



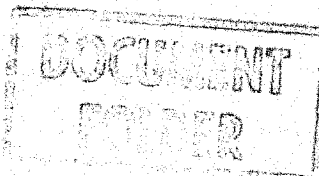
COMMONWEALTH OF PENNSYLVANIA  
 PENNSYLVANIA PUBLIC UTILITY COMMISSION  
 P.O. BOX 3265, HARRISBURG, PA 17105-3265

ISSUED: July 15, 1992

AMN

IN REPLY PLEASE  
 REFER TO OUR FILE

C-913419



HONORABLE DANIEL L ANDERSON  
 REP DISTRICT 31 U S CONGRESS  
 4767 ROUTE 8  
 ALLISON PARK PA 15101

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

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Administrative Law Judge John H. Corbett, Jr. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17120, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision. All timely filed exceptions and replies thereto will be attached to the decision for consideration at Public Meeting. Late filed exceptions and/or late filed replies might not be considered by the Commission.

ALJ CORBETT, OFFICE OF ALJ, CHAIRMAN, COMMISSIONERS, OSA, S&C, LB, PIB,  
 NEW FILING, OUR FILE

Very truly yours,

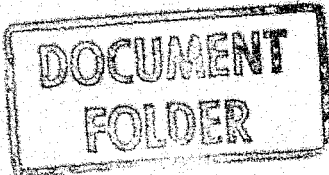
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Allison K. Turner  
 Chief Administrative Law Judge

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Representative Daniel L. Anderson :  
 :  
 v. : No. C-913419  
 :  
 Bessemer & Lake Erie Railroad Company :

RECOMMENDED DECISION



Before  
John H. Corbett, Jr.  
Administrative Law Judge

**DOCKETED**  
JUL 31 1992

History of the Proceeding

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

B&LE filed an answer and an amended answer alleging it conducts annual inspections of the Tunnel, which indicate it is structurally sound. B&LE has conducted scaling activities to

remove loose concrete inside the Tunnel. B&LE contends the Tunnel is in satisfactory condition and no repairs are necessary at this time.

A field conference was held at this site on August 14, 1991 involving all interested parties.

This matter proceeded to a hearing on January 30, 1992 at the offices of the Commission in Pittsburgh. Besides Representative Anderson, representatives for B&LE, the Pennsylvania Department of Transportation ("PennDOT"), and Indiana Township also attended the hearing.<sup>1</sup> The hearing generated 95 pages of notes of testimony. The record also consists of six exhibits sponsored by Representative Anderson and six exhibits sponsored by B&LE. Subsequently, the presiding Administrative Law Judge ("ALJ") granted Indiana Township leave to file two late-filed exhibits, which included a number of photographs of the structure. Both B&LE and Indiana Township filed main briefs. Representative Anderson joined in the brief filed by the Township. B&LE filed a reply brief on April 14, 1992.

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<sup>1</sup> By a letter dated December 12, 1991, Pennsylvania-American Water Company informed the Commission its facilities were not affected at this crossing and it did not plan to participate in the scheduled hearing. By a letter dated December 19, 1991, West Penn Power Company indicated to the Commission it had no facilities involved and would not attend the hearing.

Summary of the Testimony

Representative Daniel L. Anderson testified in support of the complaint (N.T. 4-21). Representative Anderson is a duly elected representative to the State General Assembly from the 31st Legislative District, which includes the municipalities of McCandless, Hampton, Indiana, West Deer, Thorn, Creighton, Brackenridge, Tarentum and Harrison. The subject Tunnel is within his legislative district and he has visited it several times (N.T. 5). He has been the elected representative from this district for the last year (N.T. 14).

During his one year in office, Representative Anderson has received approximately 30 complaints from residents living in the area relating to the condition of the Rural Ridge Tunnel (N.T. 6, 15, 19). Residents complain about debris falling from the structure onto the roadway. He sponsored a number of photographs depicting cracks and missing concrete from the face of the concrete structure (N.T. 6, 9, 11-12; Complainant's Ex. No. 1). He has personally observed debris on the road surface, when he has visited the site, although there was no debris present during the field conference with the Commission representative (N.T. 16).

Residents have complained to not only Representative Anderson, but to other officials as well, including prior

legislators representing this district. One resident has been complaining to B&LE since 1977 (N.T. 13-15, 20-21). Representative Anderson doubts all of the concrete missing from the structure as depicted in the photographs could have been removed by scaling operations performed by B&LE (N.T. 17-18). He fears continued falling debris poses a safety problem for vehicles using the roadway and poses a structural problem as well for trains passing over the Tunnel (N.T. 10, 12).

Ann Kondrick testified in support of the complaint (N.T. 22-34). Mrs. Kondrick has resided on Little Deer Creek Road in Rural Ridge, Indiana Township, for the past 52 years. Her residence lies within 2,000 or 3,000 feet of the Tunnel (N.T. 23).

Mrs. Kondrick has complained to various authorities, including B&LE, for approximately 20 to 25 years. The Tunnel is not large enough to accommodate larger trucks or emergency vehicles. They sometimes get stuck in the Tunnel causing damage. She sponsored five pieces of correspondence from various authorities relating to her complaints about the structure (N.T. 23-27; Complainant's Ex. Nos. 2, 3, 4 and 5). While Mrs. Kondrick did complain about the Tunnel's obsolescence, her main complaint at this time concerns debris falling onto the roadway (N.T. 30). Mrs. Kondrick also sponsored a petition she circulated in 1980 among residents and travelers passing through

the Tunnel roadway (N.T. 28-31; Complainant's Ex. No. 6). Mrs. Kondrick has not observed any concrete debris falling from the Tunnel (N.T. 32).

Andrew Klebine testified in support of the complaint (N.T. 35-39). Mr. Klebine has resided in Rural Ridge for 52 years. His residence is approximately one-half mile from the Tunnel (N.T. 35).

While passing through the Tunnel in 1991, Mr. Klebine observed a piece of concrete, several inches in length, fall in front of his car. He has also had occasion to observe concrete debris on the roadway (N.T. 36). He opined it is not safe to travel through the Tunnel (N.T. 37). Sometime after the incident, B&LE performed a scaling operation on the Tunnel (N.T. 38).

