

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

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sub-stations across the property and facilities of the Westside Electric Street Railway Company has been affirmatively determined by the Court of Common Pleas of Washington County, a Court of competent jurisdiction.

We are of the opinion that it is incumbent upon us to follow this determination until it has been reversed by an appellate court and, therefore, find and determine that under the Act of 1921, the West Penn Power Company has power and authority to exercise the right of eminent domain for the purpose and manner as set forth in the petition of said company, and that the service, to be furnished by said Company through the exercise of said power of eminent domain is necessary and proper for the service, accommodation, convenience and safety of the public.

An order will therefore issue refusing the petition of the Westside Electric Street Railway Company to dismiss the application and approving the application.

DEPARTMENT OF HIGHWAYS

vs.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, COUNTY OF NORTHUMBERLAND, TOWNSHIP OF UPPER MT. BETHEL, BOROUGH OF PORTLAND

COMPLAINT DOCKET No. 7083

Grade crossings—Railroads—Elimination—Costs.

The Commission found a grade crossing over a state highway to be dangerous and ordered its elimination by the construction of an underpass, and allocated the cost and allotted the work among the respective parties.

John L. Shelley, Jr. for the Department of Highways.

G. W. Morgan for The Delaware, Lackawanna & Western Railroad Co.

Albert F. Kahn for the County of Northampton.

Everett Kent for the Borough of Portland.

REPORT BY THE COMMISSION, *March 8, 1927, as modified April 5, 1927:*

State Highway Route No. 517 extends southwardly from the Borough of Portland in Northampton County, a distance of about two miles, to a

bridge over the Delaware River, and crosses at grade the north leg of the "Y" track of the Delaware, Lackawanna and Western Railroad Company at a point in the borough 800 feet north of its southern boundary. Approximately 500 feet south of this crossing the highway also crosses at grade the south leg of the "Y" track. This complaint alleges that the crossing over the south leg of respondent's track is dangerous and that it should be abolished.

This state highway is an important artery of travel and sustains heavy traffic during the summer season, connecting with the Lackawanna Trail and principal state highways of New Jersey. The improvement of this route with permanent concrete surfacing is contemplated by the Department during the present year.

The testimony submitted establishes the dangerous character of the crossing complained of, on account of the number and method of operating trains, the grade of the railroad, the limited views and the relative direction of the highway and track. The testimony also shows that train movements over the north leg of the track are infrequent and clear views of the track can be had from the approaches. Both crossings are protected by flashing-light and bell signals. The crossing over the north leg was not considered so dangerous as to warrant the expense of its elimination and was therefore not complained against.

A plan was submitted by the Department of Highways at the hearing of January 5, 1927. It provides for the elimination of the crossing by depressing the highway approximately 17 feet, elevating the track of respondent 1.17 feet and the construction of a subway at the location of the existing crossing. The bridge is of the through plate girder type and has a width of 29 feet between abutments. The new subway will have a clear roadway width of 24 feet and a 5-foot sidewalk along the west side. The minimum vertical clearance over the roadway will be 14 feet. The grades of the approaches will not exceed 4 per cent.

The total construction cost of the improvement is estimated by the Department of Highways at \$55,898.15, exclusive of property damages. The respondent railroad's total estimate of construction cost is \$60,373.13,—the difference in the two estimates being \$4,474.98. However, the railroad has included certain items in its estimate which have not been considered by the Department of Highways, i. e., charges for work train, transportation of freight, work equipment rental and interest during construction. From a study of the estimates the Commission is of the opinion that unit costs and items of engineering, and contingencies, will adequately provide for all incidental expenditures, and considers that \$55,898.15 represents the fair estimate for construction. The estimate is divided into the following principal items: railroad bridge, \$37,840; approaches, \$17,233.15; elevating track, \$825. Two tracts of land will be required for the improvement and damages therefor are estimated at \$700, thus making the total over-all estimate, \$56,598.15.

From a consideration of the record in this case the Commission finds and determines:

1. That the crossing complained of is dangerous and its abolition necessary for the safety, accommodation and convenience of the public; therefore, the complaint will be sustained.

