commission Expires Oct. 17, 1994

CERTIFICATE OF SERVICE

I, Kimberly J. Gallagher, do hereby certify that on this 1st day of July, 1991, that I have served by first class mail, postage prepaid, one copy of the foregoing Amended Answer to the Complainant listed below:

Representative Daniel L. Anderson  
4767 Route 8  
Allison Park, PA 15101

  
\_\_\_\_\_  
Kimberly J. Gallagher

July 24, 1991

LAMH

MR W D PICKERING PE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION  
509 TRANSPORTATION & SAFETY BUILDING  
HARRISBURG PA 17120

AUG 1 5 1991

In re: C-913419 - Daniel L. Anderson  
v.  
Bessemer & Lake Erie Railroad Company

Dear Sir:

This is to advise that a field investigation and conference will be held at the site of the crossing where tracks of Bessemer & Lake Erie Railroad cross over S.R. 1026, in Indiana Twp. on Wednesday August 14, 1991 at 1:30 p.m. to discuss the subject complaint.

Kindly arrange to have a representative present.

Very truly yours,

D.A. Fischer, P.E.  
Rail Safety Division  
Bureau of Safety and Compliance

DAF:kmb

See Attached List

Fischer

# BESSEMER AND LAKE ERIE RAILROAD COMPANY

135 JAMMOND AVE • P. O. BOX 68 • MONROEVILLE, PENNSYLVANIA 15146

MONROEVILLE DE  
B & A

OCT 28 1991

October 23, 1991

RAIL SAFETY  
DIVISION

Mr. D. A. Fischer, P.E.  
Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17120

Dear Mr. Fischer:

RE: C-913419, SR1026 - Republic Arch 7.77

This is to inform you that a cursory inspection of the subject arch was made on October 23, 1991. There was no concrete debris found on the roadway or shoulders and no indication of loose concrete or loss of concrete from the barrel or portals of the arch since our last inspection.

Sincerely,

D. E. Keefer  
Engineer - Design, Inspection and  
Environmental

W. J. ...  
FOLDER

RECORDED  
OCT 31 1991  
1991

DEK/jmh

cc: Honorable Daniel L. Anderson  
Representative, U. S. Congress  
District 31 - 4767 Route 8  
Allison Park, PA 15701

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
November 25, 1991

In Re: C-913419

Honorable Daniel L. Anderson  
Representative Dist. 31 U S Congress  
4767 Route 8  
Allison Park, PA 15101

Representative Daniel L. Anderson  
vs.

Bessemer & Lake Erie RR Company  
Alleging requests necessary repairs be done to rural ridge tunnel on  
Russelton Road, Indiana Township.

NOTICE

This is to inform you that an initial hearing on the above captioned case will be held Thursday, January 30, 1992, at 10:00 a.m., in the 11th Floor Hearing Room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania.

It will be necessary for you to publish the enclosed notice once during each of the weeks of January 13 and January 20, 1992, in a newspaper having a general circulation in the area involved. Proof of publication must be received in the office of the Secretary of the Commission, on or before the date of hearing.

We are enclosing herewith, a list of questions, prepared by our Bureau of Safety & Compliance, indicating information to be developed at the hearing, along with other relevant testimony.

Each party is requested to submit testimony and exhibits with respect to the entire crossing alteration project with the understanding that the Commission may, in adjudicating this matter, take jurisdiction over any desired portion of the project.

If any party intends to offer prepared written testimony, such testimony must be served upon each participant of record no less than twenty (20) days prior to this hearing.

You are advised that if you fail to appear at the hearing, the hearing will proceed without you. In that event, it is possible that you or your client will have issues determined against you and that you might be assigned positive duties or be required to pay money and will have waived any objection thereto.

The Commission's Rules require that all parties (except individuals appearing on their own behalf) be represented by counsel at hearing, therefore, will you please have counsel of your choice file an appearance on your behalf prior to the hearing date herein stated.

If you intend to file exhibits, please be advised that two copies of all hearing exhibits to be presented into evidence must be submitted to the Reporter and an additional copy should be furnished to the presiding officer and each party of record.

The presiding officer in this proceeding is Administrative Law Judge John Corbett, Jr. Judge Corbett can be contacted at 1103 Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222; telephone (412) 565-3550.

Enclosures

NOTICE

Daniel L. Anderson vs. Bessemer & Lake Erie Railroad Company  
C-913419

Notice is hereby given that a complaint, having been filed with the Pennsylvania Public Utility Commission, alleging that the Rural Ridge Tunnel on Russelton Road, Indiana Township, (Republic Arch 7.77, S.R. 1026) Allegheny County, is in a state of disrepair, and requests repairs be made. The proceeding is entitled Daniel L. Anderson versus Bessemer & Lake Erie Railroad Company (C-913419).

The Commission has fixed Thursday, January 30, 1992 at 10:00 a.m., in the 11th Floor Hearing Room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222, as the time and place for hearing when and where all persons in interest may appear and be heard if they so desire.

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
November 25, 1991

AMH

In Re: C-913419

(See attached list)

Representative Daniel L. Anderson  
vs.

Bessemer & Lake Erie RR Company  
Alleging requests necessary repairs be done to rural ridge tunnel on  
Russelton Road, Indiana Township.

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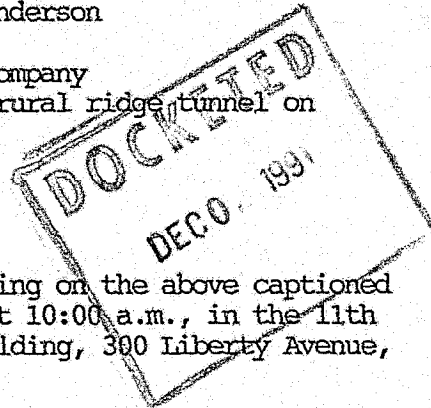
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Enclosures

cc: Judge Corbett  
Mr. Bramson  
Bur. of Safety/Compliance  
Law Bureau  
Ms. Kelly  
Mrs. Howell  
Docket Room

Certified Mail  
Receipt Requested

John L. Heaton, Chief Counsel  
Pennsylvania Dept. of Transportation  
521 Transportation & Safety Bldg.  
Harrisburg, PA 17120

W. D. Pickering, Utility Engineer  
Pennsylvania Dept. of Transportation  
509 Transportation & Safety Bldg.  
Harrisburg, Pa. 17120

F. H. Morris, Chief Engineer  
Bessemer & Lake Erie Railroad Co.  
135 Jamison Lane  
P O Box 68  
Monroeville, PA 15156

Kimberly J. Gallagher, Esquire  
Bessemer & Lake Erie Railroad Co.  
135 Jamison Lane  
P O Box 68  
Monroeville, PA 15156

Honorable Daniel L. Anderson,  
Representative Dist. 31 U S Congress  
4767 Route 8  
Allison Park, PA 15101

Thomas J. Foerster, Chairman  
Allegheny County Commissioners  
119 Courthouse  
Pittsburgh, PA 15219

James J. Dodaro, Esquire  
400 Fort Pitt Commons Bldg.  
445 Fort Pitt Boulevard  
Pittsburgh, PA 15219

Mitchell T. Kovel, Secretary  
Indiana Township  
P O Box 788  
Indianola, PA 15051

Thomas L. Snyder, Solicitor  
Forty-second Floor  
U. S. STEEL BUILDING  
Pittsburgh, PA 15219

The Bell Telephone Co. of Penna.  
Legal Department 16th Floor  
One Parkway  
Philadelphia, PA 19102

West Penn Power Co.  
Legal Department  
800 Cabin Hill Drive  
Greensburg, PA 15601

The Peoples National Gas Co.  
Legal Department  
625 Liberty Avenue  
Pittsburgh, PA 15222-3197

Pennsylvania American Water Co.  
Legal Department  
800 W. HersheyPark Drive  
Hershey, PA 17033

---

1. Daniel L. Anderson (complainant) state whether the existing crossing is adequate for the convenience and safety of the public or should be altered, rehabilitated or demolished, and, if so, submit testimony regarding the general nature and extent of all work or changes, if any, which complainant deems advisable to provide a safe and convenient crossing at this location.
2. Bessemer and Lake Erie Railroad Company (B&LE) submit testimony as to the exact corporate name of the owners and of the operators of the line of railroad located at the subject crossing, including the number of tracks and the volume, class, and approximate speed of all trains operated daily thereon, and whether any significant changes to such operations are contemplated in the foreseeable future.
3. B&LE submit testimony describing the general type of existing bridge, number of spans, principal dimensions and state the general physical condition thereof.
4. B&LE state the approximate date of construction of the existing bridge and any significant changes that have been made to the structure in the past which have affected or altered the structure.
5. B&LE state its present obligations with respect to maintenance of the existing structure.
6. That B&LE state the nature and type, extent, date, cost and any other pertinent specific details as to any recorded substantial items of maintenance and/or repair performed on the existing structure by the railroad or its contractor.
7. B&LE state whether the existing crossing is adequate for the convenience and safety of the public or should be altered, rehabilitated or demolished, and, if so, submit testimony regarding the general nature and extent of all work or changes, if any, which the railroad deems advisable to provide a safe and convenient crossing at this location.
8. B&LE state whether it will agree to prepare such plans as may be required for any work necessary or advisable at this location.
9. B&LE submit testimony as to what portion, if any, of any construction work that it will agree to perform; and what portion, if any, of the cost of same and future maintenance that it will agree to bear; and the portions, if any, of said work and cost thereof which should be performed and borne by each of the other parties thereto. Responses should be specific as to percentages of allocations suggested, and should include the reasons for such allocations.

10. That the Department of Transportation (PennDOT) submit testimony describing the general location of the existing rail-highway crossing, below grade, involved in this proceeding.
11. PennDOT submit testimony describing the general type of the existing bridge, number of spans, principal dimensions and clearances about the highway, and state the general physical condition thereof.
12. PennDOT submit accurate data concerning the present and estimated future highway traffic, including a breakdown of truck traffic, at this location.
13. PennDOT state the nature, type, extent, date and cost and other pertinent specific details as to any of the recorded substantial items of maintenance and/or repairs performed on the existing structure by its contractor.
14. PennDOT state whether the existing crossing is adequate for the convenience and safety of the public or should be altered, rehabilitated or demolished, and, if so, submit testimony regarding the general nature and extent of all work or changes, if any, which PennDOT deems advisable to provide a safe and convenient crossing at this location.
15. PennDOT state whether it has prepared any plans or cost estimates as may be required for any work necessary or advisable at this location.
16. PennDOT state whether any Bridge Bill Funds are available to be used at this location.
17. That PennDOT submit testimony as to what portion, if any, of any construction work that it will agree to perform; and what portion, if any, of the cost of same or future maintenance that it will agree to bear; and the portions, if any, of said work and costs thereof which should be performed or borne by each of the other parties hereto. Response should be specific as to the percentage of allocation suggested, and should include the reasons for such allocation.
18. Indiana Township submit testimony describing the importance of a separated crossing at this location to its residents and businesses in the area of the structure.
19. Indiana Township state its present obligations which respect to the maintenance of the existing crossing.
20. Indiana Township state whether the existing crossing is adequate for the convenience and safety of the public or should be altered, rehabilitated or demolished, and, if so, submit testimony regarding the general nature and extent of all work or changes, if any, which the Township deems advisable to provide a safe and convenient crossing at this location.
21. Indiana Township submit testimony as to what portion, if any, of any construction work it will agree to perform; and what portion, if any, of

the cost of same and future maintenance that it will agree to bear; and the portions, if any, of said work and cost thereof which should be performed and borne by each of the parties hereto. Response should be specific as to the percentage of allocation suggested, and should indicate the reasons for such allocation.

22. Query whether any of the other parties desires to submit any additional testimony, exhibits or proposals relevant to this proceeding.

DAF:kmb



# Pennsylvania-American Water Company

LAMH

800 West Hersheypark Drive • P.O. Box 888 • Hershey, PA 17033-0888  
(717) 533-5000

Velma A. Redmond  
Corporate Counsel

December 12, 1991

John Corbett, Jr.  
Administrative Law Judge  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility  
Commission  
1103 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222

Re: Representative Daniel L. Anderson  
Docket No. C-913419

Dear Judge Corbett:

This is to advise you that upon review of the facts involved in the above-captioned matter, Pennsylvania-American Water Company has determined that its facilities are not affected.

Accordingly, Pennsylvania-American Water Company does not plan to participate in the hearing set for January 30, 1992 nor present any testimony in this proceeding.

Sincerely,

Velma A. Redmond  
Corporate Counsel

eth

cc: Jerry Rich, Secretary  
All Parties of Record

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DEC 18 1991

SECRETARY'S OFFICE  
Public Utility Commission

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JAN - 3 1992

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ORIGINAL

ECKERT SEAMANS CHERIN & MELLOTT

ATTORNEYS AT LAW

42ND FLOOR  
600 GRANT STREET  
PITTSBURGH, PA 15219  
(412) 566-6000

FACSIMILE (412) 566-6099  
TELEX 866172

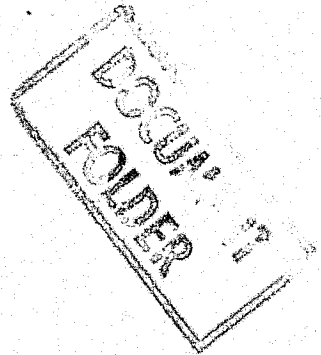
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JAN 10 1992

SECRETARY'S OFFICE  
Public Utility Commission

TIMOTHY S. COON  
(412) 566-1214

January 9, 1992



Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265, North Office Building  
Harrisburg, PA 17105

In Re: C-913419  
Representative Daniel L. Anderson v. Bessemer  
& Lake Erie Railroad Company

Dear Sir/Madame:

Please file the enclosed Notice of Appearance, entering our appearance on behalf of Indiana Township in the above-referenced matter. Should you have any questions, please contact me.