George Erceg testified in support of the complaint (N.T. 39-43). Mayor Erceg resides at 11 Ring Street in Rural Ridge, where he has lived all his life. He lives within half a mile of the Tunnel (N.T. 39-40).

Mr. Erceg became Mayor of Indiana Township in January 1992. Before then, he had been the supervisor of that municipality since 1979. In his capacity as supervisor, he received numerous complaints relating to this Tunnel. During 13 years as supervisor, he received more than 50 complaints concerning falling debris. He recalls traveling through the

Tunnel many times and observing debris on the roadway. On one occasion, he pulled out a piece of concrete approximately three inches by four inches with his hand. He observed debris on the roadway a week before the field conference, although the roadway was clear of such debris at the time of the field conference (N.T. 40-42).

Donald E. Keefer testified as the Design Inspector and Environmental Engineer for Bessemer & Lake Erie Railroad Company (N.T. 44-69). He has been employed as a bridge engineer with B&LE since 1965. He related his educational experience and the fact that he is a licensed civil engineer in the Commonwealth of Pennsylvania (N.T. 44-45).

B&LE has two tracks at this crossing. One of these tracks is out of service, because of low business volume. Six trains a day traverse this crossing at a maximum speed of 35 miles per hour. These freight trains transport coal, ore, pallets, stone, scrap steel and steel products (N.T. 45-46). By 1994, B&LE hopes to operate eight trains per day over this crossing (N.T. 46).

The existing structure consists of a double concrete arch bridge with two 26-foot spans under the railroad tracks. Each of the two spans are 107 feet long, passing east and west under the railroad. One span provides passage for the public on a state highway. The second span crosses over Little Deer Creek.

Mr. Keefer sponsored engineering drawings, as well as photographs, of the Tunnel (N.T. 46-49; B&LE Ex. Nos. 1, 2, 3 and 4).

The Tunnel arch over the road has a height of 18 feet at the center of the span. There is about 16 feet, 9 inches of fill between the top of the concrete arch and the subgrade of the rail line. The tracks are approximately 39 feet above the road. Both ends of the structure have wingwalls extending out 24 feet (N.T. 46-48).

B&LE constructed the Tunnel in 1910 and has maintained it since then. Mr. Keefer is unaware of any Commission order assigning responsibility for maintenance. There have been no major alterations to the structure, since the construction date. B&LE has performed only minor scaling operations on the structure. In the opinion of Mr. Keefer, the existing crossing structure is adequate for the convenience and safety of the public (N.T. 49).

Mr. Keefer opined the existing structure should not be altered, rehabilitated or demolished. The structure is a gravity masonry arch, which is designed to support loads in compression. Masonry structures are extremely effective in resisting compressor forces without reducing the life of the structure. Mr. Keefer has responsibility for the maintenance of 150 bridges on the Union Railroad, as well as B&LE. Twenty-two of these

bridges are masonry bridges constructed before 1930. Fourteen were constructed before 1910. None of these structures have failed nor required major rehabilitation nor substantial repair or maintenance. The only maintenance has been scaling of loose surface material on the concrete facing the roadway. In his opinion, salt used on the highways is spread by traffic movement onto the exposed concrete surface, causing layers of concrete to loosen and eventually fall. Scaling operations remove the loose concrete to prevent it from falling onto vehicles passing through the Tunnel. The loss of this concrete does not affect the structural stability of the arch. Since these structures typically consist of large masses of concrete, they can lose up to 20% of their section without affecting their ability to hold loads (N.T. 50-51).

Many structures of this type carrying railroads over highways and streams exist, especially in the northeastern United States (N.T. 51). Mr. Keefer is unaware of any failure of a masonry arch bridge as a result of age, deterioration or loss of mass due to spalling of the surface (N.T. 52).

B&LE will not agree to prepare any plans for repairs or modifications to the structure, since it believes no work is needed. B&LE agrees to bear future maintenance costs for its railroad facilities at the crossing, as well as perform inspection and scaling operations. If future inspection

determines the surface of the concrete should be sealed, B&LE will seal it (N.T. 52).

Mr. Keefer believes there is no problem with falling debris at this crossing, since B&LE has received no complaints on this subject (N.T. 52-53). B&LE is aware of complaints relating to the alignment of the structure, as well as complaints of low clearance (N.T. 53). As a result of this proceeding, B&LE inspected the crossing for fallen debris on October 23, 1991 and again on December 6, 1991. On both occasions, no evidence was found to indicate a problem. He prepared and submitted two reports to the Commission relating to these inspections (N.T. 53-54; B&LE Ex. Nos. 5 and 6).

On cross-examination, Mr. Keefer admitted there is a probability of minor spalling at times with debris falling off. He has never seen debris on the roadway, although he has seen it along the curbing (N.T. 56). Upon reviewing B&LE Ex. No. 3, Mr. Keefer stated a large piece of concrete in the upper right portion of the arch over the roadway was removed by B&LE crews during scaling operations (N.T. 56-57). During an annual inspection, a B&LE bridge inspector will visually inspect the arch and use a sounding hammer to test the concrete to determine if there are any loose spots. Every spring, a B&LE crew scales off loose material and determines if any large pieces of material are loose and need to be removed (N.T. 57-58).

Mr. Keefer explained how an ultrasonic test is performed and stated B&LE has never done one. He also explained how and why core sampling tests and chloride ion tests are performed. B&LE has performed neither of these tests (N.T. 59-60). B&LE has never determined whether salt being deposited on the Tunnel from roadway traffic has affected the strength of the concrete (N.T. 60). He explained how engineers perform tests to determine the density and strength of concrete. He also explained what a petrographic examination is. B&LE has performed no petrographic examination (N.T. 60-61).

