

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

November 20, 1920, to August 21, 1922

VOLUME V



HARRISBURG, PA.
J. L. L. KUHN, PRINTER TO THE COMMONWEALTH
1925

IT IS FURTHER ORDERED: That the sum of \$15,000 be and the same is hereby specifically appropriated by The Public Service Commission out of the funds appropriated to it for the elimination of grade crossings by the Act of July 18, 1911, P. L. 1048; said sum to be paid to the State Highway Department to be applied as provided in the foregoing report.

BOROUGH OF MOOSIC

vs.

ERIE RAILROAD COMPANY

COMPLAINT DOCKET NO. 2790

Crossings at grade—Approval of—Evidence.

The Commission refused to establish a grade crossing where the evidence showed that the proposed grade crossing would be unusually dangerous and the public was adequately served by an overhead crossing 725 feet distant.

APPEARANCES:

Charles L. Robertson and D. J. Reedy for Complainant.
G. R. James and M. B. Pierce for Respondent.

REPORT OF THE COMMISSION

BY THE COMMISSION, February 15, 1921:

This complaint on behalf of the Borough of Moosic is for the avowed purpose of compelling respondent railroad company to replace a bridge which formerly carried vehicular and pedestrian travel over the right of way and tracks of an old gravity railroad. It is alleged that the original bridge was torn down by the Erie Railroad or Erie and Wyoming Valley Railroad, which succeeded to the rights of the gravity railroad, when the steam railroad tracks were laid.

The proposed bridge would connect two parts of Spring Street in the borough, which are now separated by the railroad tracks. At the hearing it was developed that the complaining municipality would be satisfied if a grade crossing were established at the place in question in lieu of an overhead bridge.

An answer was filed by the United States Railroad Administration then in operating control of respondent's company, and denied the necessity of constructing a bridge at Spring Street. No separate answer was filed by the railroad company. An engineer of the Public Service Commission, accompanied by an engineer of the Borough of Moosic, and the Superintendent and Division Engineer of the Erie Railroad Company, made an inspection, and a report of the Commission's engineer was offered in evidence. The evidence does not disclose the date when the bridge alleged to have been torn down by the railroad company was destroyed, except that it was done about the time the so-called old gravity road was abandoned and the steam railroad of the Erie and Wyoming Valley Railroad Company, predecessor of the Erie Railroad Company, was built. This must have been nearly forty years ago.

It further appears that in 1912, the Borough of Moosic attempted to establish a grade crossing at this point, but was restrained by preliminary injunction under bill filed by the Erie Railroad Company and the Erie and Wyoming Valley Railroad Company against the Borough of Moosic, by order of the Lackawanna County Court, sitting in equity, entered November 27, 1912, which injunction, by order of December 4, 1912, was continued until final hearing, and, in so far as the Commission is advised, no further proceedings or orders in that matter have been had.

The evidence clearly establishes that a grade crossing at the point desired would be unusually dangerous and ought not to be permitted. Some question was raised as to whether Spring Street, where it crossed the railroad by the destroyed bridge, was ever legally abandoned, but we do not think that that question is material to the present inquiry, or necessary to be answered in determining the matter before us. It is sufficient for us to know that for many years prior to the passage of the Public Service Company Law, there was no crossing over this railroad at Spring Street, either at grade or separated, and it would be inexpedient for this Commission, in an order based solely upon the determination of this question, to require the re-establishment of a crossing which it is convinced would very much endanger public safety if at grade, and require the expenditure of a large sum not warranted by public necessity or convenience if elevated.

In reaching this conclusion the Commission takes into consideration that at Sax Street, in the same borough, the highway crosses the tracks of this railroad above grade. It is only about 725 feet distant from the proposed Spring Street crossing, and can adequately serve the public. In this view, we are supported by the investigation, conclusions and recommendations made by the engineer of The Public Service Commission. An order will therefore be entered, dismissing the complaint.

BOROUGH OF MOOSIC

vs.

ERIE RAILROAD COMPANY AND THE SCRANTON RAILWAY
COMPANY.

COMPLAINT DOCKET NO. 2789

Crossing above grade—Repair of—Apportionment of cost.

Where a street railway occupied a bridge carrying a public highway over the tracks of a railroad company, the Commission after considering the evidence, imposed one-half of the cost of maintaining the bridge between the railroad right of way upon the street railway and one-half upon the railroad. The cost of maintenance beyond the railroad right of way was imposed upon the borough.

Crossing above grade—Repair of—Power of Commission.

The Commission has power to require overhead crossings to be kept in a safe condition.

Crossing above grade—Duty to repair—Contract releasing railroad from duty to maintain.