Very truly yours,

Timothy S. Coon

TSC/klb

Enclosure

*Jan  
ACT  
SER*

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

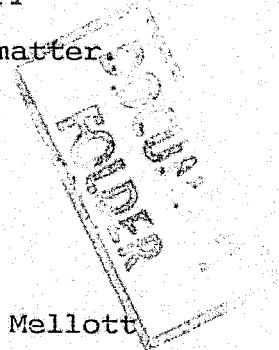
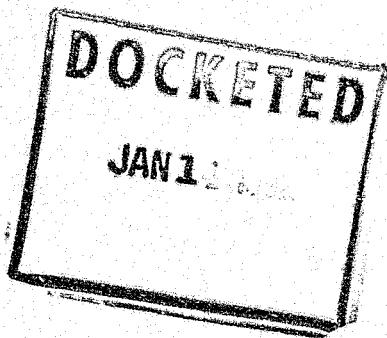
In Re: C-913419

Representative Daniel L. Anderson  
v.  
Bessemer & Lake Erie Railroad  
Company

NOTICE OF APPEARANCE

Please enter our appearance in the above-designated matter on behalf of Indiana Township, Pennsylvania. I am authorized to accept service on behalf of said participant in this matter.

On the basis of the Notice, I request a copy of each document hereafter issued by the Commission in this matter.



Eckert Seamans Cherin & Mellott

Thomas L. Snyder  
Timothy S. Coon  
600 Grant Street, 42nd Floor  
Pittsburgh, PA 15219  
(412) 566-6000

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

135 JAMISON LANE • P. O. BOX 68 • MONROEVILLE, PENNSYLVANIA 15146

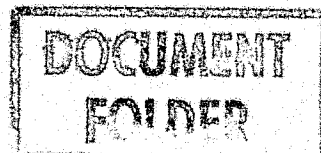
OFFICE OF GENERAL COUNSEL  
AND SECRETARY

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JAN 7 1992

SECRETARY'S OFFICE  
Public Utility Commission

January 8, 1992



Mr. Jerry Rich, Secretary  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, Pennsylvania 17120

Re: Representative Daniel L. Anderson v. Bessemer and Lake Erie  
Railroad Company, Complaint Docket No. C-913419, Initial  
Hearing, January 30, 1992

Dear Mr. Rich:

Enclosed please find the original and three copies of the Notice of Appearance of the Bessemer and Lake Erie Railroad Company in the above-captioned matter.

Also enclosed is a Certificate of Service indicating that a copy of this document has been served on the Complainant.

Very truly yours,

*K. J. Gallagher*  
Kimberly J. Gallagher  
General Attorney

KJG:nt  
Enclosures  
cc: Daniel L. Anderson  
D. E. Keefer

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Representative Daniel L. Anderson v.  
Bessemer and Lake Erie Railroad Company,  
Complaint Docket No. C-913419,  
Initial Hearing, January 30, 1992

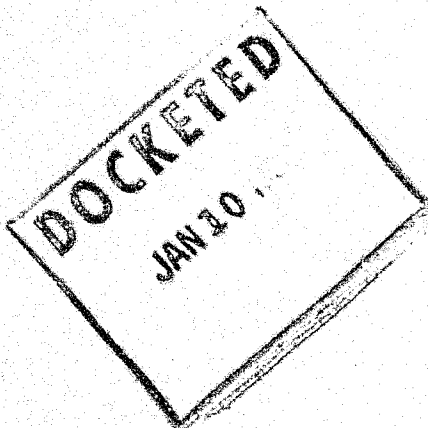
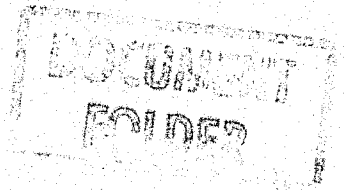
NOTICE OF APPEARANCE

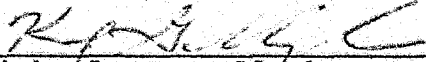
TO THE SECRETARY,

Please enter my appearance in the above-designated matter on behalf of the Bessemer and Lake Erie Railroad Company.

On the basis of this notice, I request a copy of each document hereafter issued by the Commission in this matter.

Kimberly J. Gallagher  
General Attorney  
Bessemer and Lake Erie  
Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893



  
\_\_\_\_\_  
Kimberly J. Gallagher  
General Attorney

January 8, 1992  
Date

CERTIFICATE OF SERVICE


I, Kimberly J. Gallagher, do hereby certify that on this 8th day of January, 1992, that I have served by first class mail, postage prepaid, one copy of the foregoing Notice of Appearance to the Complainant listed below:

Representative Daniel L. Anderson  
4767 Route 8  
Allison Park, PA 15101

Pennsylvania Department of Transportation  
1200 Transportation & Safety Building  
Harrisburg, PA 17120

Mr. Ira Weiss, Solicitor  
Allegheny County  
300 Fort Pitt Commons  
Fort Pitt Boulevard  
Pittsburgh, PA 15219

Mr. Mitchell Kovel  
Township Manager  
Indiana Township  
P. O. Box 788  
Indianola, PA 15051

  
\_\_\_\_\_  
Kimberly J. Gallagher

APPEARANCE SHEET

ALJ HEARING REPORT **ARM**

DOCKET NO. G-913419  
 CASE NAME Representative Daniel L.  
Anderson vs. Bessemer & Lake Erie  
RR Company  
 HEARING LOCATION Pittsburgh  
 HEARING DATE January 30, 1992  
 ALJ Corbett

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES  NO   
 Testimony taken YES  NO   
 Hearing concluded YES  NO   
 Further hearing needed YES  NO   
 Estimated add'l days \_\_\_\_\_  
 RECORD CLOSED YES  NO   
 Date \_\_\_\_\_  
 Briefs to be filed YES  NO   
 Date \_\_\_\_\_  
 BENCH DECISION YES  NO   
 REMARKS: Briefing letters to be sent upon  
receipt of transcript

**RECEIVED**

JAN 31 1992

A. L. J.  
 Public Utility Commission

**DOCUMENT  
 FOLDER**

**DOCKETED**  
 MAR 3 1992

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD  
 PLEASE PRINT CLEARLY

INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
TRENT HARBOUR 7872819	513 Transportation and Safety Building City: <u>Hog</u> State: <u>Pa</u> Zip: <u>17110</u>	Office of Chief Counsel Pa Department of Transportation
Kimberly J. Gallagher Telephone No. ( )	P.O. Box 68 135 Jamison Lane City: <u>Monroeville</u> State: <u>PA</u> Zip: <u>15146</u>	
Rep Dan Anderson Telephone No. ( )	3241 McCully Rd City: <u>Allison Park</u> State: <u>Pa</u> Zip: <u>15101</u>	3rd Leg. Dist.

CHECK THIS BOX IF ADDITIONAL PARTIES  
 OR COUNSEL OF RECORD APPEAR ON BACK.

Paula R. Davis  
 Reporter



COMMONWEALTH OF PENNSYLVANIA  
 PENNSYLVANIA PUBLIC UTILITY COMMISSION  
 PITTSBURGH STATE OFFICE BUILDING  
 300 LIBERTY AVENUE  
 PITTSBURGH, PENNSYLVANIA 15222

DOCUMENT  
 FOLDER

AMM

IN REPLY PLEASE  
 REFER TO OUR FILE

February 27, 1992

TO ALL PARTIES OF RECORD:

In re: C-913419

Representative Daniel L. Anderson vs.  
 Bessemer & Lake Erie RR Company

The transcript of testimony taken in the above entitled proceeding indicates that the parties will file briefs.

In accordance with the Commission's Rules of Practice, Main Briefs shall be filed on or before March 27, 1992. Reply Briefs, if any, shall be filed on or before April 16, 1992. If Briefs are not received within the allotted time, they shall not be accepted for filing, except by special permission of the presiding officer. Your Main Briefs should be concise and must comply with 52 Pa. Code §5.501.

An original and nine (9) copies of each Main and Reply Brief must be filed with the Commission in accordance with 52 Pa. Code §1.4 and in care of the New Filing Section, Room B-18, North Office Building, Harrisburg, PA 17120. Also, one copy must be served on the presiding Administrative Law Judge and two copies on each party of record.

DOCKETED  
 MAR 3 1 1992

Very truly yours,

*John H. Corbett, Jr.*  
 John H. Corbett, Jr.  
 Administrative Law Judge

JHC:bjm

cc: Annette Shelley

ORIGINAL  
ECKERT SEAMANS CHERIN & MELLOTT

ATTORNEYS AT LAW

42ND FLOOR  
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PITTSBURGH, PA 15219  
(412) 566-6000

FACSIMILE (412) 566-6099  
TELEX 866172

LAMP

LPW

TIMOTHY S. COON  
(412) 566-1214

March 24, 1992

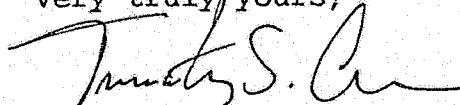
Pennsylvania Public Utility Commission  
New Filing Section  
Room B-18, North Office Building  
Harrisburg, PA 17102

RE: Anderson v. Bessemer & Lake Erie Railroad Co.  
No. C-913419

Dear Sir/Madame:

Please accept and file the enclosed brief on behalf of Indiana Township, Pennsylvania, a participant in the above proceeding. An original and nine copies of the brief have been enclosed. Please contact me should you have any questions.

Very truly yours,

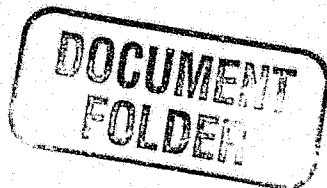


Timothy S. Coon

TSC/klb

Enclosures

cc: Honorable John H. Corbett, Jr. (w/encl.)  
All Parties of Record (w/encl.)



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MAR 25 1992

SECRETARYS OFFICE  
Public Utility Commission

LPW

BEFORE THE PENNSYLVANIA  
PUBLIC UTILITIES COMMISSION

IN RE:

No. C-913419

REPRESENTATIVE DANIEL L. ANDERSON

Petitioner,

Judge John Corbett, Jr.

v.

BESSEMER & LAKE ERIE RAILROAD CO.,

Respondent.

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MAR 29 1992

DOCUMENT  
FOLDER

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BRIEF OF INDIANA TOWNSHIP  
IN SUPPORT OF PETITION FOR NECESSARY  
REPAIRS TO RURAL RIDGE TUNNEL, RUSSELTON  
ROAD, INDIANA TOWNSHIP, PENNSYLVANIA

RECEIVED

MAR 25 1992

SECRETARYS OFFICE  
Public Utility Commission

Timothy S. Coon  
Pa. I.D. No. 52741  
Eckert Seamans Cherin & Mellott  
Firm I.D. No. 075  
600 Grant Street, 42nd Floor  
Pittsburgh, PA 15219  
(412) 566-6000

Attorneys for Indiana Township

### ISSUES PRESENTED

1. Whether the Pennsylvania Public Utility Commission should order the Bessemer & Lake Erie Railroad Company to perform any and all necessary repairs to prevent further deterioration of the subject structure and to stop the spalling of concrete from said structure?

2. Whether the Pennsylvania Public Utility Commission should order the Bessemer & Lake Erie Railroad Company to perform additional testing and engineering evaluation of the structural integrity of the subject structure?

### SUMMARY OF ARGUMENT

This matter involves a tunnel located on Russelton Road, Indiana Township, Pennsylvania which was constructed, is owned, and is "maintained" by the Bessemer & Lake Erie Railroad Company. The record in this matter indisputably reflects that the tunnel is in a severely deteriorated condition, and that due to the deteriorated condition, pieces of concrete fall or spall from the arches and roof, causing accumulation of debris on the roadway. The record further reflects that Bessemer & Lake Erie Railroad is aware of the deteriorated condition, that it has done essentially nothing to stop the spalling of concrete, and has done nothing to determine that this tunnel is structurally sound. The condition of the tunnel has created a substantial and continuing adverse impact on the convenience and safety of the travelling public. According, Bessemer & Lake Erie Railroad Company should be ordered to conduct necessary repairs on the tunnel and to conduct appropriate testing to assess its structural integrity.

### ARGUMENT

This matter involves a petition filed by Pennsylvania State Representative Daniel L. Anderson requesting that certain repairs and inspections be performed on the Rural Ridge Tunnel (the "Tunnel") located on Russelton Road, Indiana Township, Allegheny County, Pennsylvania. The Tunnel was erected by the Bessemer & Lake Erie Railroad Company ("B&LE") in 1910. (Transcript "Tr." 49). In the past 82 years, there have been no alterations or major maintenance activities performed by B&LE on the Tunnel, although B&LE has historically performed whatever "maintenance" was done, and at the hearing before Administrative Law Judge John Corbett, Jr., acknowledged its responsibility to perform all future maintenance. (Tr. 49, 52).