Mr. Keefer opined the effect of roadway salt on the surface of the Tunnel is causing it to spall off (N.T. 62). Spalling can occur from the infiltration of surface water above the Tunnel, but he sees no evidence of that happening here (N.T. 62). Mr. Keefer opined salt is sprayed as much as 15 or 20 feet in the air to the upper portions of the arch over the roadway (N.T. 63). Prior to the field conference, a B&LE crew performed an annual scaling of the arch. They cleaned the road off, when the operation was completed (N.T. 63-64).

Mr. Keefer described the inspections on October 23, 1991 and December 6, 1991 as cursory in nature. A B&LE employee spent approximately three hours at the site on each occasion (N.T. 64; B&LE Ex. Nos. 5 and 6). Other than visual inspections

and sounding with a hammer, B&LE has not performed any other type of examination or testing (N.T. 65).

Mr. Keefer believes no drainage problem exists at the structure, since there is no evidence of effervescence, which is a white staining of materials running down the inside of the structure. B&LE has never observed any icicles forming inside the Tunnel in the winter. No additional testing is necessary to determine if the structure is sound (N.T. 66). There is some drainage on the upper outside surface of the arch, but not through the structure of the arch itself. This drainage is occurring at the lip holding the dirt back from the road surface and is not a load-bearing portion of the structure (N.T. 68).

Henry W. Farrell testified as a Civil Engineer in the Bureau of Design for the Pennsylvania Department of Transportation (N.T. 69-87). Mr. Farrell personally visited the crossing, which lies near the community of Russelton in Indiana Township, Allegheny County. The highway involved is a state road, which passes beneath the structure. It is a two-lane highway running in a north-south direction. It basically serves local traffic (N.T. 71-72).

The alignment of the roadway passing beneath the arch is very poor. Sight distance problems exist for motorists using the highway. During the field conference on August 14, 1991, motorists were observed stopping their vehicles and sounding

their horns before passing through the arch. There are virtually no shoulders. The vertical clearance restricts truck traffic through the arch (N.T. 72, 84-85).

A traffic count performed in 1986 disclosed 6,150 vehicles per day pass through this crossing. Projecting a two percent increase in traffic per year for every year since then, the estimated traffic at the present time is 6,300 vehicles per day (N.T. 72-73). Neither PennDOT nor any of its contractors have performed any maintenance or repairs on the structure (N.T. 73).

Whether the crossing is safe for motorists depends very much on the driving habits of the motorists themselves. The highway alignment is not desirable. There are no shoulders. There are stop signs in the area of the structure, which have existed for approximately 50 years. This condition appears many times in Pennsylvania in similar areas with similar structures. To provide a highway that would meet present design criteria, the entire structure would have to be demolished and reconstructed. The highway would have to be realigned and the creek rechanneled. Traffic would have to be detoured or shut off during construction. Private property would have to be appropriated and utilities moved. In the opinion of Mr. Farrell, all of this would entail a major undertaking (N.T. 74-75).

PennDOT has prepared no plans or cost estimates for any work at this location. Bridge Bill Funds are not available for the structure. PennDOT accepts no responsibility for maintenance or construction costs for the structure. The structure has been maintained by the operating railroad to accommodate rail traffic and provides no benefit to the motoring public. PennDOT feels maintenance and construction responsibilities should be assigned to B&LE. A consultant for PennDOT will need at least 18 months to prepare a detailed plan and engineering study, if one is ordered. Mr. Farrell guesstimates the costs for replacing this structure will be at least several million dollars (N.T. 75-78).

While working for PennDOT in the Bureau of Road Maintenance, Mr. Farrell had responsibility for snow and ice control on the state highways. This was a major problem for PennDOT. On a secondary route such as this state highway, normal policy is to treat the road with an anti-skid material such as cinders, sand or stone. Although Mr. Farrell could not state that salt was not used on the road at the site of this crossing, it would certainly be contrary to the policy of PennDOT (N.T. 78-80). It is possible for traffic movement to splash salt vapors or materials onto the arch over the highway (N.T. 80-81).

PennDOT has performed no detailed inspection of the structure. It has performed a cursory field inspection and is not prepared to comment on the structural adequacy of this Tunnel

(N.T. 83). Mr. Farrell believes he should not comment on testing procedures for a structure that is owned by another entity (N.T. 86-87). In the opinion of Mr. Farrell, if PennDOT was responsible for a structure from which a large piece of concrete were removed, PennDOT would do further testing to determine its structural integrity (N.T. 87).

Mitchell T. Kovel has been the Manager of Indiana Township for approximately four and a half years (N.T. 88-91). Little Deer Creek Road is used by a portion of the Township residents for ingress and egress to their homes. Fire, police and ambulance services also use the road (N.T. 88). The Township believes it has no responsibility for this structure, since it is owned by B&LE (N.T. 88-89).

The Township has received complaints concerning the Tunnel, mostly relating to falling material on the roadway inside the Tunnel itself. Also, it has received complaints about the sight distance problem (N.T. 89). There exists an inadequate sight distance for highway traffic at the crossing due to poor alignment of the road. It also is concerned about falling debris on passing motorists (N.T. 90). The Township has undertaken no project or design program to determine what should be done at the crossing, because it is a privately-owned facility. The Township

does not agree to pay any portion of the repair or rehabilitation costs (N.T. 90). The Township claims the roadway is owned by PennDOT, but maintained by the Township pursuant to a winter maintenance program agreement with PennDOT for that portion that crosses through Indiana Township (N.T. 90-91).

Donald E. Keefer returned to the stand to testify in rebuttal on behalf of B&LE (N.T. 92-93). B&LE performed traffic counts at this crossing. On August 22, 1991, it counted 3,133 vehicles during an eight hour period. On August 23, 1991, it counted 2,593 vehicles (N.T. 92-93).

This testimony, together with the sponsored exhibits, constitute the entire record of this case.

#### Findings of Fact

1. The subject crossing, known locally as the Rural Ridge Tunnel, lies near the community of Russelton in Indiana Township, Allegheny County; the highway involved passes beneath the structure supporting a rail line (N.T. 5, 71-72).

