

DECISIONS OF

# The Public Service Commission

OF THE

## COMMONWEALTH OF PENNSYLVANIA

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September 10, 1929 to May 11, 1931

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VOLUME 10



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port, it being the intent and purpose of the limitation and restriction to confine the intrastate rights to the transportation of persons originating at points between Williamsport and New York-Pennsylvania State Line to points on route south of Williamsport and the transportation of persons from points on route south of Williamsport to points on route north of Williamsport.

(b) On route Sharon to Clearfield, no right or privilege to transport persons between Sharon and Mercer, Mercer and Franklin, Mercer and Oil City and Franklin and Cranberry.

The Commission further finds and determines that the applicant has failed to establish that the proposed intrastate service between DuBois and Kane, DuBois and Ridgway and Brockway and Brookville, is necessary for the service, accommodation and convenience of the public. Orders, therefore, will issue in accordance with said findings and determinations.

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## DEPARTMENT OF HIGHWAYS

v.

ERIE RAILROAD COMPANY, NEW YORK, ONTARIO AND  
WESTERN RAILWAY COMPANY, SCRANTON-SPRING  
BROOK WATER SERVICE COMPANY, COUNTY  
OF SUSQUEHANNA and TOWNSHIP OF  
CLIFFORD

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COMPLAINT DOCKET No. 8476

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*Practice—Crossing complaints—Parties concerned—Public Service Company Law, Article V, Sec. 12—Water company—Ownership of land to be affected.*

A public service company which owns land which may be affected by a crossing improvement but whose service and facilities are not otherwise involved, is not a party "concerned" within the meaning of the provisions of the Act, and is not properly to be regarded as a party to the proceeding although entitled as reputed owner of property to be appropriated to notice of the proposed condemnation.

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*J. L. Shelley, Jr., for Department of Highways.*

*Hause, Evans & Baker for Scranton-Spring Brook Water Service Company.*

*Grover R. James for Erie Railroad Company.*

*C. L. Andrus for New York, Ontario and Western Railway Company.*



PRELIMINARY REPORT AND ORDER BY THE COMMISSION, *December 22, 1930:*

This matter comes before the Commission at this time upon the complaint of the Department of Highways, alleging that the crossing at grade of State Highway Route No. 296, over tracks of the Erie Railroad Company at a point about one mile north of the Borough of Forest City, Clifford Township, Susquehanna County, is dangerous and its elimination necessary, and the answer thereto of the Scranton-Spring Brook Water Service Company in the nature of a petition to dismiss as to it. The answer of the Department of Highways to the petition to dismiss indicates that the company is made a party solely because it is the owner of certain land over which the approach to the proposed bridge would be constructed. No interference with any facilities of the company is contemplated.

Article V, Section 12, of the Public Service Company Law, which defines the powers of the Commission in regard to the abolition of crossings at grade, in the interest of public safety, provides that the Commission may allocate the cost thereof among the public service companies and municipal corporations concerned. It is also provided that where the general improvement requires as incidental thereto a relocation, change in, or removal of any adjacent structures, equipment or other facilities of a public service company, the company shall make the relocation, change or removal at its own expense.

The averments of record do not indicate that the water company has any interest in the elimination of the crossing involved, or that it has any facilities which may be affected by any project of elimination which might be adopted. Its only interest in the entire proceeding, which would appear from the averments, is that of an owner of property. Conceding that as such it is entitled to the usual public notice of the filing of the complaint and of the consideration of the elimination of the crossing in a manner which may affect its property, nothing appears which would indicate that the company should be made a party respondent any more than any other owner of property in the vicinity.

In the opinion of the Commission a public service company, which owns land which may be affected by a crossing improvement but whose service and facilities are not otherwise involved, is not a party "concerned" within the meaning of the provisions of the Act, and is not properly to be regarded as a party to the proceeding, although entitled as reputed owner of property to be appropriated to notice of the proposed condemnation. The same principle applies to all owners of property whatever their character, whether individuals or corporation and whether engaged in the public service or not; **THEREFORE,**

NOW, to-wit, December 22, 1930, IT IS ORDERED: That the complaint of the Department of Highways of the Commonwealth of Pennsylvania be and is hereby dismissed as to the Scranton-Spring Brook Water Service Company.

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BOROUGH OF HONESDALE

v.