According to PennDOT's Engineer, Henry Farrell, who testified at the hearing, approximately 6,300 motor vehicles transit the Tunnel each day. (Tr. 72-73). The Tunnel is located on a state-maintained road in Indiana Township that constitutes a primary access route for Indiana Township's residents, fire department, police department, and ambulance service. (Tr. 88). Although a large number of vehicles, including emergency services, pass through the Tunnel each day, uncontroverted testimony established that the Tunnel functions solely to accommodate B&LE rail traffic passing overhead, and that the Tunnel, itself, provides no benefit to motorists or other members of the public. (Tr. 76).

A substantial, existing problem concerns the spalling of concrete from both the eastern and western Tunnel faces as well as from interior portions of the Tunnel arch. As has been well-documented in photographs submitted by several parties, including B&LE, both Tunnel faces and portions of the interior arch have suffered serious deterioration.<sup>1</sup> (See eg. Complainant Exh. 1; B&LE Exh. 3 and 4). It is equally clear that this ongoing deterioration and spalling of concrete from the Tunnel has existed and progressed over many years.

Pennsylvania State Representative Daniel Anderson testified that in the one year that he has been in office, he has received at least 30 complaints from area residents concerning the spalling of concrete from the Tunnel, and that predecessors to his office similarly received many complaints. (Tr. 6, 11, 15, 19). The present Mayor of Indiana Township, George Erceg, who has also been a Township Supervisor for over a decade, similarly testified that he has personally received over 50 complaints concerning the spalling of concrete from the Tunnel and resultant debris on the roadway. (Tr. 40-41). The occurrence of frequent complaints was also confirmed by the Township Manager. (Tr. 89).

---

<sup>1</sup>In particular, Indiana Township respectfully directs the Commission's attention to a number of photographs submitted as an Exhibit after the hearing, upon stipulation of all parties. These photographs demonstrate the existence of large cracks and deep spalling of the concrete arch. Parts of steel reinforcing bars are readily observed in several of the photographs.

These complaints by area residents are not merely hypothetical. Both Representative Anderson and Mayor Erseg testified that they have personally observed concrete debris on the road surface on many occasions. (Tr. 16, 41-42). Indiana Township resident Andrew Klebine testified about a recent incident where a several-inch long piece of concrete fell directly in front of his automobile as he was passing through the Tunnel. (Tr. 36-37). Mr. Klebine also described observing concrete debris on the roadway on many other occasions. Id. The only witness to testify on behalf of B&LE, Engineer Donald Keefer, similarly admitted that spalling of concrete on the Tunnel does occur. (Tr. 56, 62).

Although B&LE will undoubtedly seek to trivialize the admitted problem in its brief, it is clear that the ongoing deterioration of this structure, wherein concrete from the interior arch and Tunnel faces is falling onto the roadway, creates a substantial adverse impact on the convenience and safety of the travelling public. Apart from the obvious risk of damage to vehicles of passing motorists, the problems of falling concrete and debris on the roadway further enhance the risk to the property and safety motorists in light of certain unique and undesirable characteristics of the Tunnel.

The Tunnel is an antiquated, narrow structure, clearly outdated in light of modern engineering standards. There are substantial sight distance and road alignment problems, and there

are virtually no road shoulders inside the Tunnel. (Tr. 72-74, 90). One need not be an engineer or transportation specialist to conclude that the risks of collision and injury are enhanced for motorists who are startled by falling concrete or swerve to avoid roadway debris, especially when such motorists are already preoccupied with transiting a narrow, confined tunnel having substantial visibility and alignment problems.

Indeed, the testimony of B&LE's Engineer supports a finding that the existing condition of the Tunnel presents a substantial hazard to the travelling public. Mr. Keefer admitted under cross-examination that a large piece of concrete near the top of the west face of the Tunnel (and directly above the roadway) had been found to be loose during B&LE's annual inspection and was, accordingly, removed by B&LE's crew. (Tr. 56-57). While it was rather fortunate happenstance that B&LE's crew discovered the loosened concrete during its once-a-year inspection and scaling operations, again, one does not require too much imagination to visualize the effect upon a passing motorist of having a 20 or 50 or 100 pound piece of concrete fall on, or in front of, his or her vehicle.

This admission by Mr. Keefer is particularly pertinent in light of B&LE's testimony that in the past 82 years it has done virtually nothing to determine that the Tunnel's structural integrity has remained intact.

B&LE's annual "engineering inspections" of the Tunnel are limited to simply looking at it and randomly tapping the concrete with a hammer. (Tr. 57-58). Even if one could characterize this activity as an "engineering inspection" by some stretch of the imagination, Engineer Keefer conceded that there are a number of tests and analyses available (at least some of which he characterized as inexpensive) which would provide an engineer with specific information concerning structural integrity, including ultrasound analysis, core sampling, chloride ion testing, concrete density analysis, and petrographic examination. (Tr. 58-62). B&LE has never performed even one of these tests, although it admits: that a large piece of loosened concrete had to be removed from the Tunnel face; that there is frequent spalling of the concrete; that there are substantial cracks on the Tunnel faces; that there is at least a possibility of water infiltration affecting the concrete; and that spalling has occurred even inside the Tunnel arch, which is protected from the elements. (Tr. 56-57, 62, 65).<sup>2</sup>

PennDOT's Engineer, Henry Farrell, rendered an opinion that where a large piece of concrete has fallen or has been

---

<sup>2</sup>B&LE's failure to conduct core sampling or chloride ion testing is particularly curious in light of its contention that the deterioration of the concrete is due to splashing of salt from the roadway. Although PennDOT's Engineer denied that salt was the cause of the spalling concrete (Tr. 79-80), even if one assumes that salt is the culprit, B&LE admits that it has never conducted core sampling or chloride ion testing -- analyses specifically designed to determine whether salt has affected the structural stability of the concrete (Tr. 59-60).

removed from a concrete structure (admittedly the situation here), as a structural engineer he would deem it advisable to order additional testing to ensure the integrity of the remaining structure. (Tr. 87). Mr. Farrell is correct. Deterioration of a concrete Tunnel, to an extent that large pieces of concrete become loose and require removal, demands further investigation and evaluation. B&LE has not done so, and will not do so unless ordered by this Commission.

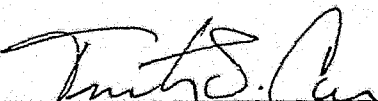
B&LE wants to continue to go on as it has for the past 82 years -- spending virtually nothing to maintain a Tunnel which B&LE built, for which it admits maintenance responsibility, and which benefits no one but B&LE. There is substantial evidence in the record that the Tunnel is in a severely deteriorated condition. There is substantial evidence in the record that the condition of the Tunnel adversely affects the convenience and safety of the travelling public. There is substantial evidence in the record that B&LE has done essentially nothing to ensure that this 82 year old Tunnel is structurally safe.

B&LE should be ordered to repair all areas of the Tunnel where spalling and cracking have occurred. B&LE should be ordered to perform all necessary and appropriate testing to ensure that the Tunnel is structurally stable. B&LE should not be permitted, as it desires, to turn a blind eye to the concerns and safety of the residents of Indiana Township and other members of the public.

CONCLUSION

For the foregoing reasons, Indiana Township respectfully requests that the Pennsylvania Public Utility Commission order B&LE to repair all areas of the Tunnel where the concrete has cracked, spalled, or otherwise deteriorated and further order B&LE to perform all necessary and appropriate testing to ensure the structural stability of the Tunnel.

Respectfully submitted,

  
\_\_\_\_\_  
Timothy S. Coon

Eckert Seamans Cherin & Mellott  
600 Grant Street, 42nd Floor  
Pittsburgh, PA 15219  
(412) 566-6000

Attorneys for Indiana Township,  
Pennsylvania

Dated: March 24, 1992

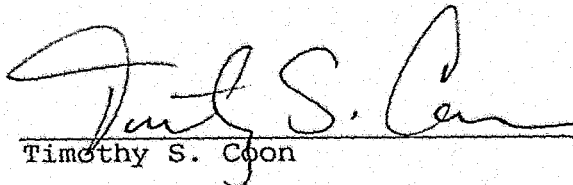
CERTIFICATE OF SERVICE

The undersigned hereby certifies that two (2) true and correct copies of the foregoing Brief of Indiana Township in Support of Petition for Necessary Repairs to Rural Ridge Tunnel, Russelton Road, Indiana Township, Pennsylvania was served upon the following by First Class, United States Mail, postage prepaid, this 24th day of March, 1992:

Kathleen Gallagher, Esquire  
Bessemer & Lake Erie Railroad Co.  
135 Jamison Lane, P.O. Box 68  
Monroeville, PA 15146

Trent Hargrove, Esquire  
Office of Chief Counsel  
Commonwealth of Pennsylvania  
513 Transportation and Safety Building  
Harrisburg, PA 17120

Daniel L. Anderson, Representative  
4767 Route 8  
Alison Park, PA 15101

  
\_\_\_\_\_  
Timothy S. Coon

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Representative Daniel L. )  
Anderson v. Bessemer and Lake )  
Erie Railroad Company ) C-913419  
Alleging Requests Necessary )  
Repairs Be Done To Rural Ridge )  
Tunnel on Russelton Road, )  
Indiana Township. )

BRIEF FILED BY BESSEMER AND LAKE ERIE  
RAILROAD COMPANY

DOCUMENT  
FILED

FILED  
MAR 29 1992

Kimberly J. Gallagher  
Attorney for Bessemer and  
Lake Erie Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893

Date: March 25, 1992

RECEIVED  
MAR 25 1992  
SECRETARY'S OFFICE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Certificate of Service . . . . .	9

QUESTIONS PRESENTED

Q. Is the Rural Ridge Tunnel structurally sound and adequate for the convenience and safety of the public?

A. Yes.

Q. Does any repair or maintenance need to be performed on the Rural Ridge Tunnel on Russelton Road, Indiana Township, Pennsylvania?

A. No.

STATEMENT OF CASE

This proceeding involves a Complaint filed by Representative Daniel L. Anderson against the Bessemer and Lake Erie Railroad Company ("B&LE") dated June 11, 1991. The Complaint alleged "the deterioration of Rural Ridge Tunnel on Russelton Road in Indiana Township". The Complaint sought to have the Pennsylvania Public Utility Commission ("Commission") make "the necessary repairs". The B&LE answered this Complaint denying that the Tunnel is in a condition of deterioration. The B&LE further provided that it conducted annual inspections of the Tunnel and the results of such inspections have indicated the Tunnel is structurally sound.

By Commission Order dated November 25, 1991, the Commission ordered a hearing to be held on January 30, 1992. Whereupon, the initial hearing was held on Thursday, January 30, 1992 before Administrative Law Judge John Corbett, Jr.. At the hearing, appearances were entered by Daniel L. Anderson, appearing pro se, Trent Hargrove, on behalf of Pennsylvania Department of Transportation, Timothy S. Coon, on behalf of Township of Indiana, and K. J. Gallagher, on behalf of B&LE.

At the hearing, the B&LE was the only party that provided any competent evidence with respect to the condition of the Rural Ridge Tunnel. The B&LE sufficiently developed evidence through the testimony of Mr. D. E. Keefer, a licensed civil engineer with over twenty-six (26) years of experience in concrete arches and tunnels, that the Rural Ridge Tunnel is structurally sound and that no additional maintenance or repairs are necessary at this time.

### SUMMARY OF ARGUMENT

It is the B&LE's contention that the Rural Ridge Tunnel is structurally sound and that no additional repairs or maintenance need to be performed on the structure. Specifically, the B&LE contends that it performs annual inspections of the structure and that none of the inspections has indicated anything to the contrary. Further, the B&LE avers that it is the only party that produced any competent evidence of a technical nature that should be considered relevant for purposes of determining structural deterioration. Representative Anderson did not present any competent testimony indicating any technical basis for proving any type of deterioration to the structure. Moreover, of the three (3) lay witnesses for Representative Anderson, one of which has lived in the area for over fifty (50) years, only Mr. Klebine ever saw any debris falling from the structure. Further, Mr. Klebine only saw debris falling on one occasion. No expert witnesses were presented nor technical inspections performed by Representative Anderson to determine the condition of the Rural Ridge Tunnel. Therefore, it is the position of the B&LE that Representative Anderson's Complaint should be dismissed for failure to present a prima facie case.

## ARGUMENT

THE RURAL RIDGE TUNNEL IS STRUCTURALLY SOUND AND IS NOT IN NEED OF ANY REPAIR OR ADDITIONAL MAINTENANCE.

It is the position of the B&LE that the Rural Ridge Tunnel is adequate for the convenience and safety of the public (TR 49)<sup>1</sup>. Further, the B&LE avers that the existing structure does not need altered, rehabilitated, or demolished (TR 50). The B&LE avers that there are two (2) distinctive complaints which have arisen from the hearing held in this matter on January 30, 1992. The complaint concerning the alignment of the structure (TR 28, 74, 90) and an alleged complaint regarding the tunnel's condition. The B&LE avers that the only proper issue in this proceeding is the alleged deterioration of the structure as that was the sole issue raised in the Complaint filed by Representative Anderson dated June 11, 1991. Therefore, any testimony or evidence dealing with alignment matters are improper.