2. The bridge consists of a double concrete arch, with two 26-foot spans passing east to west under the railroad tracks. Each span is 107 feet long. One span crosses a state highway, Russelton Road, and the other span traverses Little Deer Creek. The arch over the road is 18 feet high at the center of the span. There is about 16 feet, 9 inches of fill between the

top of the concrete arch and the subgrade of the rail line. The tracks are approximately 39 feet above the road. Both ends of the structure have wingwalls extending out 24 feet (N.T. 46-48, 72).

3. The owner and operator of the rail line running north-south over the structure is the Bessemer & Lake Erie Railroad Company, which has two tracks at this crossing, and operates about six freight trains per day at a maximum speed of 35 miles per hour (N.T. 45-47).

4. B&LE constructed the Tunnel in 1910 and has maintained it since then (N.T. 49).

5. The subject crossing is within the 31st State Legislative District of Representative Daniel L. Anderson, who was elected to this office in 1990 and has visited the site several times (N.T. 5, 14).

6. During his term in office, Representative Anderson has received approximately 30 complaints from residents of his District complaining of debris falling from the structure (N.T. 6, 19).

7. Representative Anderson fears a drainage problem at the structure will continue to loosen concrete, which will fall onto vehicles passing through the Tunnel (N.T. 10).

8. Representative Anderson sponsored photographs, which depict deterioration and cracks in the face of the Tunnel structure (N.T. 10-11; Complainant's Ex. No. 1).

9. Representative Anderson has seen debris on the road surface at times, when he has visited the site (N.T. 16).

10. Representative Anderson fears that due to the train traffic passing over the structure and its deteriorated condition, the Tunnel is not structurally sound (N.T. 6, 12).

11. The Tunnel handles fire companies, ambulances and school buses (N.T. 28, 88).

12. Representative Anderson doubts the scaling operations performed by B&LE could have removed all the concrete missing from the structure (N.T. 17-18).

13. Mrs. Ann Kondrick has resided on Little Deer Creek Road within 2,000 or 3,000 feet of the Tunnel for the last 52 years (N.T. 23).

14. Mrs. Kondrick has been complaining to various authorities, including B&LE, for approximately 25 years. In a letter dated May 19, 1977, she complained the Tunnel was obsolete preventing larger trucks from passing through. These trucks would cause damage to the surface of the Tunnel and debris was falling at that time (N.T. 20, 24; Complainant's Ex. No. 5).

15. Mrs. Kondrick sponsored a petition she circulated in 1980 among residents and travelers passing through the Tunnel (N.T. 28-31; Complainant's Ex. No. 6).

16. Mrs. Kondrick has not observed any debris falling from the Tunnel (N.T. 32).

17. Mr. Andrew Klebine has resided within one-half mile of the Tunnel for approximately 52 years (N.T. 35).

18. While passing through the Tunnel in 1991, Mr. Klebine observed a piece of concrete, several inches in length, fall in front of his car. Mr. Klebine notified the Township, which notified the railroad. B&LE did some chipping away of the concrete on the structure (N.T. 35-38).

19. He has also seen concrete debris on the roadway (N.T. 36).

20. Mr. George Erceg is a life-long resident of the area and presently lives within a half-mile of the Tunnel (N.T. 39-40).

21. Mr. Erceg is currently the Mayor and a former Supervisor of Indiana Township (N.T. 40).

22. During the 13 years he has been in elected office, Mayor Erceg has received more than 50 complaints concerning falling debris from the structure (N.T. 40-42).

23. On one occasion after receiving a complaint, he went to the Tunnel and removed a piece of concrete about four inches by three inches thick from the Tunnel structure by hand (N.T. 40-42).

24. Mayor Erceg recalls traveling through the Tunnel many times and observing debris on the roadway (N.T. 40-42).

25. Mayor Erceg observed concrete debris on the roadway a week before the field conference with the Commission's Bureau of Safety and Compliance. The roadway was clear of such debris at the time of the conference (N.T. 40-42).

26. According to B&LE, the roadway was cleared during its annual scaling of the Tunnel (N.T. 63).

27. B&LE has not performed any substantial maintenance and/or repairs to the structure except minor scaling of loose surface material (N.T. 49, 51, 53).

28. In the opinion of B&LE, salt used on the highway is spread by traffic onto the exposed concrete surface, causing layers of concrete to loosen and eventually fall (N.T. 51-52, 60, 62-63).

29. In the opinion of B&LE, falling pieces of concrete pose no problem at this crossing. B&LE has no record of ever receiving a complaint about falling debris. It has received complaints relating to alignment and vertical clearance of the structure (N.T. 52-53).

30. B&LE performed inspections of the structure on October 23, 1991 and December 6, 1991, checking for falling debris or material missing from the surface of the structure. At these inspections they found no evidence of a problem (N.T. 54, 64; B&LE Ex. Nos. 5 and 6).

31. In the opinion of B&LE, some minor spalling from the face and inside the arch probably does occur and this material falls off. The B&LE engineer has never seen debris along the roadway, but he has seen it along the curbing (N.T. 56, 62, 65).

32. B&LE removed a large piece of concrete from the west end of the arch during its scaling operations (N.T. 56-57, 62, 65).

33. On the left-hand side of the Tunnel's west end, B&LE is unable to determine whether the concrete spalling is the result of its scaling operations or it occurred on its own (N.T. 62-63; B&LE Ex. No. 3).

34. B&LE does not believe there is a drainage problem at this crossing, because it has never observed icicles in the winter or effervescence inside the Tunnel (N.T. 66-67).

35. B&LE inspects the structure annually. It conducts additional cursory inspections on six-week intervals as a result of this proceeding (N.T. 52).

36. During annual inspections, a B&LE engineer, who is qualified as a bridge inspector through PennDOT, visually inspects the Tunnel and uses a sounding hammer to test for loose spots of concrete. Additionally, B&LE scales loose material each spring and determines if there are any large pieces of material that are loose and in need of removal (N.T. 57-58).

37. In the opinion of B&LE, the Tunnel is structurally sound. It bases this opinion on visual inspections, the tapping of the concrete with a hammer and the experience of its engineer (N.T. 65).

