

DECISIONS OF

Pennsylvania Public Utility Commission

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THIRD: That applicant install any additional drainage facilities that may become necessary by the removal of the rails of the aforesaid two tracks.

FOURTH: That all work be done at the sole cost and expense of applicant, and that applicant thereafter maintain the paving in the crossing area.

IT IS FURTHER ORDERED: That all work herein ordered be completed in a manner satisfactory to this Commission on or before June 1, 1939.

DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH
OF PENNSYLVANIA

v.

ERIE RAILROAD COMPANY, COUNTY OF LACKAWANNA
AND TOWNSHIP OF JEFFERSON, LACKAWANNA COUNTY

COMPLAINT DOCKET No. 11031

Crossings—Damages—Property Appropriated—Procedure.

Under both the Public Service Company Law of 1913 and the Public Utility Law (Act of May 28, 1937, P. L. 1053, Section 411a) the owner of adjacent property taken, injured or destroyed in the construction, relocation, alteration, protection or abolition of a railroad crossing must first make application to the Commission for a determination of his damages. Under the former law the jurisdiction of the Commission to assess damages was exclusive, but under the Public Utility Law the Commission may of its own motion or upon application of any party in interest, submit to the Court of Common Pleas of the County wherein the property affected is located, the determination of the amount of damages to any property owner due to such condemnation.

Forrest Mercer for the Complainant.

J. P. Canny for Erie Railroad Company.

ORDER

BY THE COMMISSION, February 27, 1939:

This matter is before the Commission upon petition of the County of Lackawanna for modification of the Commission order of February 24, 1936, and answers of the Department of Highways and Trustees of Erie Railroad Company.

On November 18, 1935, the Department of Highways filed a complaint praying the Public Service Commission to declare a grade crossing near the Village of Drinker, Jefferson Township, to be

dangerous and to order such crossing eliminated for the safety, accommodation and convenience of the public. After hearing, the Commission, in an order dated February 24, 1936, determined that the grade crossing should be eliminated. As part of that proceeding, the Commission appropriated a portion of the property of George P. Evans for the purposes of the improvement. It was further ordered that the County of Lackawanna pay all compensation for damages due to the owners of the properties taken by reason of the improvement and that the Erie Railroad Company, having agreed to do so, pay the County of Lackawanna, when and as certified by the Public Service Commission, a sum or sums of money equal to 50% of all sums of money which the County of Lackawanna might be required to pay as compensation due to owners of adjacent properties.

On January 25, 1939, the present petition for modification was filed by the County of Lackawanna. The petition discloses the following facts:

The properties and lands necessary for the improvement have been appropriated and the grade crossing has been eliminated. George P. Evans instituted proceedings in the Court of Common Pleas of Lackawanna County for the recovery of property damages. The proceedings were referred to the Lackawanna County Board of Viewers to award damages and, upon appeal to the Court of Common Pleas of Lackawanna County, a verdict and judgment was entered in favor of George P. Evans in the sum of \$1500 and \$59.10 costs. The County of Lackawanna, on May 24, 1938, paid the judgment, and thereafter made demand upon the Trustees of the Erie Railroad Company which, since the order of February 24, 1936, had filed reorganization proceedings in the District Court of the United States for the Northern District of Ohio. The Trustees have refused to pay the County of Lackawanna the 50% of the amount of damages awarded George P. Evans.

The petition therefore prays the Commission to certify that 50% of the money paid George P. Evans by the County of Lackawanna is required to be paid by the Trustees of the Erie Railroad Company to petitioner. It further prays that, if the respondent refuses to pay the said 50%, the Commission initiate enforcement proceedings in the Court of Common Pleas of Dauphin County, or before such other tribunal as may properly hear the case, to secure the enforcement of such order; and that the Commission amend its prior order so as to require the Trustees of Erie Railroad Company to file a bond to insure the County of Lackawanna that it will receive the 50% the Erie Railroad Company will be required

to reimburse the county upon presently unliquidated claims of other property owners. Answers to the petition, admitting the material averments, have been filed by the Department of Highways and the Trustees of the Erie Railroad Company, who also aver that their proportionate share has not been paid because the railroad is now undergoing reorganization.

The petition does not aver, nor do the files of the Public Utility Commission reveal, any proceeding in which the Commission determined the amount of damages sustained by George P. Evans; nor has any application been filed requesting the Public Utility Commission to submit the determination of the amount of damages to the Court of Common Pleas of Lackawanna County.

The Commission has no knowledge whether or not the Lackawanna County Board of Viewers entertained the petition for determination of damages before or after the effective date of the Public Utility Law, June 1, 1937, as the petition does not aver that date. However, in this proceeding, this is not material, because both The Public Service Company Law of 1913 and the present Public Utility Law require applications for damages to be first filed with the Commission.

Article V, Section 12 of The Public Service Company Law of 1913, (66 PS 573) provided:

“* * * The compensation for damages which the owners of adjacent property, taken, injured, or destroyed, may sustain in the construction, relocation, alteration, or abolition of any such crossing * * * shall, after due notice and hearing, be ascertained and determined by the Commission; * * *”

The jurisdiction of the former Public Service Commission was, therefore, exclusive, and the local Board of Viewers had no jurisdiction to determine the amount of damages. In *Moscato v. City of Erie*, 304 Pa. 373 (1931), the Supreme Court held that the only tribunal authorized to determine the amount of damages suffered by land owners by reason of a grade crossing improvement was the Public Service Commission.

Under the Public Utility Law the application for damages likewise should have been filed with the Public Utility Commission and not in the local county courts. Section 411a (66 PS 1181a) provides that:

“The compensation for damages which the owners of adjacent property taken, injured, or destroyed may sustain in the construction, relocation, alteration, protection, or abolition of any crossing under the provisions of this act, shall, after due notice and hearing, be ascertained and determined by the commission. * * * Provided, however, That the commission may, of its own

motion, or upon application of any party in interest, submit to the court of common pleas of the county wherein the property affected is located, the determination of the amount of damages to any property owner due to such condemnation
* * *.”

Thus, if any party was desirous of having the local county court determine the amount of damages, a petition praying the Commission to submit that determination to the local court should have been filed with the Commission.

As the proper procedure for determining the amount of damages suffered by adjacent property owners in a grade crossing improvement has not been followed in this case, the applicable law requires dismissal of the petition for modification; **THEREFORE,**

NOW, to wit, February 27, 1939, **IT IS ORDERED:** That the petition for modification of the order of February 24, 1936, be and is hereby dismissed.

PETITION OF YORK MOTOR EXPRESS COMPANY

INTERMEDIATE RATE DOCKET No. 54

Rates—Intermediate Rule Section 304 of Public Utility Law—Exceptions—Jurisdiction.

The Commission approved a petition of a motor carrier for exceptions to the intermediate rule of Section 304 of the Public Utility Law in the publication of class and commodity rates where it found the proposed rate to be compensatory, that its approval would save the petitioner from the loss of considerable business and maintain the general plan of its rate structure.

ORDER

BY THE COMMISSION, February 27, 1939:

This petition, filed by York Motor Express Company, is for authority to publish and maintain as exceptions to the intermediate rule of Article III, Section 304 of the Public Utility Law, class and commodity rates for the transportation of general merchandise by motor vehicle between Philadelphia and Reading, via Lancaster, over its authorized circuitous route, which are lower than the established rates at some intermediate points.

The direct route between Philadelphia and Reading is 57 miles, and the authorized circuitous route of the petitioner via Lancaster is 96 miles. The class rates now published by the competing lines