With respect to the alleged deterioration of the structure, the B&LE avers that it is the only party that presented any competent testimony, that of a licensed civil engineer, dealing with the issue of the structural integrity of the Rural Ridge Tunnel. The B&LE presented its testimony through Mr. D. E. Keefer, Engineer-Design, Inspection & Environmental, for the

---

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

B&LE. Mr. Keefer has been employed with the B&LE for over 26 years and has a vast background in dealing with structural integrity of bridges and concrete arches. He is a licensed civil engineer in the Commonwealth of Pennsylvania and received his Engineering degree from Carnegie Institute of Technology. In Mr. Keefer's professional opinion, the Rural Ridge Tunnel is adequate for the convenience and safety of the travelling public. While the B&LE does not deny that it is possible for small pieces of concrete to spall from the sides of the tunnel due to reactions from exposure to salt caused by roadway salting, the B&LE performs annual inspections of the tunnel (TR 52) and conducts scaling activities to remove loose concrete. The cause of the spalling is most pronounced by reviewing the condition of the arch over the creek with the arch over the roadway. There is very little spalling in the arch over the creek as opposed to the arch over the road. Further, the B&LE presented evidence that it has never received a claim indicating any damage or complaint resulting from falling debris at this tunnel (TR 53). Additionally, after the filing of the Complaint in this matter, the B&LE conducted additional cursory inspections of the Rural Ridge Tunnel, all indicating that no debris had fallen (TR 52-54 and Exhibits 5 and 6).

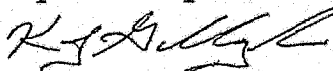
The testimony presented by Representative Anderson was that of three (3) local residents. One resident, Mrs. Kondrick, had lived in the area for 52 years and had never seen or witnessed any debris falling from the structure (TR 32). Representative Anderson failed to present any competent and/or technical evidence to indicate that the structure is deteriorating or poses a threat to the public safety. Further, the only other technical witness at the hearing was Henry W. Farrell, an engineer and witness for the Pennsylvania Department of Transportation. Mr. Farrell specifically stated that he had no comment on the condition of the Rural Ridge Tunnel as PennDOT had not performed an inspection (TR 83). The only statement he could make relative to the condition of the tunnel was that the alignment was not desirable but that such conditions were common in Pennsylvania (TR 74), an issue that is inappropriate in this proceeding.

Therefore, it is the B&LE's position that no competent evidence was presented at the hearing to indicate that the Rural Ridge Tunnel has experienced deterioration and requires any additional maintenance or alteration. The B&LE provided expert testimony indicating that the structure is sound and adequate for the convenience and safety of the travelling public.

CONCLUSION

It is the B&LE's position that the Rural Ridge Tunnel is structurally sound and adequate for the convenience and safety of the public. The B&LE avers that it presented substantial competent evidence indicating such at the hearing and that no competent evidence refuting the statements were presented. Wherefore, the B&LE respectfully requests that the Commission dismiss the Complaint filed by Representative Anderson.

Respectfully submitted,



Kimberly J. Gallagher  
General Attorney  
Bessemer and Lake Erie  
Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893

DATE: March 25, 1992

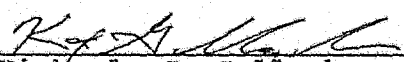
CERTIFICATE OF SERVICE

I, Kimberly J. Gallagher, do hereby certify that on this 25th day of March, 1992, that 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:

Daniel L. Anderson  
Member, 31st District  
House of Representatives  
Commonwealth of Pennsylvania  
4767 Route 8  
Allison Park, PA 15101

Trent Hargrove, Esq.  
Office of Chief Counsel  
Commonwealth of Pennsylvania  
513 Transportation & Safety Building  
Harrisburg, PA 17120

Timothy S. Coon, Esq.  
600 Grant Street  
42nd Floor  
Pittsburgh, PA 15219

  
\_\_\_\_\_  
Kimberly J. Gallagher

**BESSEMER**

**ORIGINAL**  
AND LAKE ERIE RAILROAD COMPANY

FAO

135 JAMISON LANE • P. O. BOX 68 • MONROEVILLE, PENNSYLVANIA 15146

OFFICE OF GENERAL COUNSEL  
AND SECRETARY

March 25, 1992

VIA AIRBORNE EXPRESS

Mr. Jerry Rich, Secretary  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
North Office Building  
Harrisburg, Pennsylvania 17120

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MAR 25 1992

STATE OFFICE  
Public Utility Commission

Re: C-913419; Representative Daniel L. Anderson  
v. Bessemer and Lake Erie Railroad Company

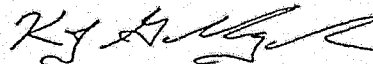
Dear Mr. Rich:

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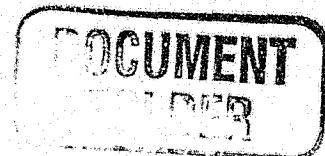
Please date stamp the enclosed copy of this letter and return it in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Very truly yours,



Kimberly J. Gallagher  
General Attorney

KJG:nt  
Enclosures  
cc: New Filing Section ✓  
Parties of Interest



ORIGINAL

FAO

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Representative Daniel L. )  
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Alleging Requests Necessary )  
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C-913419

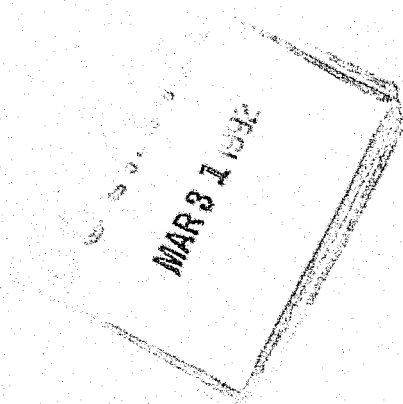
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MAR 25 1992

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BRIEF FILED BY BESSEMER AND LAKE ERIE  
RAILROAD COMPANY

DOCUMENT  
FOLDER



Kimberly J. Gallagher  
Attorney for Bessemer and  
Lake Erie Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893

Date: March 25, 1992

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A. Yes.

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Respectfully submitted,



Kimberly J. Gallagher  
General Attorney  
Bessemer and Lake Erie  
Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893

DATE: March 25, 1992


CERTIFICATE OF SERVICE

I, Kimberly J. Gallagher, do hereby certify that on this 25th day of March, 1992, that 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:

Daniel L. Anderson  
Member, 31st District  
House of Representatives  
Commonwealth of Pennsylvania  
4767 Route 8  
Allison Park, PA 15101

Trent Hargrove, Esq.  
Office of Chief Counsel  
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Timothy S. Coon, Esq.  
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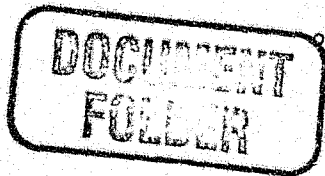
  
\_\_\_\_\_  
Kimberly J. Gallagher

ORIGINAL

LPW

# BESSEMER AND LAKE ERIE RAILROAD COMPANY

135 JAMISON LANE • P. O. BOX 68 • MONROEVILLE, PENNSYLVANIA 15146



OFFICE OF GENERAL COUNSEL  
AND SECRETARY

March 25, 1992

AMB

VIA AIRBORNE EXPRESS

Mr. Jerry Rich, Secretary  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
North Office Building  
Harrisburg, Pennsylvania 17120

Re: C-913419; Representative Daniel L. Anderson  
v. Bessemer and Lake Erie Railroad Company

Dear Mr. Rich:

Pursuant to the Order issued in the above-referenced case by Administrative Law Judge John H. Corbett, Jr., enclosed please find for filing an original and nine (9) copies of the main Brief filed on behalf of the Bessemer and Lake Erie Railroad Company. In addition, an original and nine (9) copies are being filed in care of the New Filing Section, Room B-18, North Office Building, Harrisburg, PA 17120, pursuant to said Order.

A Certificate of Service is also enclosed indicating that one copy was served on the presiding Administrative Law Judge and two copies of the Brief were served on each party of record.

Please date stamp the enclosed copy of this letter and return it in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kimberly J. Gallagher".

Kimberly J. Gallagher  
General Attorney

KJG:nt  
Enclosures  
cc: New Filing Section  
Parties of Interest

RECEIVED  
MAR 25 1992  
SECRETARY'S OFFICE  
Public Utility Commission

DATE:

April 8, 1992

SUBJECT:

Representative Daniel L. Anderson v.  
Bessemer & Lake Erie Railroad Company  
C-913419

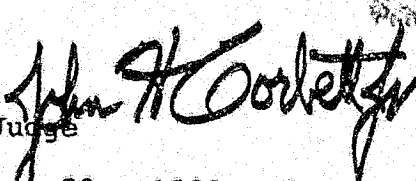
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APR 9 1992

TO:

John A. Alford  
SecretarySECRETARY'S OFFICE  
Pennsylvania Commission

FROM:

John H. Corbett, Jr.  
Administrative Law Judge

On January 30, 1992, I presided over a hearing in the above-captioned matter. Subsequent to the hearing, I granted the parties leave to file certain late-filed exhibits. These documents are enclosed for filing at this time.

These documents consist of two copies of an affidavit that has been marked and identified as "Indiana Township Exhibit No. 1". The second document consists of two copies of a group of photographs identified as "Indiana Township Exhibit No. 2". Please file these documents as a part of the record for this case.

As always, if you have any questions, please feel free to contact me.

JHC:apg

Enclosures

c.c.: James Carmines, Technical Staff



BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: ) NO. C-913419  
REPRESENTATIVE DANIEL L. )  
ANDERSON, ) Judge John Corbett  
 )  
V. )  
 )  
BESSEMER & LAKE ERIE )  
RAILROAD COMPANY. )

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APR 9 1992

SECRETARY'S OFFICE  
Public Utility Commission  
DC

APR 20 1992

AFFIDAVIT OF ANDREW J. KLEBINE

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS.  
COUNTY OF ALLEGHENY )

Before me, a notary public, personally appeared Andrew J. Klebine, who, being duly sworn according to law, deposes and states:

1. I am a resident of Indiana Township, Pennsylvania and reside at Box 102, Cheswick, Pennsylvania 15024.
2. On February 9, 1992 at 11:00 a.m., I participated in the taking of certain photographs of the Rural Ridge Tunnel located on Russelton Road, Indiana Township, Pennsylvania. Said photographs ("Photographs") have been submitted in the envelope attached to this affidavit.
3. The within Photographs were taken at my direction by my brother, Robert Klebine, R.D. 1, Cheswick, Pennsylvania 15024. I was present while such photographs were taken.

INDIANA TOWNSHIP EXHIBIT NO. 1

SECRETARY'S OFFICE  
Public Utility Commission

4. A description of the portion of the Rural Ridge Tunnel which each Photograph depicts has been provided on the reverse side of each Photograph.

5. I have examined the within Photographs and state that they fairly and accurately depict portions of the Rural Ridge Tunnel as it appeared on February 9, 1992.

Further affiant sayeth not.

Andrew J. Klebine

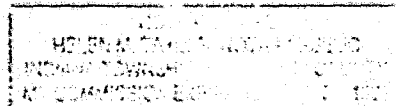
Andrew J. Klebine

Sworn to and subscribe me

me this 18<sup>th</sup> day of

MARCH, 1992.

Helen M. Taylor  
Notary Public



With Our Quality  
Film Processing

# CAPTURE THE MAGIC

RECEIVED

APR 9 1992

QUALITY FOR ALL SEASONS

SECRETARY'S OFFICE  
Public Utility Commission

INDIANA TOWNSHIP EXHIBIT NO. 2

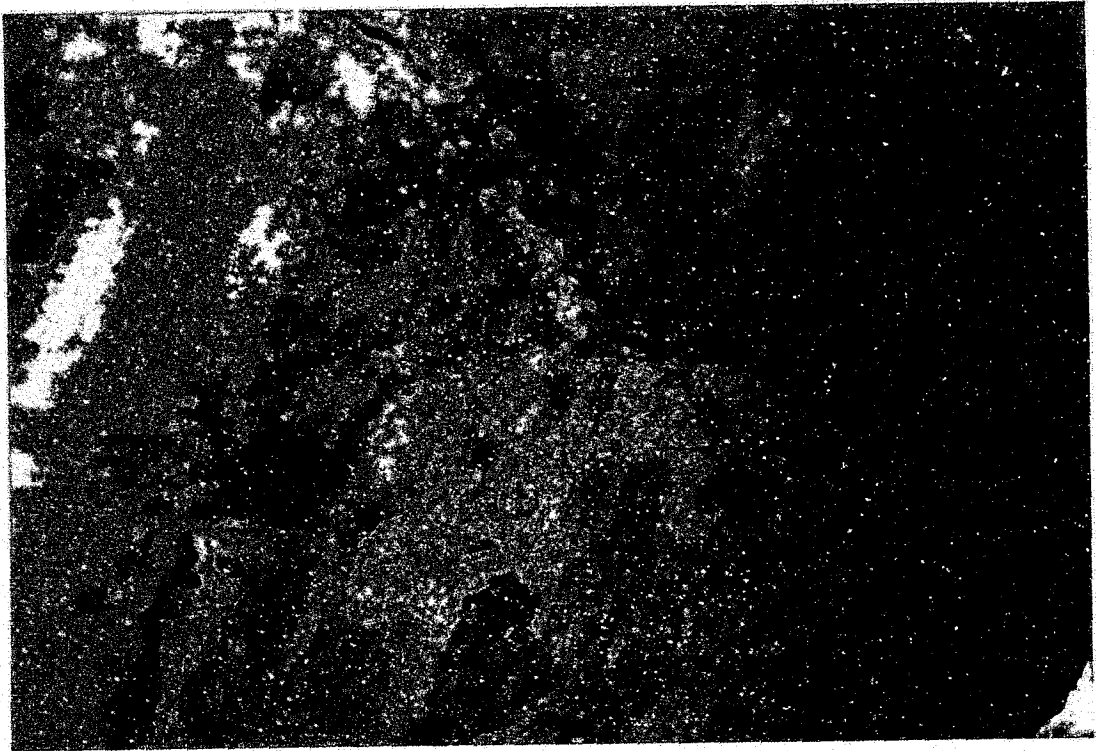
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DOCKETED