38. According to B&LE, some drainage may be coming out under the lip of the west face of the Tunnel. The drainage is not coming out through the arch of the structure. B&LE opines the drainage is not affecting the arch. It is only affecting the lip, which is non-load bearing. Some concrete has fallen off the edge. During its annual inspection, B&LE determines if there is any movement of any portion of the structure (N.T. 68; B&LE Ex. No. 3).

39. B&LE does not believe there is a need to do further testing at this time. When a structure has deteriorated to a point where it is concerned, B&LE will perform further testing (N.T. 66, 69).

40. In the opinion of B&LE, the crossing structure is adequate for the safety and convenience of the public and should not be altered, rehabilitated or demolished (N.T. 49-50).

41. B&LE will not agree to prepare plans for altering or rehabilitating the structure, since it believes no work is needed (N.T. 52).

42. B&LE agrees to bear future maintenance costs for the railroad facilities at the crossing and perform inspection and scaling. If a future inspection determines the surface of the concrete should be sealed, B&LE will seal it (N.T. 52).

43. B&LE has not performed ultrasonic testing, core sampling or chloride ion testing on the structure (N.T. 59-60).

44. B&LE conducted a highway traffic count at the subject crossing. For an eight-hour period, it counted 3,133 vehicles on August 22, 1991, and 2,593 vehicles on August 23, 1991 (N.T. 92-93).

45. The involved highway is a two-lane state road running in a north-south direction serving basically local traffic (N.T. 72).

46. According to PennDOT, the highway alignment through the crossing is very poor. There are sight distance problems for motorists using the state highway. There are no shoulders and the vertical clearance restricts truck traffic through the Tunnel (N.T. 72, 84).

47. In 1986, PennDOT conducted a traffic count disclosing 6,150 vehicles per day use the crossing. The present estimated traffic count is 6,300 vehicles per day. There is minimal truck traffic due to the clearance problems (N.T. 72-73).

48. PennDOT has performed no maintenance on the structure (N.T. 73).

49. To provide a highway that would meet present design criteria, PennDOT opines the entire structure would have to be demolished and reconstructed. This reconstruction would entail realigning the highway and rechanneling the creek (N.T. 74, 77).

50. PennDOT has prepared no plans or cost estimates for work at this crossing (N.T. 75).

51. Bridge Bill Funds are not available for this structure. PennDOT accepts no responsibility for maintenance or construction costs for the structure (N.T. 75-76, 78, 83).

52. PennDOT primarily uses anti-skid material on the highway at this crossing. Five to ten percent of such material consists of salt. In the opinion of PennDOT, such material dropped from a truck could not possibly hit the arch, but traffic movement could splash such material onto the arch (N.T. 79-81).

53. PennDOT has performed no detailed inspection or testing of the structure. It has performed cursory inspections to assure the structure poses no imminent danger to the public. PennDOT possesses no opinion as to the structural integrity of the Tunnel (N.T. 83, 86-87).

54. In the opinion of PennDOT, PennDOT would at least perform some further testing to determine the structural integrity of a bridge or tunnel for which it had responsibility, which was found to have a large piece of concrete removed or missing (N.T. 87).

55. According to Mitchell T. Kovel, the Manager of Indiana Township, a portion of the Township's residents use the Tunnel for ingress and egress to their homes (N.T. 88).

56. The Township has received complaints concerning the structure, which deal mostly with falling material inside the Tunnel. The Township has also received complaints about the sight distance problems of the roadway (N.T. 89).

57. The Township feels the crossing poses sight-distance problems due to the alignment of the highway. It is also concerned about debris falling on passing motorists (N.T. 90).

58. The Township has not undertaken any project or design program to determine what, if anything, should be done at the crossing, since the structure is a privately-owned facility (N.T. 90).

59. The Township does not agree to pay any portion for repair or rehabilitation costs of the structure (N.T. 90).

60. The Township sponsored a series of photographs depicting various aspects of the Tunnel (Indiana Township's Ex. Nos. 1 and 2).

### Discussion

#### A. Jurisdiction

Section 2702 of the Public Utility Code ("Code"), 66 Pa. C.S. §2702, grants the Commission exclusive jurisdiction over all rail-highway crossings in the Commonwealth. That jurisdiction has been extended to the approaches of a crossing by case law. Department of Transportation v. Pa. P.U.C., 64 Pa. Cmwlth. 299, 440 A.2d 657 (1982); Springettsbury v. Pa. P.U.C., 5 Pa. Cmwlth. 102, 289 A.2d 762 (1972).

The Commission has the exclusive authority to order the construction, reconstruction, alteration, repair, protection or abolition of a rail-highway crossing, as well as the exclusive authority to determine and order which parties should perform such work at the crossing and which parties shall maintain the

crossing in the future, all to effectuate the prevention of accidents and promote the public safety. 66 Pa. C.S. §2702.

In order to promote the public safety, the Commission is empowered to determine and prescribe the manner in which a crossing may be maintained, altered or reconstructed. 66 Pa. C.S. §2702(b). The Commission may order the alteration or reconstruction of a crossing upon such reasonable terms and conditions as it shall prescribe. 66 Pa. C.S. §2702(c). Additionally, the Commission has the exclusive authority to assess the costs of any ordered performance upon the parties to this proceeding in such proper proportions as it may determine. 66 Pa. C.S. §2704(a). In apportioning costs in a rail-highway crossing case, the Commission is not limited to any fixed rule, but takes all relevant factors into consideration; the only requirement is that its order must be just and reasonable. East Rockhill Township v. Pa. P.U.C., 115 Pa. Cmwlth. 228, 540 A.2d 600 (1988). The assignment of future maintenance of any portion of a crossing remaining in place is logically within the parameters of "reasonable terms and conditions."

B. The Burden of Proof

Section 332(a) of the Code, 66 Pa. C.S. §332(a), provides that the party seeking affirmative relief from the Commission bears the burden of proof. In this proceeding,

Representative Anderson has applied to the Commission asserting the subject structure is in such a deteriorated state that it is in need of Commission-mandated repairs. Thus, it is clear the Complainant is the party seeking affirmative relief from the Commission and, therefore, is the party bearing the burden of proof.