2. That said abolition shall be made in accordance with the plan prepared by the Department of Highways and marked "Complainant's Exhibit No. 1" at the hearing of January 5, 1927, which said plan is hereby approved, attached hereto and made part hereof.

3. That the Delaware, Lackawanna and Western Railroad Company, within sixty (60) days from the date of service hereof, shall submit to this Commission for approval and to the parties of record for examination detailed plans of the work required to be done by said railroad company.

4. That all property necessary for the improvement, together with all buildings and structures thereon, will be taken and appropriated for the purpose of the improvement; detailed descriptions thereof with the names and addresses of the reputed owners being recited at length in the order attached to and made part of this report.

5. That the Delaware, Lackawanna and Western Railroad Company shall do all work and furnish all materials necessary to construct the substructure and superstructure of the bridge, including excavation of the highway to subgrade within the limits of the structure, and, in addition thereto, shall furnish all materials and do all work necessary to elevate its "Y" track, all in accordance with and as shown on the approved plan; the estimated cost of this work being \$38,665.

6. That, in addition to furnishing the materials and doing the work herein ordered to be done by said Delaware, Lackawanna and Western Railroad Company, said company shall pay any money to which it may be entitled as compensation for damage for any of its property taken, injured or destroyed by reason of the improvement.

7. That the Department of Highways shall furnish all materials and do all work necessary to construct the approaches to the subway, including roadway and sidewalk paving on the approaches and within the limits of the subway, and install all necessary drainage facilities, all in accordance with the approved plan; the estimated cost of this work being \$17,233.

8. That all of the work herein ordered to be done shall be fully completed by the respective parties on or before December 31, 1927.

9. That the Department of Highways shall pay to the Delaware, Lackawanna and Western Railroad Company, when and as certified by The Public Service Commission, the sum of Fifteen hundred dollars (\$1500) to apply on the cost of the materials to be furnished and work to be done by said railroad company.

10. That the County of Northampton shall pay to the Delaware, Lackawanna and Western Railroad Company, when and as certified by The Public Service Commission, the sum of Eleven thousand dollars (\$11,000) to apply on the cost of the materials to be furnished and work to be done by said railroad company.

11. That the Borough of Portland shall pay to the Delaware, Lackawanna and Western Railroad Company, when and as certified by The Public Service Commission, the sum of Five hundred dollars (\$500) to apply on the cost of the materials to be furnished and work to be done by said railroad company.

12. That the Township of Upper Mt. Bethel shall pay to the Delaware, Lackawanna and Western Railroad Company, when and as certified by The Public Service Commission, the sum of Five hundred dollars (\$500), to apply on the cost of the materials to be furnished and work to be done by said railroad company.

13. That all compensation for damages due to the owners of adjacent property taken, injured or destroyed, in the execution of this improvement, exclusive of compensation due for damage to respondent railroad company for any of its property taken, injured or destroyed by reason of this improvement, shall be paid by the Borough of Portland.

14. That any relocation, changes in, or removal of any adjacent structures, equipment or other facilities of any public service company, which may be required as incidental to the execution of the improvement herein ordered, shall be made by said public service company at its own expense.

15. That, upon completion of the improvement, the Delaware, Lackawanna and Western Railroad Company shall maintain the substructure and superstructure of the subway; the Borough of Portland shall maintain the north approach and the portion of the south approach to the new subway which lies within the municipal limits of the said borough, and in addition all drainage facilities; and the Department of Highways shall maintain the portion of the south approach within the municipal limits of Upper Mt. Bethel Township.

An order will issue in accordance with these findings.

APPLICATION OF PLAIN GROVE TOWNSHIP LAWRENCE POWER COMPANY for approval of its incorporation and the beginning of the exercise of the rights, powers and franchises granted thereby.

APPLICATION DOCKET No. 15984

Electric companies—Beginning of exercise of power—Approval of.

The Commission approved the beginning by the applicant company of the exercise of the powers granted by its charter upon evidence of the public need therefore and that the applicant was a proper agency to render it.

Hause, Evans & Baker by Berne H. Evans for the Applicant.