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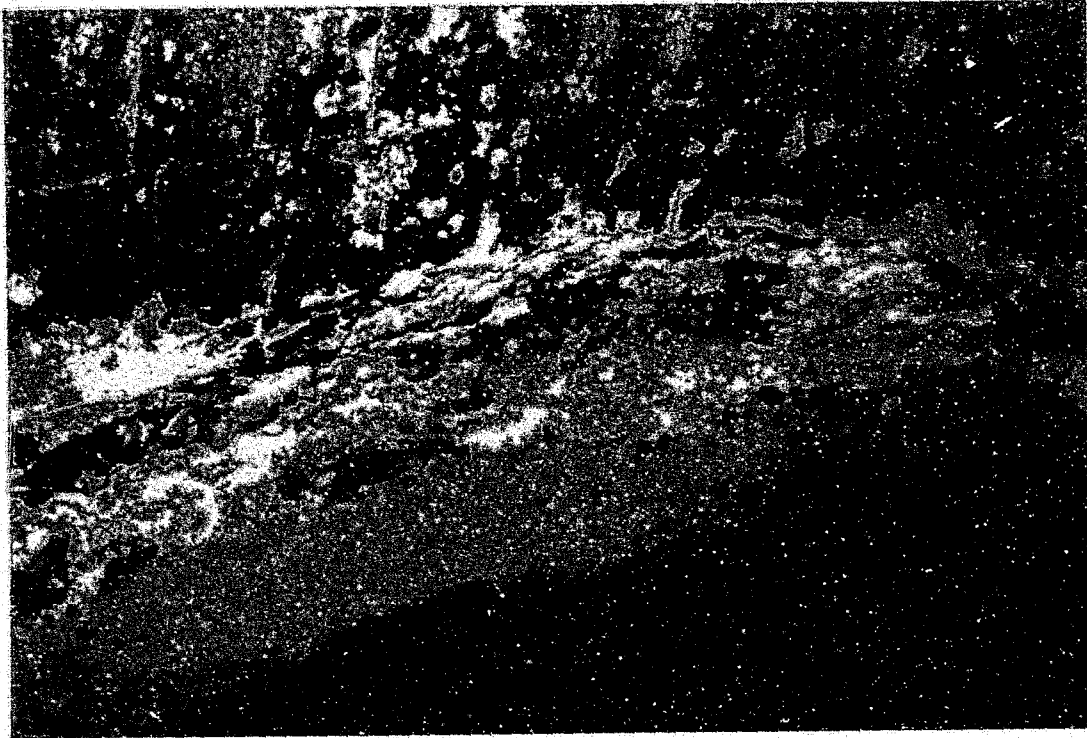
PHOTOGRAPHS —



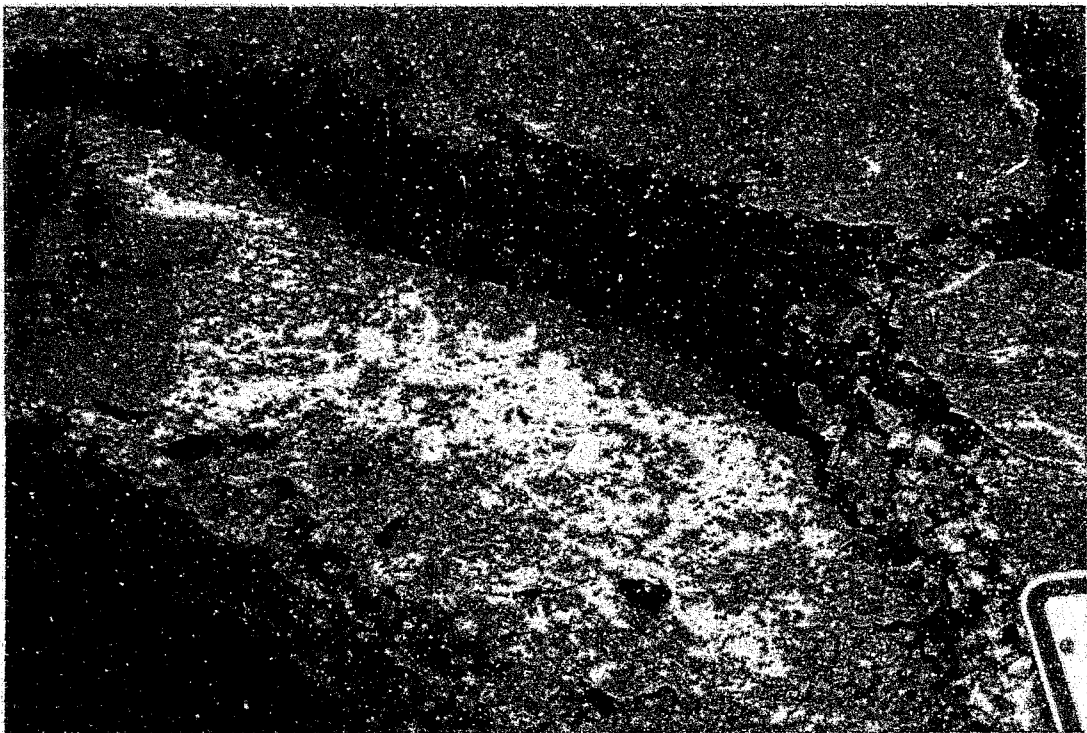
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POOR ORIGINAL

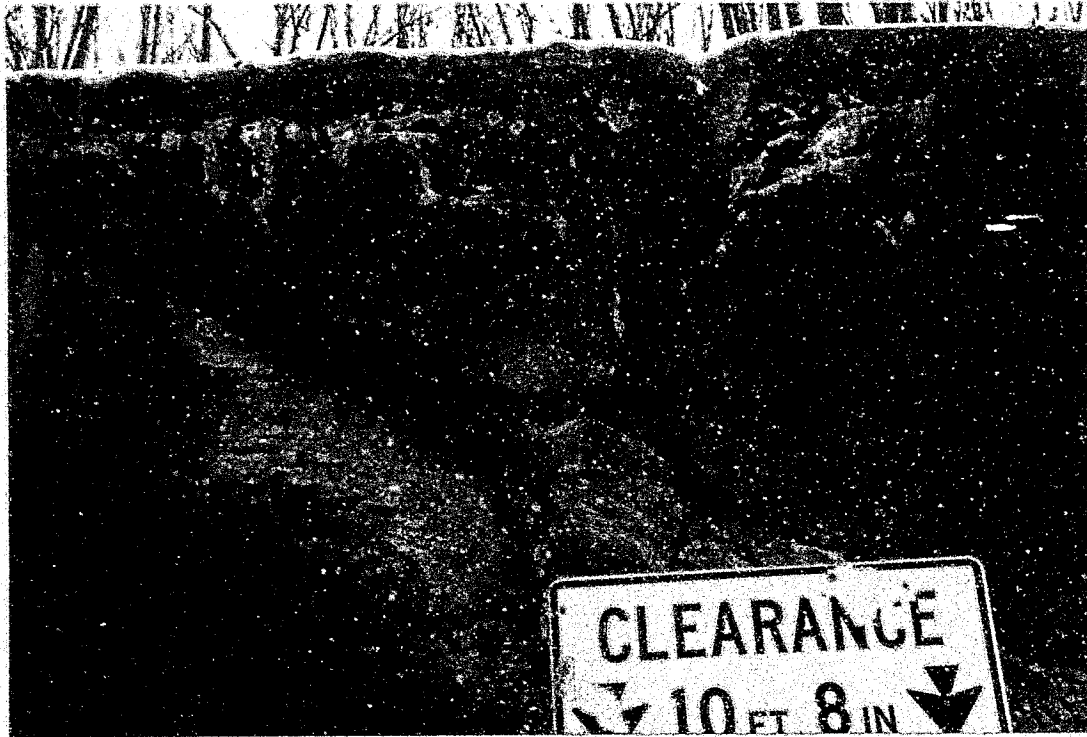


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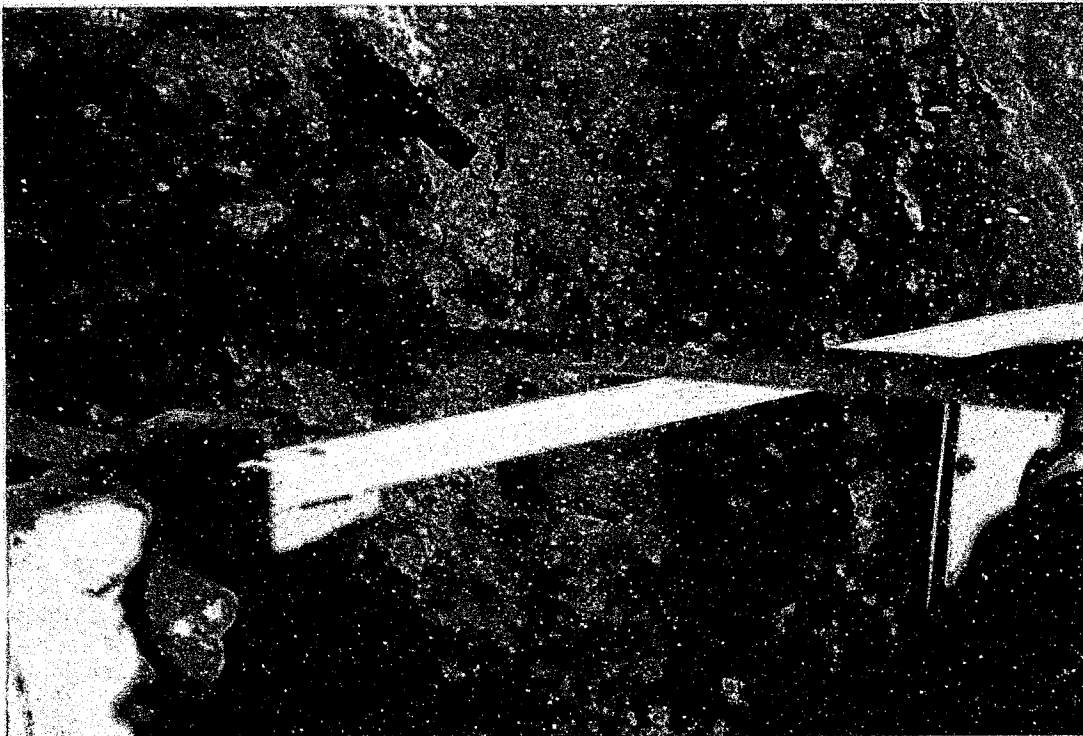


