

DECISIONS OF
The Public Service Commission

OF THE
COMMONWEALTH OF PENNSYLVANIA

AND OF THE
APPELLATE COURTS IN APPEALS THEREFROM

JULY 1, 1917 TO JUNE 1, 1919

VOLUME III



HARRISBURG, PA.:
J. L. L. KUHN, PRINTER TO THE COMMONWEALTH
1920.

COMPLAINT DOCKET No. 1344

SCRANTON STOVE WORKS

vs.

ERIE & WYOMING VALLEY R. R. CO.
ERIE RAILROAD COMPANY

Where a railroad siding is owned by and is a facility of a railroad, it must maintain it during the period of the existence of the same in a reasonably safe and proper condition. It cannot permit it to become in bad repair and then, for that reason, arbitrarily abandon its use or remove it, nor can it require the industry which the siding serves to repair and maintain the same.

While the Commission has no authority to order a railroad to construct a siding at its own expense off its right of way for the purpose of serving an industrial establishment, there is nothing in the Public Service Company Law preventing the railroad from so doing, and if it avails itself of that privilege it must maintain the same during the period of its existence in a reasonably safe and proper condition.

APPEARANCES:

Charles H. Welles, Representing the Complainant.

M. P. Pierce, Representing the Respondent.

OPINION.

AINEY, *Chairman*:

Under an arrangement with the Erie and Wyoming Valley Railroad Company the Scranton Stove Works was induced to locate its plant at which it manufactures stoves, ranges, etc., along the line of the latter's railroad in Dupmore, Lackawanna County. It appears that a part of the understanding was that the Erie and Wyoming Valley Railroad Company would construct and operate a switch or siding from its main tracks on the property which the complainant company purchased and over and for which it furnished the railroad company a right of way. This switch has been continuously maintained by the railroad since its construction in 1892, for the purpose of serving the complainant's plant.

With respect to this transaction the Erie and Wyoming Valley Railroad Company undertook to be to the "expense of grading a switch" from the tracks of respondent to the plant of complainant, the complainant "to furnish the right of way over any land that is not owned by the Erie and Wyoming Valley Railroad Company."

The statement of George B. Smith, Superintendent of the Erie and Wyoming Valley Railroad Company at the time of the construction of this siding was received in evidence at the hearing under agreement of counsel. He stated that the Erie and Wyoming Valley Railroad Company built the tracks and switches herein referred to upon land owned and controlled by the said stove company. No charge was made against the stove company for laying said tracks and switches and I think, I understand, no charge for maintaining the same, it being considered a part of the expense incident to completion of arrangement in connection with securing the business from the said stove works."

The expense of construction and maintenance of this siding has been borne by the respondent with the exception of the outlay incident to a change in a trestle which was made at the instance of and was borne by the complainant, and to a certain part of the expense of the original construction which the complainant contributed to the railroad. In final analysis the entire siding, both the portion on the respondent's right of way and on the right of way provided respondent by complainant, belongs to the respondent.

In 1915 the Erie Railroad Company, then and now operating the Erie and Wyoming Valley Railroad Company under a lease, requested the complainant to enter into a "uniform contract" under which the complainant would be obligated to keep the switch or siding in repair, and which proposed contract contained a provision that it might be terminated by either party on ninety days' notice. The complainant declined to execute the contract, and thereupon the Erie Railroad Company gave notice that it proposed to discontinue the siding on the ground that it was out of repair and was dangerous to operate. For a short period of time the railroad company refused to deliver carload lots to complainant on this siding.

A complaint having been filed with The Public Service Commission for the purpose of securing an order requiring the respondent company to repair the switch and to restrain the company from discontinuing the service thereon, hearings were had at which the facts hereinbefore set forth were developed, the contention of the respondent being that the Commission had neither the authority to interpret nor enforce the contract under which the siding was constructed and thereafter maintained, nor to compel the respondent to continue the use of this siding erected on the property of complainant, nor to pay the expenses of its maintenance. By the evidence it is clearly

established that about the year 1892 the railroad company constructed this siding for the purpose of serving the complainant company, and whether constructed upon its own land or permissibly on the land of another, it was a facility of the railroad company, and as such it was and still is the duty of the company to keep it in safe condition.

The respondent claims ownership of the entire siding and this is not disputed. In the uniform contract which respondent submitted to complainant, it is asserted that these tracks "are the property of the railroad company."

While under the authority of the Kift Milling Company case (*64 Pa. Superior, 586*), this Commission would have no authority to order the respondent to construct a siding at its own expense off its right of way for the purpose of serving an industrial establishment, there is nothing in the Public Service Company Law preventing the respondent from so doing, and if it avails itself of that privilege it must maintain the siding during the period of the existence of the same in a reasonably safe and proper condition. Being of the opinion that the siding is a facility of the railroad company and not of the Scranton Stove Works, we reach the conclusion that it should be maintained by the respondent in a safe condition for operation.

The Supreme Court of California in *Atchison, Topeka and Santa Fe Railroad Company vs. Railroad Commission of California, P. U. R. 1917-B, 336 (341); 160 Pac., 828*, made the distinction clear: "A public utility, undertaking to supply a given public need, submits itself to the regulation and control of public authority with respect to the service which it has thus undertaken." "Is the railroad commission, in ordering the construction of a railroad line, regulating the service which the petitioner has undertaken to give to the public, or is it compelling the railroad company to dedicate its property to a new service? If the former, the commission is acting within its jurisdiction; if the latter it is attempting to exercise an authority which the statute either has not attempted or is unable to confer upon it." "No question is made of the authority of the railroad commission to compel the railroad company or other public utility to restore a service which it has been furnishing."

The Commission does not undertake to enforce a contract entered into between the parties to this complaint, but places its decision upon the broad ground that the switch or siding as constructed is a railroad facility, and therefore the railroad company may not permit the siding to become in bad repair and then, for that reason, arbitrarily abandon its use or remove it. Having voluntarily established it, it should continue until such time as other reasons appear than those given, justifying its abandonment.

With respect to the uniform siding contract which has been presented to the complainant for signature, its applicability to the pres-

ent case is not apparent. Here the whole siding is a facility of, and therefore within the operative control, of the respondent. The primary purpose of any standard contract is to give a greater margin of safety to railroad companies operated on sidings privately owned and over which they would have no immediate control except as provided in the contract.

In so far as the complainant's rights are claimed to be constructural the enforcement of them is primarily for the courts where adequate relief can be granted, but in so far as the safety and continuance of operation of a facility of a railroad, whether created by contract or otherwise is involved, that matter is within the jurisdiction of the Public Service Company Law. An order will be issued requiring the respondent to keep and maintain this siding in a safe condition for use as a part of its facilities.

ORDER.

This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having on the date hereof filed of record a report containing its findings of fact and conclusions thereon, which report is hereby approved and made a part hereof;

NOW, to-wit, October 23rd, 1917, the respondents, the Erie & Wyoming Valley Railroad Company and the Erie Railroad Company, lessee, ARE HEREBY ORDERED to repair, keep and maintain in a safe condition at their own expense, their switch connection and siding extending from the lines of the Erie & Wyoming Valley Railroad Company to the plant of the complainant, the Scranton Stove Works, situate in Dunmore, Lackawanna County, Pennsylvania.