The Pennsylvania Supreme Court has held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility is responsible or accountable for the problem described in the complaint. Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976).

As required by these decisions, the record in this proceeding must be reviewed to determine whether the Complainant has satisfied his burden of proof. If the review indicates that this burden has been satisfied, it must then be determined whether the Respondent has submitted evidence of "co-equal" value or weight to refute Complainant's evidence. If this has

occurred, the burden of proof cannot be deemed to have been satisfied, unless additional evidence has been presented by the party having the burden of proof. Morrissey v. Pa. Dept. of Highways, 424 Pa. 87, 225 A.2d 895 (1967), and Burleson v. Pa. P.U.C., 66 Pa. Cmwlth. 282, 443 A.2d 1373 (1982) aff'd., 501 Pa. 443, 461 A.2d 1234.

In addition to determining whether the Complainant has satisfied his burden of proof, care must be exercised to insure that the decision of the Commission is supported by substantial evidence in the record. See, e.g., Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704. The term "substantial evidence" has been defined by the Pennsylvania Supreme, Superior and Commonwealth Courts as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); and Murphy v. Com., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

C. The Matter of Public Safety

This proceeding involves a crossing in Indiana Township, Allegheny County. The structure at this crossing consists of a double concrete arch, which B&LE built in 1910. This structure carries two tracks of the B&LE railroad over a local highway. Two 26-foot spans run under the railroad tracks. Each span extends 107 feet long. One span crosses a two-lane state road, Russelton Road. The other span traverses Little Deer Creek. The arch over the roadway has a height of 18 feet at the center of the span. In his complaint, Representative Anderson asserts the Rural Ridge Tunnel is in such a deteriorated state that it is in need of repair.

In support of his allegation, Representative Anderson testified he has received approximately 30 complaints from residents of his District relating to fallen debris from the Tunnel during the one year he has been in office. The Mayor and former Supervisor of Indiana Township, Mr. George Erceg, received 50 complaints concerning falling debris over a 13 year period of time. Both Representative Anderson and Mayor Erceg have seen debris in the Tunnel. Local residents and Representative Anderson are concerned about material falling from the structure onto vehicles using the Tunnel and the structural soundness of the Tunnel. A local resident contacted B&LE in 1977 concerning

safety hazards at the structure and circulated a petition in 1980.

B&LE responded it has inspected the structure, confirming earlier findings, that the structure is sound and poses no safety hazard to the public. It has not performed any substantial maintenance and/or repairs to the structure, except minor scaling of loose surface material. It inspects the structure annually and has performed several cursory inspections, while this proceeding has been pending. B&LE opines there probably is some minor spalling from the face and inside the arch, which falls off. Although the B&LE engineer has never seen debris on the roadway, he did see it along the curbing. B&LE did remove a large piece of concrete from the west end of the arch during scaling operations.

B&LE opines salt used on the highway is spread by traffic onto the exposed surface of the concrete arch, causing layers of concrete to loosen and eventually fall. It believes no further testing is necessary at this time. When a structure has deteriorated to the point B&LE is concerned, it will then do further testing. B&LE opines the existing crossing structure is adequate for the safety and convenience of the public and is structurally sound.

PennDOT avers the highway alignment under the arch is very poor and there are sight distance problems for motorists

passing through the structure on the state highway. There are virtually no shoulders. The vertical clearance restricts truck traffic through the arch.

PennDOT may mix some five to ten percent salt with anti-skid material used on the highway. Traffic movement could splash such material onto the arch. PennDOT has performed no detailed inspection or testing of the structure, but it has performed a cursory inspection to assure the structure is not an imminent danger to the public. If it was responsible for a structure from which a large piece of concrete was removed, PennDOT would perform further testing to determine its structural integrity.

The record is somewhat clear. Falling debris from the spalling of the concrete has landed on the roadway at this crossing. In fact, one such piece fell immediately in front of a vehicle driven by a resident, who testified in this proceeding. Both Representative Anderson and Mayor Erceg testified to receiving numerous complaints in the past about this identical problem. As seen in the photographs introduced by Indiana Township (Indiana Township Ex. No. 2), missing concrete and cracks appear inside the Tunnel. These photographs graphically document the concerns expressed by the complaining witnesses. The removal of a large piece of concrete from the west face of the structure during scaling operations, leads me to concur with

PennDOT that further testing should be performed to determine the structural integrity of the Rural Ridge Tunnel.

The foregoing evidence raises a reasonable doubt about the safety and structural integrity of this Tunnel. This evidence is certainly of such a substantial nature that any reasonable person must conclude the prudent course under these circumstances is to further investigate. An engineering study of the structural integrity of the Tunnel appears justified. I therefore conclude an in-depth inspection of the structure should be performed. B&LE will be directed to perform this inspection at its initial cost and expense. The final costs are not being assigned at this time and will be addressed in a later proceeding.

B&LE will be given six months to prepare and submit an in-depth inspection report. The inspection report shall include testing results for the reliability of the arch, structural analysis and analysis of cracks. Also, chloride ion testing is to be considered. Furthermore, the report must contain a recommendation for any work deemed necessary to the structure, together with estimates of costs for any recommended work. Since a state highway is involved at the subject crossing, B&LE and PennDOT should cooperate with each other during the preparation of the inspection report. Upon completion of the report, another hearing will be held to address the issues involved in this

proceeding, together with any issues arising from the report. Since the Commission has not previously assigned maintenance of the subject structure and highway, I will address those issues now.

D. Interim Maintenance

B&LE built the structure in 1910 and has maintained it since then. B&LE agrees to bear its own future maintenance costs for the railroad facilities at the crossing and perform inspection and scaling of the Tunnel. If a future inspection determines the surface concrete should be sealed, B&LE will seal it. Since B&LE is currently maintaining the structure and has agreed to perform certain maintenance tasks, B&LE will be directed to maintain the structure at its initial cost, until a further order is issued.

Since the highway passing through this crossing is a state road under the control of PennDOT, PennDOT will be directed to maintain the highway at the subject crossing at its initial cost, until a further order is issued.