WEST END  
LEFT SIDE

POOR ORIGINAL



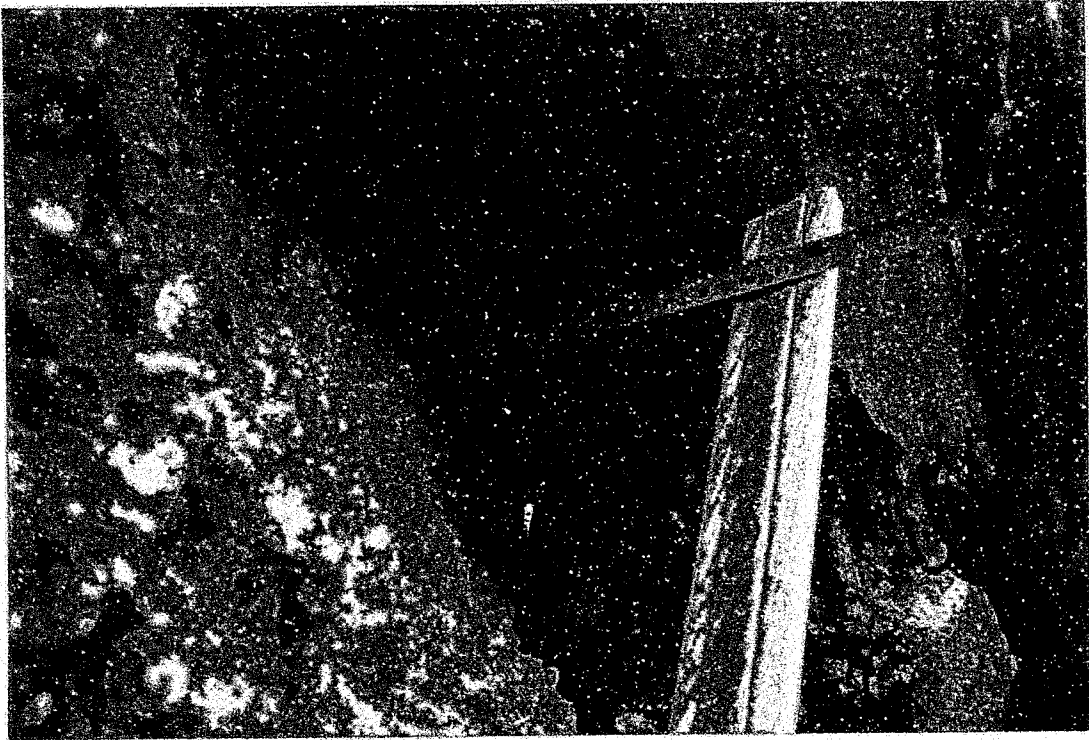
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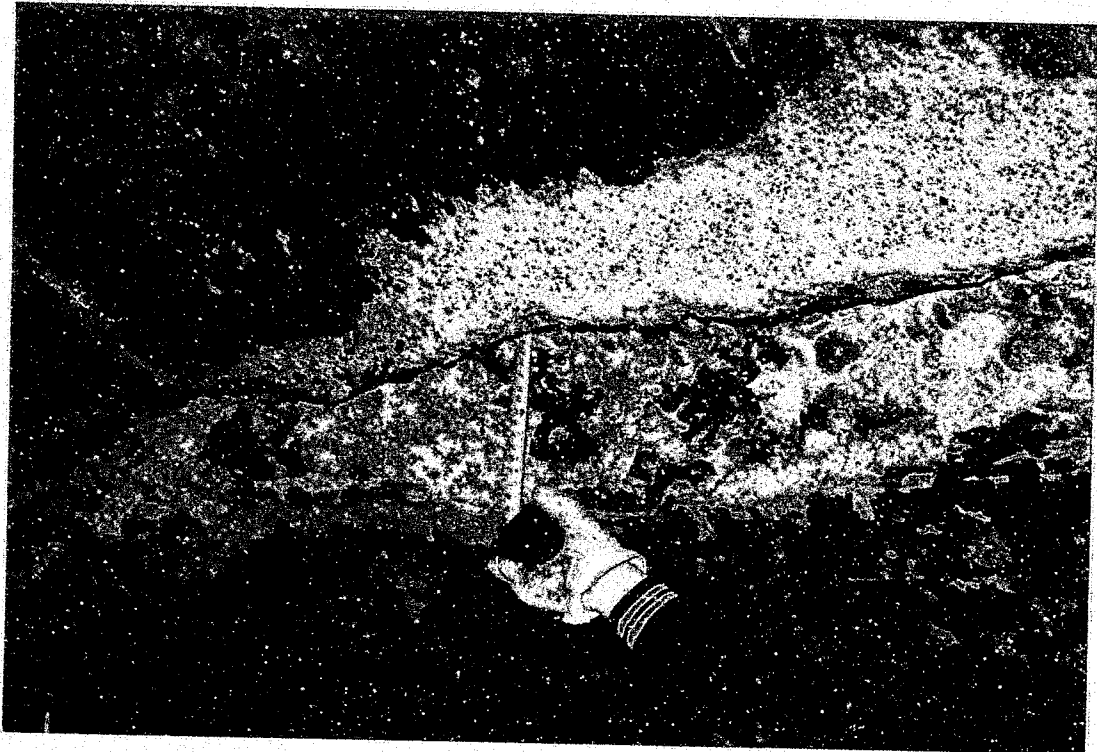
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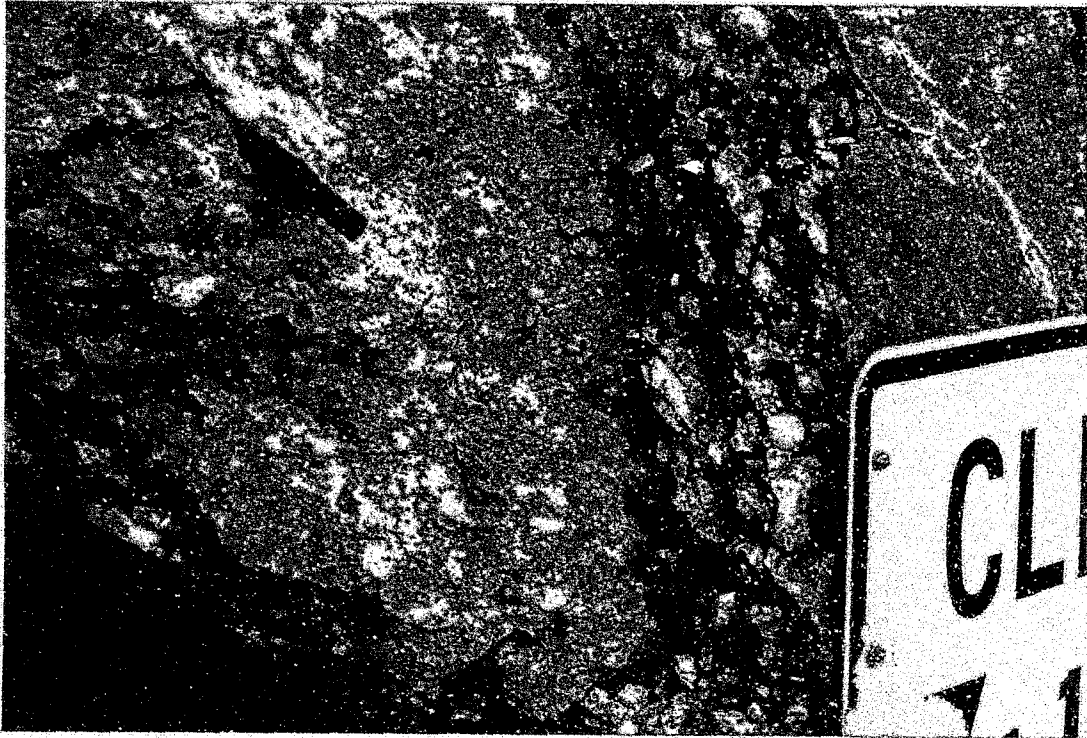
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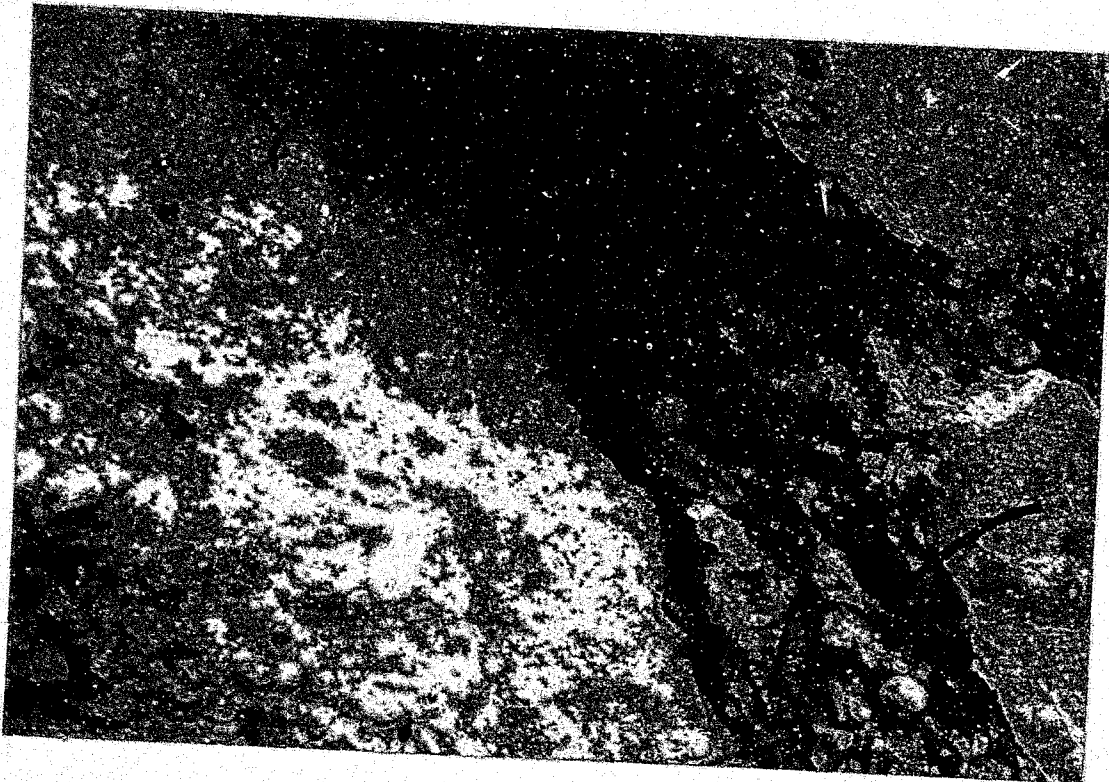
INSIDE TOP