A contract with a township exempting a railroad from liability to repair a bridge carrying a highway across its tracks is made subject to the implied term that the lawful exercise of the police power might take place at any time and require the railroad to maintain the bridge notwithstanding the contract.

APPEARANCES:

Charles L. Robertson and David J. Reedy for Complainant.
G. R. James and M. B. Pierce for Erie Railroad Company.
C. L. Tingley and H. B. Gill for Scranton Railway Company.

REPORT OF THE COMMISSION

BY THE COMMISSION, February 15, 1921:

The Wyoming Division of the Erie Railroad in the Borough of Moosic, Lackawanna County, occupies the bed of what was formerly a gravity railroad. At the time the gravity railroad was operated, Sax Street was carried over the railroad by a bridge. Later when the Erie and Wyoming Valley Railroad, the predecessor of the Erie

Railroad, acquired the road bed, laid tracks and commenced the operation of steam cars thereover, it became necessary to rebuild the bridge in order to provide a greater vertical clearance. About 1884 a new bridge was constructed by the Erie and Wyoming Valley Railroad under an agreement with Lackawanna Township (the Borough of Moosic had not at that time been incorporated), at a point about 50 or 60 feet east of the location of the old bridge. In 1894 the Scranton and Pittston Railway Company, one of the constituent companies of the Scranton Railway Company, obtained permission to lay its tracks and operate on Sax Street and across the Sax Street bridge. The bridge was strengthened by the street railway company and the operation of street cars thereover begun.

The Borough of Moosic was incorporated in 1900, and now embraces within its corporate limits the Sax Street bridge. It entered this complaint against the Erie Railroad and the Scranton Railway Company alleging that the bridge is of inadequate width to accommodate traffic and dangerous to the traveling public, that its structure has been so altered by repairs and attempts to strengthen it that the ordinary methods of calculating the stresses afford no reliable guide for computation, and that a new and more commodious bridge should be built by and at the cost of the respondents or either of them.

The bridge in question is a half-through plate girder bridge resting on stone abutments and has a vertical clearance of about $19\frac{1}{2}$ feet. Its span is 37 feet and it crosses the railroad tracks at an angle of 50 degrees. The flooring is of plank and provides a roadway space of a little over 17 feet. The street railway tracks are so located on the bridge that it is practically impossible for a street car and another vehicle to pass.

The approach from the north is about 20 feet wide and ascends on a 4.7% grade. The earth slopes from the sides of the roadway to the natural ground level and a fence is located on the west side of the roadway only. There are no sidewalks on the bridge or approaches. The southerly approach ascends on a 3% grade for about 50 feet. A fence is provided only along the west side. A street running parallel to the railroad tracks connects with Sax Street at the southerly side of the bridge and a fence is constructed along the eastern side of the south approach to the junction of these two streets 25 feet south of the bridge where Main Street intersects with Sax Street at a 25 degree angle. The railway tracks traversing Main Street curve to the west at this point, the result being that vehicles approaching the bridge from the south are crowded to the westerly side of the roadway and are in danger of striking the bridge girders.

From the testimony taken, it appears that the Scranton Railway

Company has repaired the planking and on one or more occasions strengthened the bridge by renewing the floor beams, etc., but repairs generally have been neglected and responsibility therefore denied by the municipality, the railroad and street railway. Several years have elapsed since the bridge was painted and the webbs and beam flanges of the girders have become corroded from gasses emitted by locomotives passing under the bridge.

While it cannot be said that structurally the bridge is in an unsafe condition for public use, it is unquestionably the fact that the factor of safety, because of the failure to repair, has been growing smaller and the time has arrived when the safety of the public using this overhead crossing, as well as the safety of the railroad employes and passengers passing under it, require that repairs be made by those legally chargeable with that duty.

There is no doubt but that this bridge should be replaced by one of sufficient width to adequately care for the public which uses it and in such a manner as to enable street cars and other vehicles to pass. Further provision should be made for the convenience of pedestrians. This, however, is a work that ought to be undertaken in connection with the general improvement of Sax Street within the borough limits and that street extended constituting a part of the State Highway system (Route No. 5). To require the building of a new bridge without reference to this State highway and street improvement would be unwise and possibly improvident, and the Commission is of the opinion that it should make no order requiring a new structure at present. In the meantime, however, it is a matter of necessity, involving public safety, that some provision be made for the maintenance and repair of the present bridge. This presents a subject clearly within the jurisdiction of the Commission, and in view of the disclaimer on the part of the municipality, the railroad company and the street railway company, it becomes necessary for this Commission to determine upon whom rests the duty.