For the reasons set forth in the foregoing discussion, I recommend the following Order to be just and reasonable.

### Conclusions of Law

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. The Commission has exclusive jurisdiction over all rail-highway crossings in the Commonwealth and the approaches thereto.

3. The Commission has the exclusive authority to order the construction, reconstruction, alteration, repair, protection or abolition of rail-highway crossings, as well as the exclusive authority to determine and order which parties should perform such work at the crossings and which parties shall maintain the crossings in the future, all to effectuate the prevention of accidents and to promote the safety of the public.

4. The Complainant has met his burden of proof in order to obtain relief from this Commission.

5. Under the circumstances portrayed here, the present condition of the Rural Ridge Tunnel in Indiana Township, Allegheny County, raises such a substantial question as to the safety of the public that an in-depth inspection of the structure is warranted.

6. The Commission has the exclusive authority to assess the costs of the work ordered performed upon the parties to this proceeding in such proper proportion as it may determine.

7. In apportioning costs in rail-highway crossing cases, the Commission is not limited to any fixed rule, but takes into consideration all relevant facts, the only requirement being that its Order must be just and reasonable.

8. The allocation of costs for this project and the assignment of interim maintenance as set forth in the following Recommended Order is fair, just and equitable to each party.

#### RECOMMENDED ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Bessemer & Lake Erie Railroad Company, at its initial cost and expense, within six months of the date of service of the Commission's Order, prepare and submit to the Commission and the parties of record an in-depth inspection report of the structure; the said report must include, but need not be limited to, a structural analysis of the structure, a recommendation for any work necessary to the structure and estimates of costs to perform any recommended work.

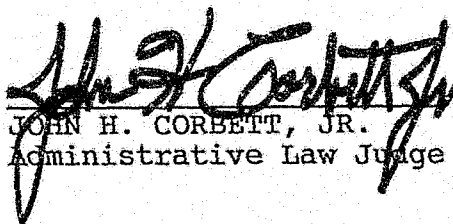
2. That the Bessemer & Lake Erie Railroad Company and the Pennsylvania Department of Transportation cooperate with each other in the preparation of the inspection report in accordance with this Order.

3. That the Bessemer & Lake Erie Railroad Company, at its initial cost and expense, furnish all materials and do all work necessary to maintain the structure and its facilities at the subject crossing in a safe and satisfactory manner, during the interim period until a further Order is issued.

4. That the Pennsylvania Department of Transportation, at its initial cost and expense, maintain the existing public highway, shoulder, guide rails and drainage structures within the legal right-of-way at the subject crossing, during the interim period until a further Order is issued.

5. That upon completion of the in-depth inspection report with recommendation, another hearing be held to resolve the remaining issues involved in this proceeding.

Date: July 1, 1992

  
JOHN H. CORBETT, JR.  
Administrative Law Judge

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AUG 05 1992

Public Utility Commission  
SECRETARY'S BUREAU  
Information Control Division

Commonwealth of Pennsylvania <sup>AMM</sup>  
Department of Transportation

JUL 15 1992

Office of Chief Counsel

THIS 15<sup>th</sup> DAY OF July 92

THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF  
COPY OF RECOMMENDED DECISION

UNDER DATE OF JULY 15, 1992 IN DOCKET NUMBER G-913419

IN BEHALF OF PENNDOT

JOHN L HEATON CHIEF COUNSEL

Kindly sign and date this form and return to: PUC-FILE ROOM  
B-20  
NORTH OFFICE BUILDING  
HARRISBURG PA

DOCUMENT  
FOLDER

AMN

RECEIVED

AUG 04 1992

Public Utility Commission  
SECRETARY'S BUREAU  
Information Control Division

THIS 16<sup>TH</sup> DAY OF July 1992

THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT OF  
COPY OF RECOMMENDED DECISION

UNDER DATE OF JULY 15, 1992 IN DOCKET NUMBER G-913419

IN BEHALF OF PENNDOT  
W D PICKERING UTILITY ENGINEER

*Thomas M. Alexander*

Kindly sign and date this form and return to: PUC-FILE ROOM  
B-20  
NORTH OFFICE BUILDING  
HARRISBURG PA

DOCUMENT  
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**BESSEMER** AND LAKE ERIE RAILROAD COMPANY

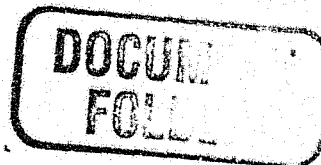
135 JAMISON LANE • P. O. BOX 68 • MONROEVILLE, PENNSYLVANIA 15146

OFFICE OF GENERAL COUNSEL  
AND SECRETARY

July 31, 1992

Via Airborne Express

Mr. John G. Alford, Secretary  
Pennsylvania Public Utility Commission  
Room B-18, North Office Building  
North Street & Commonwealth Avenue  
Harrisburg, PA 17120



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

Dear Mr. Alford:

Enclosed please find an original and nine (9) copies of the Exceptions of the Bessemer and Lake Erie Railroad Company to the Recommended Decision issued July 15, 1992, in the above-referenced proceeding.

Please acknowledge receipt by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed, stamped envelope.

Also enclosed please find a certificate of service indicating that the Administrative Law Judge and all parties of record have been served.

Should you have any questions with regard to this filing, please contact the undersigned at (412) 829-6892.

Very truly yours,

*Colette Ferris-Shotton*

Colette Ferris-Shotton  
Attorney

KJG:nt

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

**RECEIVED**  
**JUL 31 1992**  
**SECRETARYS OFFICE**  
**Public Utility Commission**

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

JUL 8 1992

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

EXCEPTIONS OF BESSEMER AND LAKE ERIE RAILROAD COMPANY  
TO RECOMMENDED DECISION DATED JULY 1, 1992  
AND ISSUED JULY 15, 1992

The Bessemer and Lake Erie Railroad Company ("B&LE") hereby submits the following Exceptions to the Recommended Decision of Administrative Law Judge John H. Corbett, Jr.:

1. Although the B&LE stated at the Hearing that it did not believe any additional testing of this structure would be necessary to determine that the concrete arch was structurally sound (N.T. 66)<sup>1</sup>, the B&LE does not take exception to this Recommended Order that the B&LE at its initial cost and expense, prepare and submit an in-depth inspection report of the structure.