RIGHT SIDE

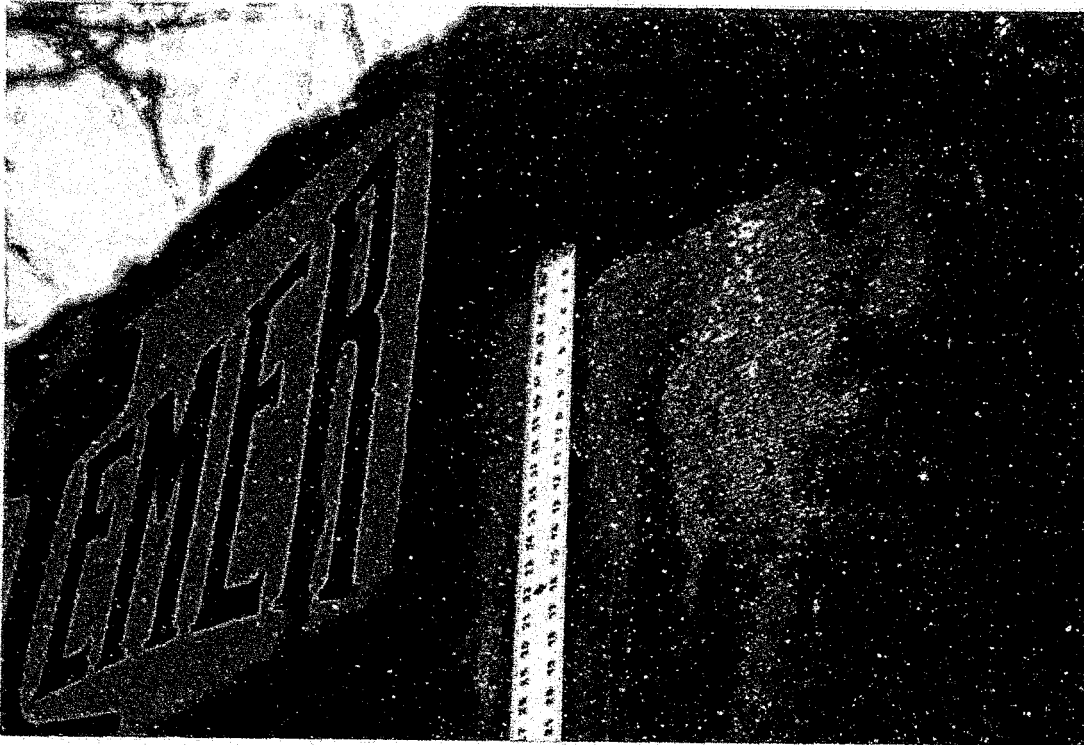


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RIGHT SIDE

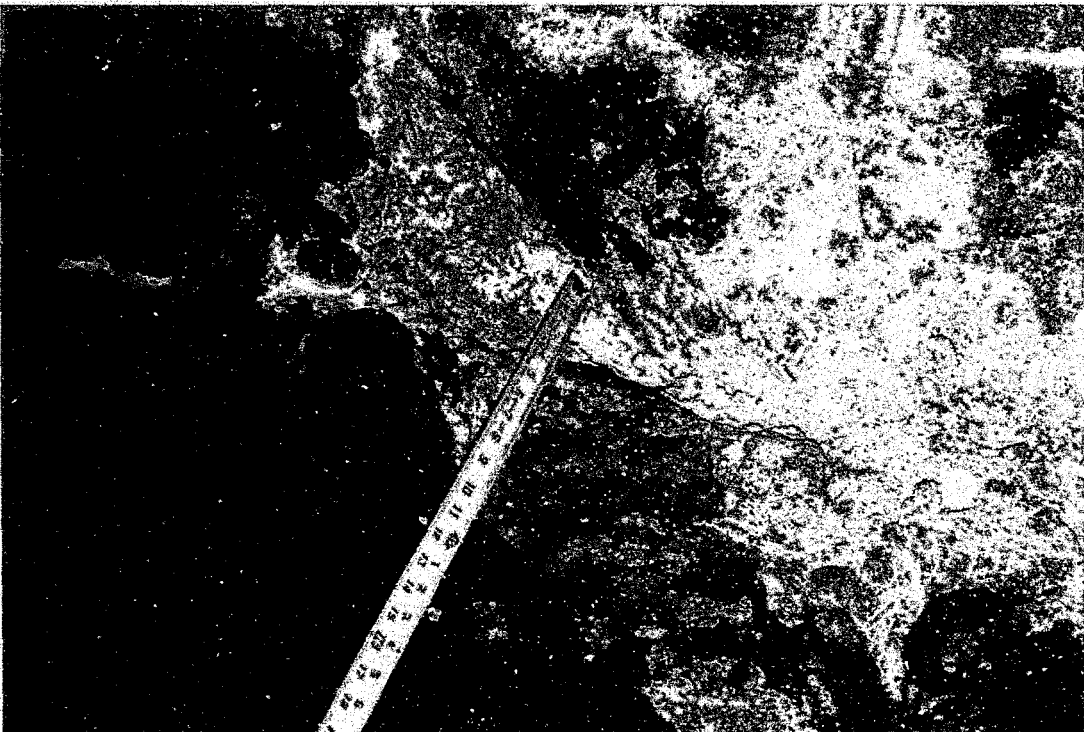


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RIGHT SIDE

POOR ORIGINAL

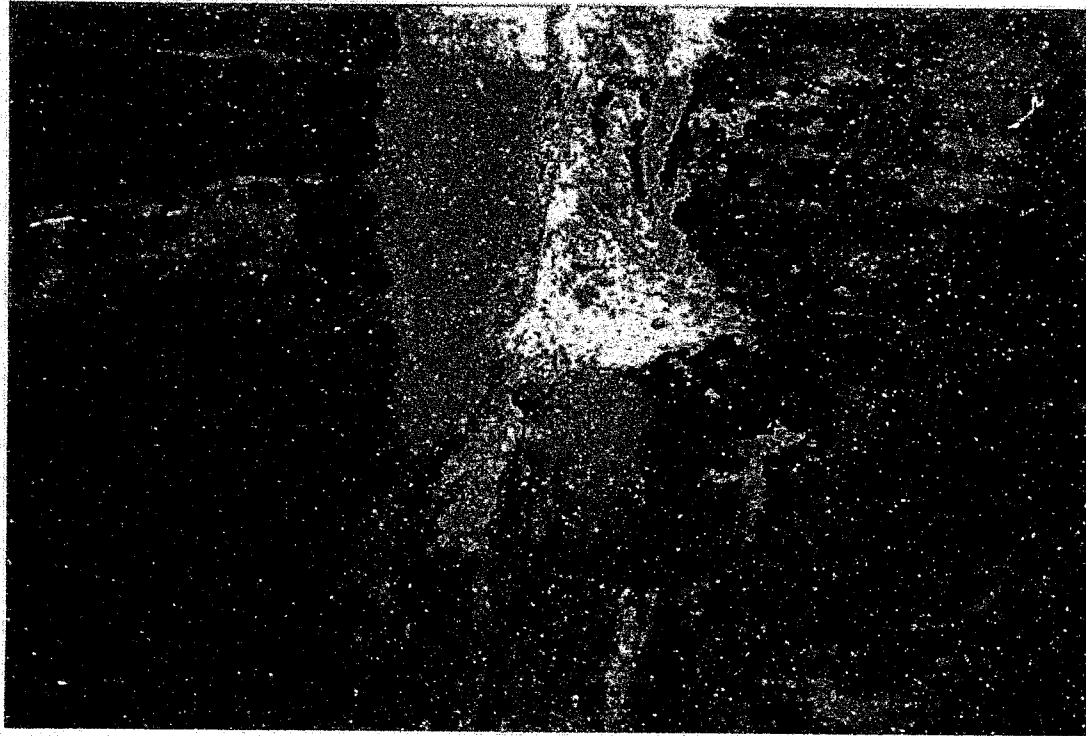


WEST END  
CENTER



INSIDE TOP

POOR ORIGINAL



INSIDE  
SIDE

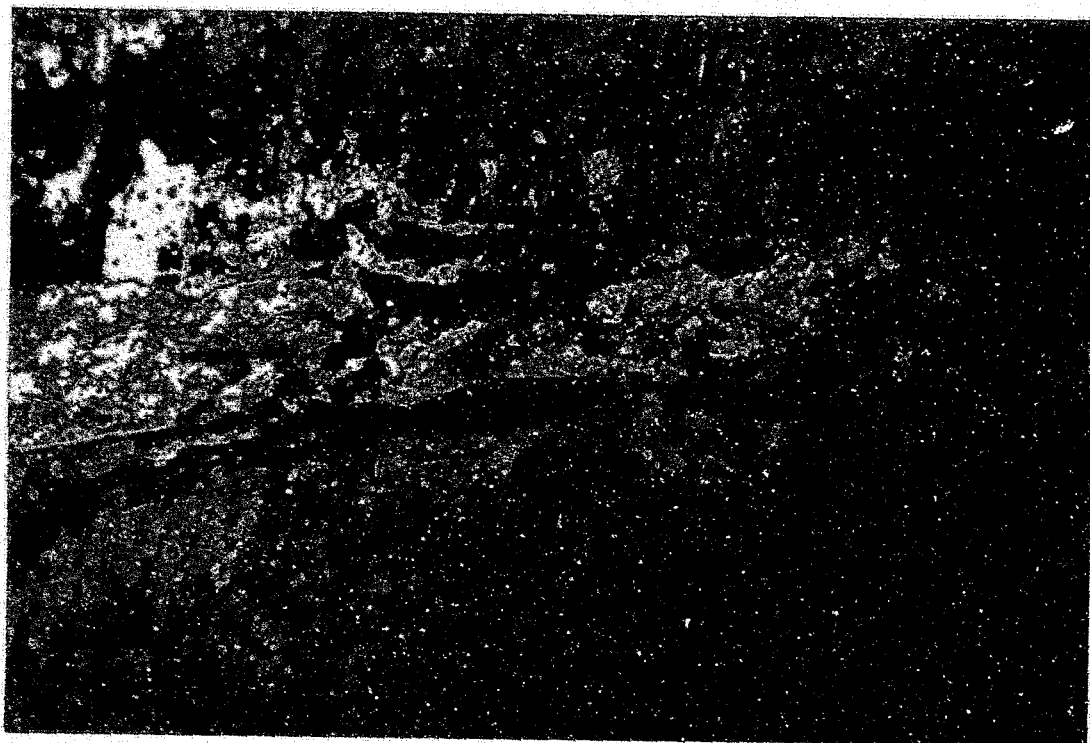


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SIDE

POOR ORIGINAL

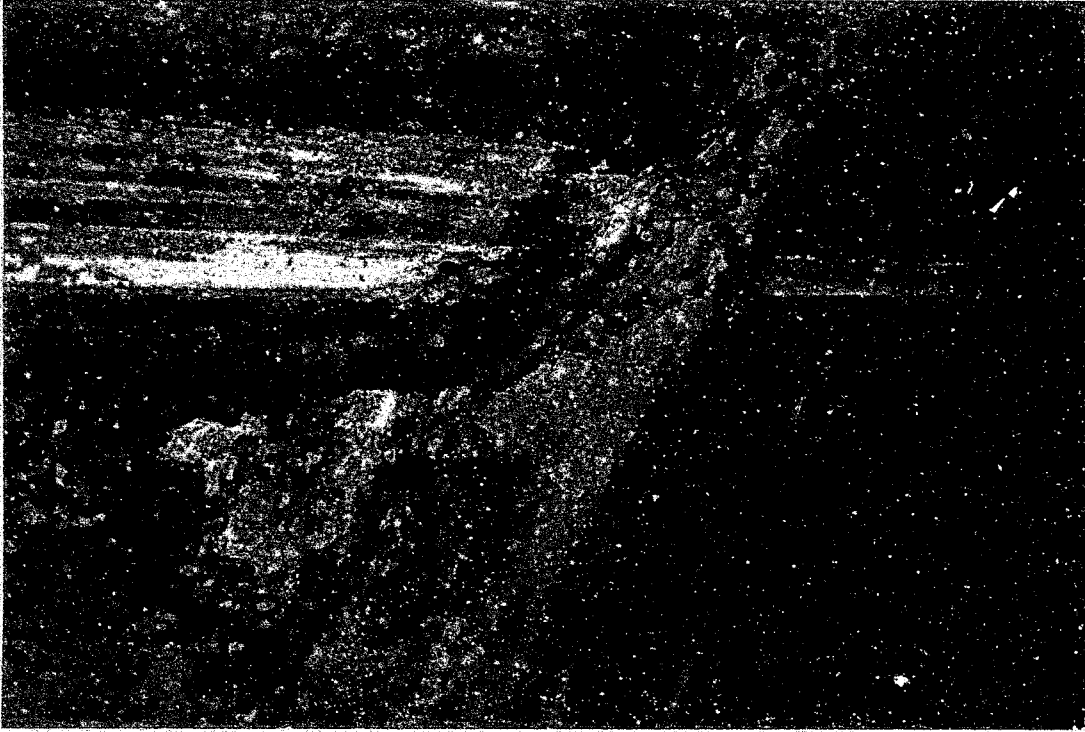
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RIGHT SIDE