HONESDALE CONSOLIDATED WATER COMPANY

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COMPLAINT DOCKET NOS. 7522 AND 7523

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*Rates—Water company—Valuation—Reproduction cost—Fair value—Operating expenses—Return.*

Upon a reproduction cost new less accrued depreciation of \$301,100 the Commission found the fair rate making value of respondent water company's property to be \$295,000 upon which a return of 7% was allowed in addition to operating expenses of \$14,000 and annual depreciation of \$2,600. The company was ordered to reduce its domestic rates so that its gross annual revenue would not exceed the allowable return as found.

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*Greene & Male, A. E. Swoyer, M. E. Simons and A. H. Hull for Complainants.*

*A. G. Rutherford and Berne H. Evans for Respondent.*

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REPORT AND ORDER BY THE COMMISSION, *January 5, 1931:*

These complaints raise the issue of the reasonableness of the rates of the Honesdale Consolidated Water Company contained in its tariff P. S. C. Pa. No. 3, effective January 1, 1928. Complaint No. 7522 concerns the rates for public fire protection, and Complaint No. 7523 covers the rates for domestic and other services. The complaints having been filed prior to the effective date of the tariff, the burden of sustaining the rates is upon respondent.

The Honesdale Consolidated Water Company is engaged in the business of public water supply service in the Borough of Honesdale, Wayne County, and vicinity. It secures its supply of water from three mountain lakes, referred to as the Glass Factory Ponds, located about six miles from the borough, and the water is brought by gravity to two reservoirs with a capacity of 750,000 gallons. Respondent's inventory



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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, be made by said public service company at its own expense.

IT IS FURTHER ORDERED: That, effective upon the completion of the improvement herein ordered, that portion of the said existing public road leading from Mount Carmel to Locust Summit, between a point about 32 feet southwardly measured along the center line of said existing public road from the center of the bridge carrying the track of the Merriam Colliery Branch of the Reading Company over the grade of said road, and a point in the north side of the public road leading from Locust Dale to Locust Gap, which lies outside of the limits of the highway hereinabove laid out, established and opened to public use, be and the same is hereby vacated and closed to public use.

IT IS FURTHER ORDERED: That, upon the completion of the improvement herein ordered, the Reading Company thereafter maintain, at its own expense, the substructure and superstructure of the bridge, exclusive of the roadway paving thereon.

IT IS FURTHER ORDERED: That, upon the completion of the improvement herein ordered, the Township of Mount Carmel thereafter maintain the remainder of the improvement including the roadway paving on the bridge.

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## DEPARTMENT OF HIGHWAYS

v.

ERIE RAILROAD COMPANY, NEW YORK, ONTARIO AND  
WESTERN RAILWAY COMPANY, COUNTY OF SUSQUE-  
HANNA AND TOWNSHIP OF CLIFFORD

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COMPLAINT DOCKET No. 8476

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*Crossings—Dangerous condition—Elimination—Plan—Costs.*

The Commission, finding a grade crossing dangerous, ordered its elimination by construction of a viaduct over railroad tracks and a river, and apportioned the costs.

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*J. L. Shelley, Jr., for Complainant.*

*Grover R. James by J. P. Canney for Erie Railroad Company.*

*Douglass D. Storey for Scranton-Spring Brook Water Service Company.*



*C. L. Andrus* for New York, Ontario and Western Railway Company.  
*G. E. Gardner* for County of Susquehanna.

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REPORT AND ORDER BY THE COMMISSION, *May 26, 1931*:

In this complaint it is alleged that the grade crossing located in Clifford Township, Susquehanna County, about one mile north of Forest City, where State Highway Route No. 296, crosses the two main tracks of the Erie Railroad Company is dangerous, and should be eliminated for the safety, accommodation and convenience of the public. Testimony submitted at the hearing shows that this grade crossing is dangerous on account of the grade and alignment of the railroad and highway approaches and the restricted views of trains. Accidents, some of which have been fatal, have occurred at this crossing.

A plan submitted by the Department of Highways and marked Department of Highways' Exhibit No. 1, provides for the elimination of the crossing by the relocation of the state highway from a point about 600 feet south of the existing crossing to a point about 850 feet north of it, and the construction of a concrete and steel viaduct to carry this relocated highway over the grade of the tracks of the railroad company and over the Lackawanna River.

This viaduct as proposed will be over 500 feet in length, and will carry a 25 foot roadway and provide a vertical clearance of 22 feet over the tracks of the railroad company. The span over the existing tracks will be of the through plate girder type and 70 feet in length, and the adjacent spans are designed so as to permit the construction of an additional future track along each side of the existing tracks. The construction of that portion of the viaduct over the river will eliminate the necessity of replacing the existing weakened and inadequate bridge carrying the state highway over this stream. The cost of improvements in accordance with this plan, which is generally satisfactory to all parties of record, is estimated at \$176,759. The improvement as proposed will require the appropriation of seven parcels of property, damages for which will be nominal.