DOCKETED  
AUG 6 1992

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<sup>1</sup>Refers to original transcript of January 30, 1992 Hearing.

2. The B&LE takes exception to paragraph 10 of the Findings of Fact on page 17 of the Recommended Decision which states as a fact that "Representative Anderson fears that due to the train traffic passing over the structure and its deteriorated condition, the Tunnel is not structurally sound." The B&LE objected to any testimony from Representative Anderson of a technical nature as he is not qualified to offer such testimony or make such conclusions and no foundation was laid to provide qualification for any technical testimony (N.T. 6). The B&LE takes exception to paragraph 10 insofar as it contains the technical conclusion of a witness who is neither competent nor qualified to render such an opinion.
  
3. The B&LE takes exception to paragraph 47 of the Findings of Fact on page 23 of the Recommended Decision which states in part that "PennDOT conducted a traffic count disclosing 6,150 vehicles per day used the crossing." It is the position of the B&LE that it was unclear from Mr. Farrell's testimony that PennDOT actually conducted a traffic count of this particular crossing as the state route indications were confused in the testimony and in the report (N.T. 81 through 82).

4. The B&LE takes exception to paragraph 54 of the Findings of Fact on page 24 of the Recommended Decision which states that "In the opinion of PennDOT, PennDOT would at least perform some further testing to determine the structural integrity of a bridge or tunnel for which it had responsibility, which was found to have a large piece of concrete removed or missing (N.T. 87)." The B&LE avers that no qualifications for the witness presenting the testimony upon which the finding is based were even stated and no foundation for such testimony laid which would show such witness to be either qualified or competent to provide such an opinion.
  
5. The B&LE takes exception to the fact that the statement contained on pages 90 and 91 of the Hearing transcript which states that "the Township has a winter maintenance program with PennDOT for that portion that crosses through Indiana Township" was not included in the Findings of Fact for the proceeding. Since the application of salt is at issue with respect to spalling on the structure, the B&LE avers that this is a significant fact and should be contained in the Findings of Fact in this proceeding (N.T. 50 through 52, 60, 62 through 63).

Except as stated above, the B&LE takes no other exceptions to the Recommended Decision of Administrative Law Judge John H. Corbett, Jr.

Respectfully submitted,

*Colette Ferris-Shotton*

Colette Ferris-Shotton  
Attorney  
Bessemer and Lake Erie  
Railroad Company  
135 Jamison Lane, P. O. Box 68  
Monroeville, PA 15146  
(412) 829-6892

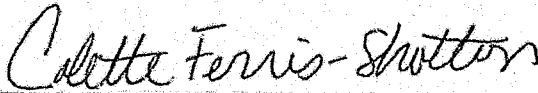
CERTIFICATE OF SERVICE

I, Colette Ferris-Shotton, do hereby certify that on this 31st day of July, 1992, that I have served by first class mail, postage prepaid, one copy of the foregoing Exceptions upon the presiding Administrative Law Judge, John H. Corbett, Jr. and 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, Esquire  
Office of Chief Counsel  
Commonwealth of Pennsylvania  
513 Transportation & Safety Building  
Harrisburg, PA 17120

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

  
Colette Ferris-Shotton  
Colette Ferris-Shotton

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL  
RECEIVED

AUG 14 1992

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

Public Utility Commission  
SECRETARY'S BUREAU  
Information Control Division

REPLY EXCEPTIONS TO THE EXCEPTIOS FILED  
BY BESSEMER AND LAKE ERIE RAILROAD TO  
THE RECOMMENDED DECISION ISSUED JULY 15,  
1992.

AND NOW, comes the Commonwealth of Pennsylvania  
Department of Transportation (hereinafter "Department") and  
through its counsel, Gina M. D'Alfonso, with its Reply Exceptions  
as follows:

1. Bessemer and Lake Erie Railroad  
(hereinafter "Bessemer") excepts to  
Finding of Fact Number 47, (Exception  
3). Said Finding of Fact is an accurate  
representation of the testimony. (N.T.  
72). Further testimony clarified any  
confusion relative to the state route  
indications. Specifically, testimony  
was adduced that the traffic count was  
for the roadway where the arch is  
located. (N.T. 82).

2. Bessemer has also excepted to  
Finding of Fact Number 54 (Exception 4)  
and avers that there were no  
qualifications for the witness or  
foundation for such testimony. To the  
contrary, the Department's witness  
responded to a question asking for an  
opinion based upon his experience with  
concrete bridges and structures. (N.T.  
87). Moreover, the witness has  
previously testified that he is a civil  
engineer and has worked in construction,  
Bureau of Maintenance and currently in  
the Bureau of Design. (N.T. 70)

DOCUMENT  
FILED

WHEREFORE, the Department of Transportation submits that Exceptions 3 and 4 of Bessemer and Lake Erie Railroad are without merit and should not be considered by this Honorable Commission.

Respectfully submitted,

*Gina M. D'Alfonso*

Gina M. D'Alfonso  
Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Transportation  
Office of Chief Counsel  
1209 State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 565-7555

Certificate of Service

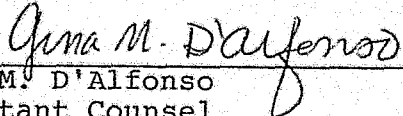
I, Gina M. D'Alfonso, do hereby certify tht on this 14th day of August, 1992, I served by first class mail, postage prepaid on the following individuals:

John H. Corbett, Jr.  
Administrative Law Judge  
1103 State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222

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

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

Colette Ferris-Shotton, Esquire  
135 Jamison Lane  
P.O. Box 68  
Monroeville, PA 15146

  
\_\_\_\_\_  
Gina M. D'Alfonso  
Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Transportation  
Office of Chief Counsel  
1209 State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 565-7555