

Original in the Public Service Commission

DECISIONS OF
The Public Service Commission
OF THE
COMMONWEALTH OF PENNSYLVANIA

VOLUME 14



HARRISBURG, PENNSYLVANIA
1937

rates made on the basis of 25% of the corresponding first-class rates, minimum 36,000 pounds.

The Commission further finds and determines that the exclusion of walnut and cherry lumber from the list of lumber articles would be unreasonable and unduly prejudicial to shippers of those woods and that such exclusion from the list of lumber articles has not been justified; **THEREFORE,**

NOW, to wit, February 24, 1936, IT IS ORDERED: That the respondents herein be and are hereby required to cancel the suspended tariffs in this proceeding, on or before April 15, 1936, upon notice to this Commission and the public by not less than one day's filing and posting according to law.

IT IS FURTHER ORDERED: That the above findings be without prejudice to the establishment of rates on lumber, including the articles named in respondents' proposed lumber list, and on cherry and walnut lumber, on the basis of 25% of the first-class rates from and to the same points, minimum 36,000 pounds.

IT IS FURTHER ORDERED: That this investigation be and is hereby terminated.

DEPARTMENT OF HIGHWAYS

v.

ERIE RAILROAD COMPANY, et al.

COMPLAINT DOCKET No. 11031

Crossings—At grade—Abolition—Construction of a bridge—Dangerous conditions—Allocation of costs.

On complaint by the Department of Highways the Commission ordered the abolition of a crossing at grade, and the construction of a bridge carrying a state highway as reconstructed over the tracks of a railroad, in accordance with approved plans, where the testimony showed that dangerous conditions existed, due to a number of trains, volume of traffic, alignment of approaches, and obstructed view of approaching trains from the crossing. The improvement required the appropriation of a specified amount of private property. Costs were allocated, and maintenance and safety devices provided.

Forrest Mercer for the Complainant.

J. P. Canny for the Erie Railroad Company.

REPORT AND ORDER BY THE COMMISSION, *February, 24 1936:*

At a point in Jefferson Township, Lackawanna County, near the Village of Drinker, State Highway Route No. 335, which leads from Scranton to a point in Pennsylvania on the west side of the Delaware River opposite Narrowsburg, New York, is crossed at grade by two tracks of the Erie Railroad Company. This complaint alleges that this grade crossing is dangerous and should be eliminated for the safety, accommodation and convenience of the public.

The testimony presented at the hearing in this proceeding shows that the crossing is dangerous on account of the number of trains, the volume of highway traffic, the alignment of the highway approaches, and the restricted views of approaching trains from points on the highway in the vicinity of the crossing.

A plan of proposed improvements, prepared by the Department of highways and placed in evidence as complainant's Exhibit No. 1, provides for the elimination of the crossing by the construction of a portion of a new public highway leading from the existing state highway at a point about 5400 feet southwest of the crossing and extending thence generally in a northeasterly direction a distance of approximately 6700 feet to a junction with the state highway at a point about 1400 feet northeast of the crossing. A new bridge to be constructed as part of the plan would carry this new highway over the grade of the tracks at a point about 1650 feet southwest of the crossing. The plan shows this new highway graded for a width of 36 feet and paved with concrete for a width of 20 feet. The bridge as proposed consists of a six-span structure having a total length of 258 feet, carrying a 24-foot roadway over the tracks, with a minimum vertical clearance of 22 feet. The estimated construction cost of the improvement totalling \$114,467.15 includes \$69,370.81 for the construction of the new highway, \$42,883.34 as the cost of the new bridge and 2,213.00 for flagman services, alteration of overhead wire lines on the right of way of the railroad company, insurance, and other items. This improvement involves the appropriation of private property, damages for which have been estimated at \$1,400.

The record shows that the Department of Highways is willing to assume the construction cost of the improvement provided Federal funds appropriated under the Emergency Relief Appropriation Act of 1935 are allocated to said Department of Highways for this project, and provided further that the plan of the improvement is approved by the Bureau of Public Roads of the

United States Department of Agriculture. Under regulations governing the use of these Federal funds, such funds can be used to defray the cost of only that portion of the improvement located between points on either side of the crossing 1500 feet from the nearest track, said cost in this case being estimated at \$80,819.05, other than land damages. The balance of the construction cost estimated at \$33,648.10 will be paid out of funds of the Department of Highways.

The parties of record offered no objection at the hearing to the improvement as proposed, and the testimony shows that the Erie Railroad Company and the County of Lackawanna have each agreed to assume 50 per cent of the property damages, resulting from the elimination of the grade crossing as shown on the plan prepared by the Department of Highways.

From a consideration of all the evidence, the Commission finds and determines that the crossing of State Highway Route No. 335 at grade across the two tracks of the Erie Railroad Company at a point in Jefferson Township, Lackawanna County, near the Village of Drinker, is dangerous and should be eliminated for the safety, accommodation and convenience of the public; **THEREFORE,**

NOW, to wit, February 24, 1936, IT IS ORDERED: That the complaint be and is hereby sustained.

IT IS FURTHER ORDERED: That the crossing of State Highway Route No. 335 at grade across the two tracks of the Erie Railroad Company at a point in Jefferson Township, Lackawanna County, near the Village of Drinker, be eliminated in accordance with the plan prepared by the Department of Highways and submitted at the hearing of December 20, 1935, and marked Complainant's Exhibit No. 1, which said plan is attached hereto, made part hereof and hereby approved.