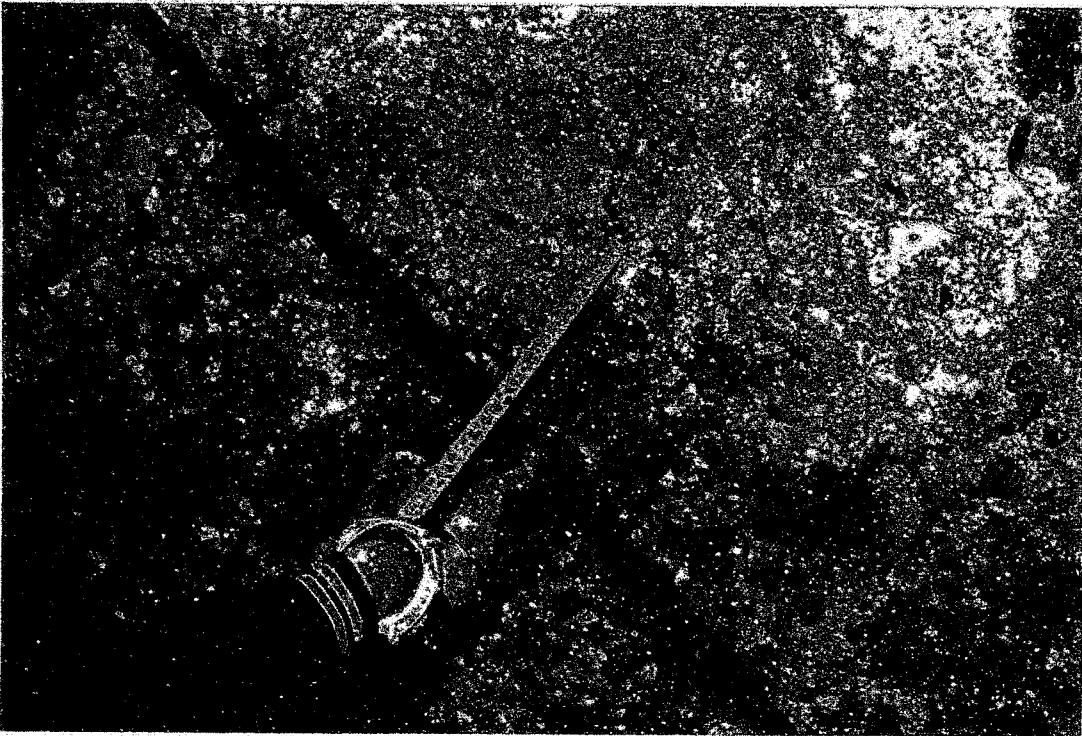


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1952 10/10/52



INSIDE SIDE

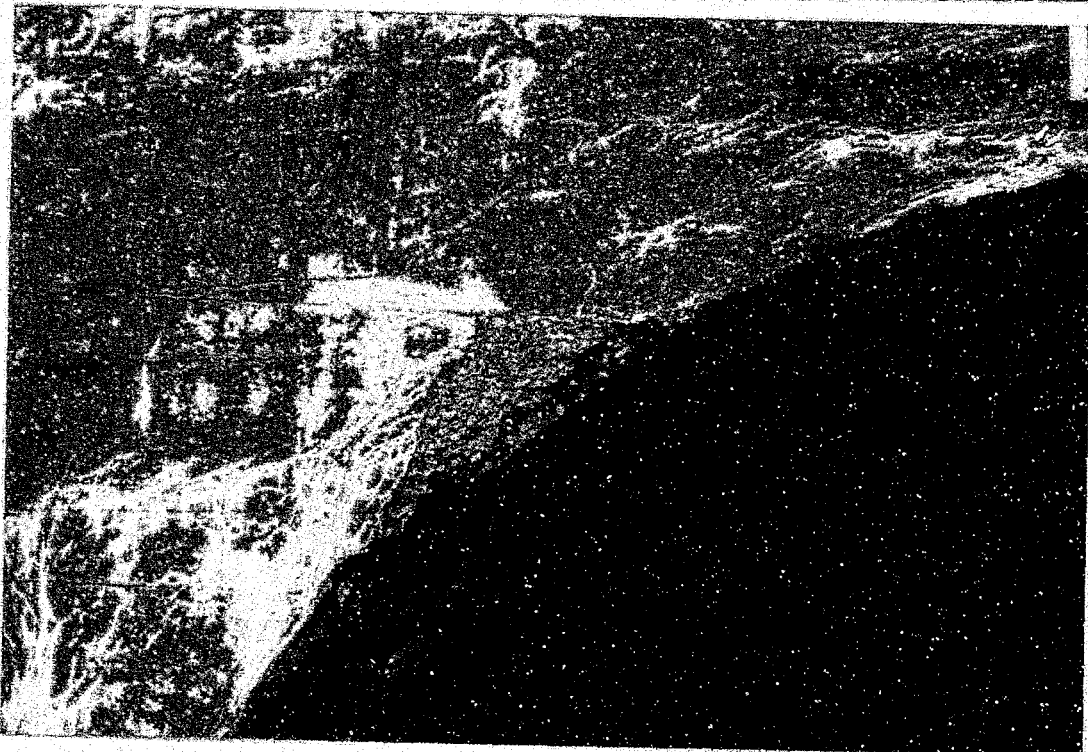


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ALL ORIGINAL

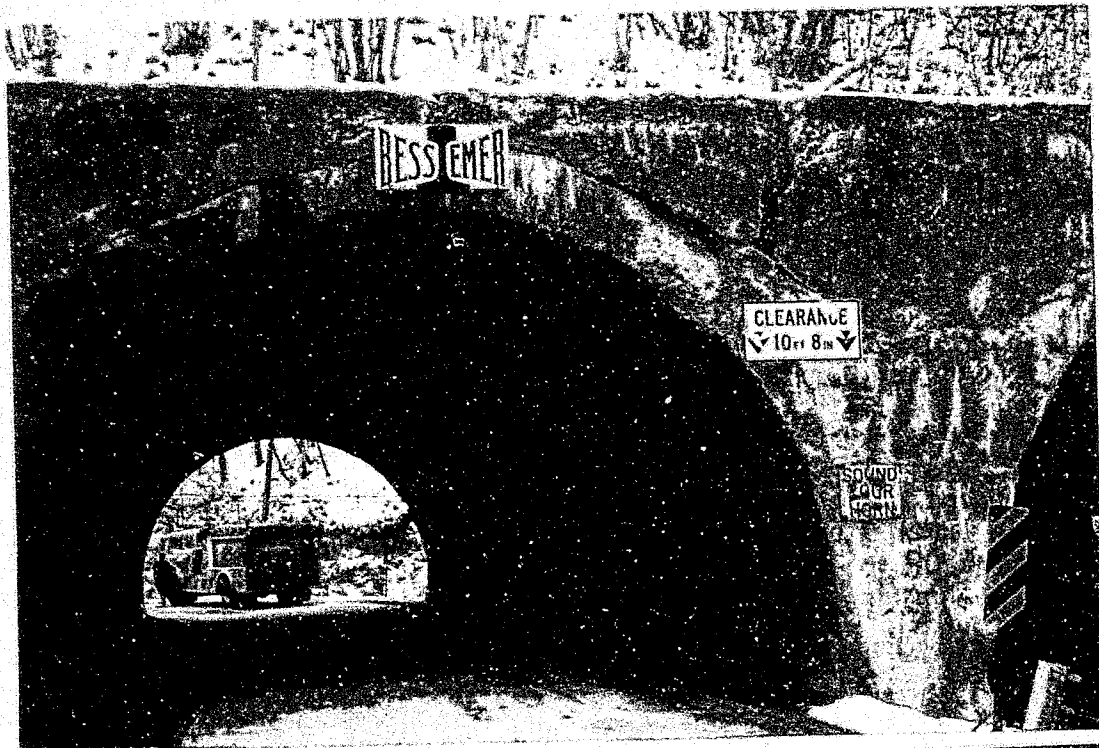


RIGHTSIDE  
EAST END



LEFTSIDE  
EAST END

Photo 10/10/10



WEST END



SIDE EAST END

1953 MAR 10 11:00 AM

ORIGINAL

FAO

# BESSEMER AND LAKE ERIE RAILROAD COMPANY

135 JAMISON LANE • P. O. BOX 68 • MONROEVILLE, PENNSYLVANIA 15146

OFFICE OF GENERAL COUNSEL  
AND SECRETARY

April 14, 1992

VIA OVERNIGHT COURIER

RECEIVED

Mr. Jerry Rich, Secretary  
Pennsylvania Public Utility Commission  
North Office Building  
P. O. Box 3265  
Harrisburg, Pennsylvania 17120

APR 14 1992

SECRETARY'S OFFICE  
Public Utility Commission

Re: C-913419; Representative Daniel L. Anderson v.  
Bessemer and Lake Erie Railroad Company/Reply Brief

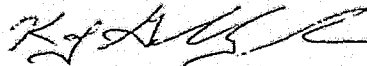
Dear Mr. Rich:

Pursuant to the Order issued in the above-captioned case by Administrative Law Judge John H. Corbett, Jr., enclosed please find for filing an original and nine (9) copies of the Reply Brief filed on behalf of the Bessemer and Lake Erie Railroad Company. In addition, an original and nine (9) copies are being filed in care of the New Filing Section, Room B-18, North Office Building, Harrisburg, PA 17120, pursuant to said Order.

A Certificate of Service is also enclosed indicating that one (1) copy was served on the presiding Administrative Law Judge and two (2) copies of the Brief were served on each party of record.

Please date stamp the enclosed copy of this letter and return it in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Very truly yours,



Kimberly J. Gallagher  
General Attorney

KJG:nt  
cc: ✓ PA PUC - New Filing Section  
Parties of Record  
Administrative Law Judge Corbett

ORIGINAL

FAO

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Representative Daniel L. )  
 Anderson v. Bessemer and Lake )  
 Erie Railroad Company )  
 Alleging Requests Necessary )  
 Repairs Be Done To Rural Ridge )  
 Tunnel on Russelton Road, )  
 Indiana Township. )

C-913419

RECEIVED

APR 14 1992

REGISTRY OFFICE  
Public Utility Commission

---

REPLY BRIEF FILED BY BESSEMER AND LAKE ERIE  
 RAILROAD COMPANY

---

Kimberly J. Gallagher  
 Attorney for Bessemer and  
 Lake Erie Railroad Company  
 135 Jamison Lane  
 P. O. Box 68  
 Monroeville, PA 15146  
 (412) 829-6893

Date: April 14, 1992

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## ARGUMENT

In response to the Brief submitted by Indiana Township ("Township") which was joined in by Representative Anderson, the Bessemer and Lake Erie Railroad Company ("B&LE") hereby submits the following Reply Brief.

First, with respect to the Township's statement that the B&LE "acknowledged its responsibility to perform all future maintenance." (TR 49, 52)<sup>1</sup> Brief at 2, the B&LE wishes to direct the Commission's attention to the transcript where the B&LE clearly states that it would bear the future cost of maintenance with respect to railroad facilities at the crossing. Further, the township goes on to allege that the tunnel itself provides no benefit to motorists or other members of the public (Brief at 2). If that was true, then the Township would have no objection to the B&LE filling in the tunnel. Obviously, the tunnel benefits both the railroad and the traveling public and any statement to the contrary is just not true.

The Township goes on in its Brief to interpret the testimony of Mr. Klebine. The Township allegedly states that Mr. Klebine testified that he observed "concrete debris on the roadway on many other occasions" Brief at 4. From review of the transcript, it is clear that Mr. Klebine never stated that he saw concrete

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

debris on many occasions. Mr. Klebine's testimony consisted of the fact that on one occasion he observed a piece of concrete falling from the structure. It is noteworthy that this was the only testimony ever elicited by any witness indicating actual visualization of any falling concrete debris.

Throughout their Brief, Township alleges that the tunnel is unsafe and creates "an adverse effect on the convenience and safety of the traveling public" Brief at 1. However, neither the Township nor Representative Anderson ever bothered to have the tunnel inspected or offered any competent evidence to refute the expert testimony of the B&LE's witness, Mr. Donald E. Keefer. The only other expert witness present at the hearing which submitted any information at all was that of PennDOT's witness, Mr. Henry Farrell. Mr. Farrell indicated that he had not inspected the bridge and could not render a decision as to the structural integrity of the tunnel.

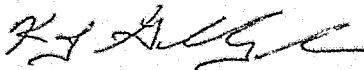
The next issues which the Township alleges in its Brief are the "substantial site distance and road alignment problems (Brief at 4). Township goes on to allege that risks of collision and injury are enhanced by motorists who are startled by falling debris (Brief at 4, 5). This is a ludicrous statement that is not founded on any testimony presented at the hearing. The B&LE stated at the hearing that it has never received a claim for any injury or property damage related to this tunnel. Further, the B&LE annually inspects the tunnel and performs scaling activities

to remove any concrete which may have been loosened during the prior period. The record of the tunnel speaks for itself -- no injuries and no property damage. The B&LE has and will perform additional testing to the tunnel when it is deemed warranted based on the periodic inspections already being conducted by the B&LE. Obviously, 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 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 other members of the public.

CONCLUSION

It is the B&LE's position that the Rural Ridge Tunnel is structurally sound and adequate for the convenience and safety of the public. The B&LE avers that it presented substantial competent evidence indicating such at the hearing and that no competent evidence refuting the statements were presented. Wherefore, the B&LE respectfully requests that the Commission dismiss the Complaint filed by Representative Anderson.

Respectfully submitted,



Kimberly J. Gallagher  
General Attorney  
Bessemer and Lake Erie  
Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893

DATE: April 14, 1992


CERTIFICATE OF SERVICE

I, Kimberly J. Gallagher, do hereby certify that on this 14th day of April, 1992, that I have served by first-class mail, postage prepaid, one copy of the foregoing Reply Brief of the Bessemer and Lake Erie Railroad Company on the presiding Administrative Law Judge, John H. Corbett, Jr., and two copies of said Reply Brief on the following parties of record:

Daniel L. Anderson  
Member, 31st District  
House of Representatives  
Commonwealth of Pennsylvania  
4767 Route 8  
Allison Park, PA 15101

Trent Hargrove, Esq.  
Office of Chief Counsel  
Commonwealth of Pennsylvania  
513 Transportation & Safety Building  
Harrisburg, PA 17120

Timothy S. Coon, Esq.  
600 Grant Street  
42nd Floor  
Pittsburgh, PA 15219

  
\_\_\_\_\_  
Kimberly J. Gallagher

ORIGINAL  
BESSEMER AND LAKE ERIE RAILROAD COMPANY

135 JAMISON LANE • P. O. BOX 68 • MONROEVILLE, PENNSYLVANIA 15146

OFFICE OF GENERAL COUNSEL  
AND SECRETARY

April 14, 1992

VIA OVERNIGHT COURIER

Mr. Jerry Rich, Secretary  
Pennsylvania Public Utility Commission  
North Office Building  
P. O. Box 3265  
Harrisburg, Pennsylvania 17120

RECEIVED

APR 14 1992

SECRETARY OF  
PUBLIC UTILITY COMMISSION

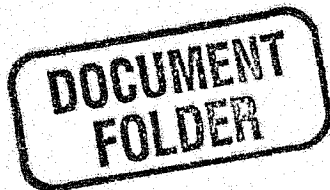
Re: C-913419; Representative Daniel L. Anderson v.  
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General Attorney

KJG:nt

cc: PA PUC - New Filing Section  
Parties of Record  
Administrative Law Judge Corbett

FAO

ORIGINAL

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Representative Daniel L. )  
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Erie Railroad Company )  
Alleging Requests Necessary )  
Repairs Be Done To Rural Ridge )  
Tunnel on Russelton Road, )  
Indiana Township. )

C-913419

FILED

APR 14 1992

OFFICE  
Commission

---

REPLY BRIEF FILED BY BESSEMER AND LAKE ERIE  
RAILROAD COMPANY

---

Kimberly J. Gallagher  
Attorney for Bessemer and  
Lake Erie Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893

APR 16 1992

Date: April 14, 1992

DOCUMENT  
FOLDER

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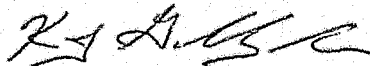
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Respectfully submitted,



Kimberly J. Gallagher  
General Attorney  
Bessemer and Lake Erie  
Railroad Company  
135 Jamison Lane  
P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6893

DATE: April 14, 1992

CERTIFICATE OF SERVICE

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Office of Chief Counsel  
Commonwealth of Pennsylvania  
513 Transportation & Safety Building  
Harrisburg, PA 17120

Timothy S. Coon, Esq.  
600 Grant Street  
42nd Floor  
Pittsburgh, PA 15219

  
\_\_\_\_\_  
Kimberly J. Gallagher

ANH

JEP

DATE:

April 23, 1992

SUBJECT:

Representative Daniel L. Anderson  
 v. Bessemer and Lake Erie Railroad Company  
 Docket No. C-913419

TO:

John Alford  
 Secretary

RECEIVED

APR 24 1992

FROM:

John H. Corbett, Jr.  
 Administrative Law Judge

*John H. Corbett, Jr.*  
 SECRETARY  
 Public Utility

I presided over a hearing in the above-captioned matter on January 30, 1992. At that hearing, I noted for the record the receipt of a letter from West Penn Power Company relating to its non-involvement in this proceeding. I have subsequently learned that a copy of that letter was never forwarded to you for filing.

Accordingly, I am forwarding to you a letter dated December 19, 1991 from West Penn Power Company relating to this case. Kindly file this letter in the document portion of the file for this case.

As always, if you have any questions, please feel free to contact me.

JHC:apg

c.c.: John R. Stallsmith, OALJ Technical Staff  
 Enclosure

DOCUMENT  
 FOLDER

JEP

**West Penn Power Company**  
Part of the Allegheny Power System

800 Cabin Hill Drive  
Greensburg, PA 15601-1689 (412) 837-3000  
December 19, 1991

RECEIVED  
DEC 31 1991  
Pittsburgh Office of A.L.J.  
Public Utility Commission

The Honorable John Corbett, Jr.  
Administrative Law Judge  
1103 Pittsburgh State Office Bldg.  
300 Liberty Avenue  
Pittsburgh, PA 15222

RECEIVED  
APR 24 1992  
SECRETARY'S OFFICE  
Public Utility Commission

Dear Judge Corbett:

C-913419 Russelton Road, Indiana County  
Necessary Repairs to Rural Ridge Tunnel

This is in response to your notice of November 25, 1991, of the hearing for January 30, 1992, on the above-captioned case.

West Penn Engineering personnel have investigated the site and find that no West Penn facilities will be involved in the project.

West Penn will not attend the abovesaid meeting.

Very truly yours,

DOCKETED  
APR 29 1992

*W. A. Kessler*  
W. A. Kessler  
Real Estate Representative

lkd

CC: D. E. Cole  
T. K. Henderson

DOCUMENT  
FOLDER