The matters and things involved having been fully considered;  
**THEREFORE,**

**NOW, to-wit, May 26, 1931, IT IS ORDERED:** That the complaint be and is hereby sustained.

**IT IS FURTHER ORDERED:** That, effective upon the completion of the improvement herein ordered, the crossing at grade of State Highway Route No. 296 over the tracks of the Erie Railroad Company in Clifford Township, Susquehanna County, about one mile north of Forest City, be and is hereby eliminated in accordance with the gen-

eral plan submitted at the hearing of May 14, 1931, and marked Department of Highways' Exhibit No. 1, which said plan is hereby adopted, attached hereto and made part hereof.

IT IS FURTHER ORDERED: That the Department of Highways, within ninety (90) days from date of service hereof, submit to the Commission for approval, and to the parties of record for examination, detailed plans of the viaduct herein ordered to be constructed by it.

IT IS FURTHER ORDERED: That the following described properties, together with all buildings or structures, or parts thereof, of any description or use whatever, erected or located thereon, be and are hereby severally taken and appropriated for the purpose of this improvement, in accordance with the approved general plan, to-wit: *(Property descriptions are here omitted.)*

IT IS FURTHER ORDERED: That the following described highway be and is hereby laid out, established and opened:

A new highway beginning at a point in the existing state highway at Survey Station 536+50 and extending thence in a general northerly direction a distance of about 1562 feet to a junction with the existing state highway at or about Survey Station 522+12.29; alignment, width and grade to be as shown on the approved general plan.

IT IS FURTHER ORDERED: That the Department of Highways furnish all materials and do all work necessary to complete the improvement in accordance with the approved plan, said work being estimated to cost \$176,759.

IT IS FURTHER ORDERED: That the Erie Railroad Company and the Department of Highways cooperate in the construction of the span over said company's tracks, so that the operation of its facilities shall not be interfered with or endangered.

IT IS FURTHER ORDERED: That the Department of Highways provide, and maintain any detour necessary for highway traffic during the construction period.

IT IS FURTHER ORDERED: That all work herein ordered to be done be fully completed on or before August 1, 1932.

IT IS FURTHER ORDERED: That the sum of \$14,700 be and is hereby appropriated by The Public Service Commission of the Commonwealth of Pennsylvania, out of funds specifically appropriated to it for the abolition or reconstruction of crossings at, above or below grade by the Act of May 1, 1929, Appropriation Act 45-A; said sum to be paid to the Department of Highways, when and as certified by The Public Service Commission, to apply on the cost of materials fur-



nished and work done by said Department of Highways, in accordance with this order.

**IT IS FURTHER ORDERED:** That the County of Susquehanna, when and as certified by The Public Service Commission, pay to the Department of Highways a sum or sums equal to \$5,000 to apply on the cost of materials furnished and work done by said Department of Highways in accordance with this order.

**IT IS FURTHER ORDERED:** That the Erie Railroad Company, when and as certified by The Public Service Commission, pay to the Department of Highways a sum or sums equal to 46 per cent of the actual cost of materials furnished and work done by said Department of Highways in excess of the specified sums hereinbefore ordered paid to said Department of Highways.

**IT IS FURTHER ORDERED:** That the Erie Railroad Company pay any money to which it may be entitled as compensation for any of its property taken, injured or destroyed by reason of this improvement.

**IT IS FURTHER ORDERED:** That the County of Susquehanna pay all compensation for damages due to the owners of property taken, injured or destroyed in the execution of this improvement, exclusive of compensation to the respondent railroad company for any of its property taken, injured or destroyed.

**IT IS FURTHER ORDERED:** 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, be made by said public service company at its own expense.

**IT IS FURTHER ORDERED:** That, upon the completion of the improvement, those portions of the existing state highway between the westerly right-of-way line of the Erie Railroad Company and Survey Station 549, which lie beyond the right-of-way lines of the new state highway, as shown on the approved plan, be and are hereby vacated.

**IT IS FURTHER ORDERED:** That, upon the completion of the improvement, the Erie Railroad Company effectively barricade to public travel the crossing hereinabove vacated, said barricades to be thereafter maintained by said Erie Railroad Company.

**IT IS FURTHER ORDERED:** That, upon the completion of the improvement, the Erie Railroad Company maintain the substructure and superstructure of the through plate girder span over its tracks, including the supporting piers; and the Department of Highways maintain the balance of the improvement.