In the first place this bridge constitutes a railroad crossing under the Public Service Company Law. Under that law the Commission is charged with great responsibility in order that the safety of the public may be assured. That responsibility extends to the protection of those using the bridge as pedestrians, vehicular travelers or street car passengers as well as of those persons, employes or passengers who travel along the railroad tracks. We are of the opinion that the Public Service Company Law has clothed the Commission with power to make that responsibility effective. The jurisdiction of the Commission over the abolition, alteration or relocation of existing crossings is complete and exclusive: *City of Erie vs. Public Service Commission*, 74 Pa. Super. Ct. 265. It would seem necessarily to follow that it has the lesser power to require these crossings to be kept

in a safe condition: Pittsburgh and Lake Erie Railroad Company vs. Public Service Commission, ————Pa. Super. ————(not yet reported); Borough of Franklin vs. Public Service Commission, 74 Pa. Super. 294. A long line of authorities has fully established that where, as in this case, the construction of a railroad necessitated the building of a bridge across it, the railroad company is not only responsible for the bridge construction but for its upkeep: Hayes vs. Gallagher, 72 Pa. 136; Conshohocken Railroad Company vs. Pennsylvania Railroad Company, 15 Pa. C. C. 445; Pennsylvania Railroad vs. Borough of Irwin, 85 Pa. 336. We should note, therefore, that there is a legal and primary obligation on the part of the Erie and Wyoming Valley Railroad Company, and now the Erie Railroad Company, to keep the bridge in a safe condition for public travel by proper maintenance and repair.

An agreement with the supervisors of Lackawanna Township was offered in evidence. There was considerable doubt whether its execution was properly established by competent testimony. It purported to release the Erie and Wyoming Valley Railroad Company from all obligations as to maintenance of this bridge, and it provided that a portion of the expense should be borne by the Scranton Railway Company. Without determining the question of the powers of the township supervisors to make such an agreement, or whether there was sufficient proof of its execution, by the recent case of Pittsburgh and Lake Erie Railroad Company vs. Public Service Commission, decided December 13, 1920, *supra*, we are advised: "Appellant also contends that it is exempt from liability to repair the bridge by its contract with the borough. At this state of the proceedings, we need only suggest that such contracts are generally held to have been made subject to the implied term that the lawful exercise of the police power might take place at any time and might require that the railroad company then be called upon to maintain the bridge notwithstanding the borough's agreement to do so: see *R. R. Co., vs. Bristol*, 151 U. S. 556; *N. P. R. Co. vs. Duluth*, 208 U. S. 583; *C. M. & St. R. R. Co. vs. Minneapolis*, 232 U. S. 430; *M. P. R. Co. vs. Omaha*, 235 U. S. 121; *D. & R. G. R. Co. vs. Denver*, 250 U. S. 241; *N. P. R. Co. vs. Puget Sound, etc., R. Co.*, 250 U. S. 332."

It clearly appears by the evidence that the occupancy and use of this bridge by the Scranton Railway Company has imposed some structural requirements in the way of bridge strengthening and reinforcement beyond that which would ordinarily have been demanded and beyond what was necessary when the bridge was originally constructed. Under all the circumstances of the case, this Commission is of the opinion that the primary obligation of keeping this bridge in repair within the right of way lines of the railroad company rests on the Erie and Wyoming Valley Railroad Company and now its

successor, the Erie Railroad Company. That one-half of the expense thereof within these right of way lines should be borne by the Scranton Railway Company and paid by it on bills properly verified and rendered to it by the Erie Railroad, after submission to and approval by this Commission, and the approaches outside of the right of way lines, including fences and guard rails, should be maintained by the Borough of Moosic. In order to effectuate this finding the Erie Railroad Company will be ordered to make, within thirty days, an engineering study of present upkeep and maintenance requirements and submit same to the Commission. A similar study and report will be required of the Borough of Moosic for such repairs as are necessary to the approaches outside the right of way lines of the railroad company. The Commission will retain jurisdiction for the purpose of making such further order in the premises as may be necessary. In reaching its conclusion with respect to apportionment of maintenance costs, the Commission has not taken into consideration any basis of apportionment of the costs of a new bridge. That matter will be determined if and when the occasion arises and without reference to the present allocation. An order will be entered accordingly.

SUN COMPANY

vs.

THE PENNSYLVANIA RAILROAD COMPANY, PHILADELPHIA & READING RAILWAY COMPANY

COMPLAINT DOCKET No. 3250

Railroads—Freight rates on petroleum—Authorized increase—Application of—Discrimination.

Under Freight Rate Authority No. 2770 authorizing an increase of 25% in freight rates on petroleum in intra-plant, intra-terminal and inter-terminal switching such increase should have been applied only to intra-station movements and not to inter-station movements. The application of the 4.5 cents per hundred pounds on petroleum shipments authorized in Ex Parte 74, 58 I. C. C. 220 upon inter-station movements results in discrimination.