IT IS FURTHER ORDERED: That the Department of Highways, within 60 days of date of service hereof, submit to this Commission for approval, and to the parties of record for examination, detail plans of the bridge herein ordered constructed.

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

A road or highway beginning in the existing State Highway Route No. 335 at or about State Highway Survey Station 166-06 and extending thence in a general northeasterly direction a distance of approximately 6700

feet to a junction with said State Highway Route at a point about 1400 feet northeast of the grade crossing; alignment, width and grade to be as shown on the approved plan.

IT IS FURTHER ORDERED: That those portions of the properties of John Janus, Moscow, Penna., R. D. No. 2, reputed owner, of the Pittston Coal Company, Mill and Smith streets, Dunmore, Penna., reputed owner, and of George F. Evans, Moscow, Penna., R. D. No. 2, reputed owner, as are shown between the lines of the improvement on the approved plan, Complainant's Exhibit No. 1, be and are hereby appropriated for the purposes of this improvement, together with all buildings and structures, or parts thereof of any descriptions or use whatsoever, erected or located thereon.

IT IS FURTHER ORDERED: That the Erie Railroad Company furnished all materials and do all work necessary to make any alterations to overhead wire lines on its right of way required on account of the improvement.

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 and materials being estimated to cost \$112,254.15.

IT IS FURTHER ORDERED: That all work herein ordered to be done be fully completed on or before December 31, 1936.

IT IS FURTHER ORDERED: That any relocation, changes in, or removal of any adjacent structures, equipment or any facilities of any public service company which may be required as incidental to the execution of this improvement, be made by said public service company at its own expense in such manner as will not interfere with the construction of the improvement.

IT IS FURTHER ORDERED: That the Department of Highways cooperate with the Erie Railroad Company so that in the construction of the span over the railroad company's tracks the operation of the railroad company's facilities will not be endangered or unnecessarily impeded.

IT IS FURTHER ORDERED: That, during the time the bridge is being constructed over the tracks, the Erie Railroad Company cooperate with the Department of Highways in the construction of the bridge, and operate its trains in the vicinity of the improvement at reduced speed and under control, and if necessary, maintain watchmen or flagmen to protect its train operation.

IT IS FURTHER ORDERED: That the Department of Highways pay the Erie Railroad Company, when and as certified by the Public Service Commission, a sum or sums of money equal to the actual cost of materials furnished and work performed by said railroad company in accordance with this order, including the cost of watchmen or flagmen services rendered during the time the bridge is being constructed over its tracks, and during the time the railroad company is making alterations to its facilities in accordance with this order, but exclusive of services of watchmen, flagmen, and linemen, required and placed by the railroad company at other periods; said work and materials being estimated at \$2213; the salvage value of materials recovered, or temporarily used, to be deducted from the actual cost of that portion of the work to be performed and materials to be furnished by the railroad company at the expense of the Department of Highways.

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

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

IT IS FURTHER ORDERED: That the Erie Railroad Company, having agreed so to do, pay the County of Lackawanna, when and as certified by the Public Service Commission, a sum or sums of money equal to 50 per cent of all sums of money which said County of Lackawanna may be required to pay as compensation for damages due to the owners of adjacent property taken, injured or destroyed by reason of this improvement.

IT IS FURTHER ORDERED: That, upon the completion of the improvement herein ordered, the Erie Railroad Company maintain the substructure and superstructure of the new bridge herein ordered constructed, exclusive of the roadway paving thereon, and that the Department of Highways maintain the balance of the improvement including the roadway paving on the bridge.

IT IS FURTHER ORDERED: That, upon the completion of the improvement and its opening to public use, that portion of

the present State Highway Route No. 335, located between a point 15 feet west of the center of the westerly track, and a point 15 feet east of the easterly track at the crossing, be and is hereby vacated.

IT IS FURTHER ORDERED: That, upon the completion of the improvement herein ordered and its opening to public use, the grade crossing of the present State Highway Route No. 335 over the tracks of The New York Central Railroad Company be effectively barricaded to public travel by said Erie Railroad Company, and said barricades be thereafter maintained by said railroad company.

PENNSYLVANIA RAILROAD COMPANY

v.

BOROUGH OF JEANNETTE, et al.

COMPLAINT DOCKET No. 11114

Crossings—Above grade—Repair of a bridge—Dangerous conditions—Allocation of costs—Completion date.

Upon complaint the Commission ordered the repair and restoration of a bridge carrying a borough street over the tracks of a railroad, where the testimony showed that dangerous conditions existed, due to the weakened condition of the structure, the closing of the bridge to traffic causing public inconvenience, and the necessity of repairs for the safety of the travelling public. Allocation of costs was reserved for a later decision. A completion date was set.

A. M. Donnan for Complainant.

Chris K. Walthour for Boro of Jeannette.

Scott Fink for County of Westmoreland.

PRELIMINARY REPORT AND ORDER BY THE COMMISSION, *February 24, 1936:*

This proceeding arises from a complaint filed by The Pennsylvania Railroad Company, alleging that a bridge which carries Seventh Street in the Borough of Jeannette over and above the grade of the main tracks and right of way of The Pennsylvania Railroad Company is in a dangerous condition due to the lack of