DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

August 21, 1922, to July 1, 1924

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and convenience by giving full rein to the establishment of auto-bus transportation in the wide new fields that have been opened, without impairing or destroying the steam and electric railway serving the public within their established fields.

For the reasons stated the Commission is constrained to refuse this application, and an order will issue accordingly.

MOTOR CLUB OF LACKAWANNA COUNTY

vs.

ERIE RAILROAD COMPANY

COMPLAINT DOCKET NO. 2642

Petition to reopen—New parties to record—Laches—Res adjudicata—Refused.

A proceeding duly heard, submitted, determined and reviewed by appellate courts and remanded for the production of certain specified testimony, will not be reopened generally. This is so especially when reasons assigned are within the knowledge of petitioner who has been represented by counsel at all phases of this proceeding.

H. W. Mumford for Complainant.
Duane E. Minard for Respondent.
John R. Wilson for Borough of Elmhurst.
H. L. Taylor for County of Lackawanna.

REPORT BY THE COMMISSION, *February 19, 1923:*

By the report and order of the Commission of August 10, 1920, the crossing at grade involved in this proceeding was ordered abolished in accordance with plans approved, and the cost of the elimination was apportioned among the parties interested as they appear of record. On appeal by respondent this action of the Commission was affirmed by the Superior Court, 76 Pa. Superior Court, 170, and on further appeal the judgment of that tribunal was affirmed by the Supreme Court, 271 Pa. 409.

On January 10, 1923, the Erie Railroad Company, respondent, by its counsel, filed a petition wherein it prays for a further hearing for reasons therein set forth. The answer of complainant avers, inter alia, that the matters now sought to be inquired into are res adjudicata, and prays for the dismissal of the petition.

The first of the four reasons assigned is that the railroad and appurtenances at the locus in quo, as well as that portion of the eleven hundred feet of track to be relocated upon land appropriated by the Commission, is owned and was built by the Erie & Wyoming Valley Railroad Company, incorporated November 6, 1882, under the general railroad laws of this Commonwealth; that none of the Commission's orders is binding upon that company for the reason that it is not and has not been made a party of record, and that no provision has been made for conveying to that company the title to the relocated right-of-way appropriated by the Commission in the name of and now vested in the Commonwealth. On these averments the Erie Railroad Company asks that the Erie & Wyoming Valley Railroad Company be made a party to the proceeding and required to answer.

In our opinion, a sufficient reply to this contention, made at so late a day, is that the petitioning company was represented by able counsel at every step of these proceedings; that it fully participated in the hearings and in argument before the Commission and on appeals; that our appellate courts have held that the action of the Commission with respect to the relocation of the right-of-way was done with the consent and approval of petitioner; and that at no time prior to the filing of this petition had respondent asserted or even intimated that the railroad at the point in question was owned by a company other than it, but on the contrary had given every indication of ownership. Undoubtedly some corporate relationship exists between the Erie Railroad Company and the Erie & Wyoming Valley Railroad Company, but petitioner has not disclosed what this is, although it seeks to have the latter made a party of record.

To have avoided the laches which it has manifested, and to have availed itself of any benefits which might flow from the fact which it now for the first time asserts and of which it must have had full knowledge from the beginning, petitioner should have sought to have had the Erie & Wyoming Railroad Company made a party of record while this phase of the proceeding was within the power and control of the Commission, and not after its findings, conclusions and orders had become finalties by the judgments of the Superior and Supreme Courts.

The remaining reasons in the petition can be briefly disposed of. The second, a suggestion that another and less expensive method of elimination than the one approved should be adopted, cannot be sustained, as the plans have been reviewed and passed upon by the ap

pellate tribunals, and the Commission is still of the opinion that they are the just, reasonable and proper ones. Nor is there merit in the third reason that the cost of abolition should have been apportioned upon a percentage basis, as the Supreme Court has specifically held in this case that the law does not require such an allocation. The fourth reason alleges that the sitting Commissioner erred in not permitting respondent at a hearing held on November 2, 1922, to show its present financial inability to respond to the order of the Commission, but this reason is likewise without merit inasmuch as that hearing was held, pursuant to the opinion of the Supreme Court, for the specific purpose of obtaining the correct description of properties to be taken, injured or destroyed in connection with the abolition.

We find that none of the reasons assigned by petitioner is persuasive or convincing. Accordingly, the petition will be refused and respondent will be directed to complete the work which it has been ordered to do, on or before September 1, 1923. An order will issue in accordance herewith.

INDIANA STATE NORMAL SCHOOL

vs.

CLYMER WATER COMPANY

COMPLAINT DOCKET No. 5262

Engineering conference—Department of Health requirements—Quality of water—Chemical treatment—Under all the evidence complaint dismissed.

John A. H. Keith, Principal of School, for Complainant.
D. B. Taylor for Respondent.

REPORT BY THE COMMISSION, *February 19, 1923:*

The Indiana State Normal School is a large consumer of water taken from the respondent company and has filed this complaint alleging that the water is unsuitable for drinking purposes because of its sour taste; that it is unfit for cooking purposes because a red scum is formed when it is boiled; also that a deposit that is sticky