

DECISIONS OF

Pennsylvania Public Utility Commission

VOLUME 21



HARRISBURG, PENNSYLVANIA

1942



(2) That the respondents advise the Commission, at least five (5) days before the date fixed for hearing, the names of any witnesses who testified for the Commission whom the respondents desire to be present for the purpose of cross-examination.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY,
BOROUGH of WINTON and COUNTY OF LACKAWANNA.

COMPLAINT DOCKET No. 12792

Crossings (reconstruction)—Public Safety.

Where the area in the vicinity of a crossing subsided as a result of the mining of coal underlying the surface, rendering the crossing dangerous to the public, the Commission ordered the crossing and approaches be reconstructed and apportioned the costs thereof between the railroad and the borough.

Paul D. Larimer for Pa. Public Utility Commission.

Paul Bedford for New York, Ontario & Western Rwy. Co.

James H. Colleran for Borough of Winton.

Philip V. Mattes for County of Lackawanna.

BY THE COMMISSION, *April 8, 1940*:

Hill Street, in the Borough of Winton, Lackawanna County, extends in a general southerly direction from Main Street to a county bridge over the Lackawanna River, and at a point near its intersection with River Street, crosses at grade the tracks and right of way of New York, Ontario & Western Railway Company.

This proceeding is an investigation on Commission motion for the purpose of determining the character and estimated cost of

the improvements to this crossing, necessary or proper for the service, accommodation, convenience and safety of the public.

The record shows that the area in the vicinity of the crossing has subsided as a result of the mining of anthracite coal underlying the surface; that as the subsidence occurred the railway company raised its tracks, including the crossing; that the highway approaches to the crossing were not properly raised or altered to conform with the altered grade of the railroad tracks and, as a result thereof, Hill Street now ascends on steep grades to the tracks. Testimony shows that the steep grades on the approaches to the crossing obstruct the view of automobile operators approaching the crossing from either side of the tracks, and that the highway approaches to the crossing are rough and unpaved.

The testimony further shows that conditions affecting public safety at the crossing can be materially improved by moving the crossing westwardly to the center of Hill Street, and by raising the approaches on each side of the tracks. The plan submitted of record at the hearing held October 17, 1939, shows the location of the existing crossing, but does not show any method of improving the conditions.

The records shows that the railway company is undergoing reorganization under Section 77 of the Bankruptcy Act and the property is in the possession of and operated by New York, Ontario & Western Railway Company, Frederic E. Lyford, Trustee, under the jurisdiction of the United States District Court for the Southern District of New York. A representative of the railway company testified that the railway company will apply to the Court for permission to pave the crossing at an estimated cost of \$200, providing the borough will raise and improve the highway approaches to conform with the altered crossing at grade.

The president of the borough council submitted testimony tending to show that the borough is in a poor financial condition, and that the Commission should not assess any portion of the cost of the improvement against the borough. The witness further testified that in event the borough recovers any money from the mine owners for damage sustained by the borough in the vicinity of the crossing, the borough will use such money to improve conditions at the crossing.

The highway involved in this proceeding is carried over the Lackawanna River by means of a county bridge located about

125 feet south of the present crossing. The elevation of the top of this bridge is about 14.4 feet below the elevation of the top of the southerly rail of the siding track at the crossing, and will necessitate the construction of a heavy grade on the south approach unless the bridge is raised. However, it appears that considerable improvement can be effected by constructing a fill of about five feet on the southerly approach, and a fill of about three feet on the northerly approach and grading the new highway approaches to a width of 28 feet.

The record shows that the raising of the grade on the highway approaches to the crossing will result in property damages estimated roughly at \$600, but that it will not be necessary for the Commission to appropriate any property for the improvement.

Upon full and careful consideration of the matters and things involved, we find and determine that the crossing at grade, at a point in the Borough of Winton, Lackawanna County, where Hill Street crosses two main tracks and one siding track of New York, Ontario & Western Railway Company, is dangerous, and that the alteration of the existing crossing at grade and the reconstruction of the highway approaches thereto is necessary or proper for the service, accommodation, convenience or safety of the public; **THEREFORE,**

NOW, to wit, April 8, 1940, IT IS ORDERED:

1. That the crossing at grade, in the Borough of Winton, Lackawanna County, where Hill Street crosses two main tracks and one siding track of New York, Ontario & Western Railway Company, Frederic E. Lyford, Trustee, be altered and the highway approaches thereto reconstructed as hereinafter ordered.

2. That New York, Ontario & Western Railway Company, Frederic E. Lyford, Trustee, at its sole cost and expense, furnish all materials and do all work necessary to relocate the present crossing at grade westwardly to the center of Hill Street, and to pave the altered crossing with bituminous or other suitable materials, solid between the rails, between the tracks, and for a distance of at least 24 inches outside of each outside rail for a roadway width of 28 feet measured at right angles to the center line of Hill Street at the crossing.

3. That New York, Ontario & Western Railway Company, Frederic E. Lyford, Trustee, at its sole cost and expense, furnish

all materials and do all work required to make any necessary renewals or replacements of its rails, ties, and other track material, preparatory to the paving of the crossing herein ordered altered.

4. That New York, Ontario & Western Railway Company, Frederic E. Lyford, Trustee, at its sole cost and expense, furnish all materials and do all work necessary to relocate and thereafter maintain the cross-buck railroad crossing warning signs at a proper location along the highway on each side of the crossing.

5. That the Borough of Winton, at its sole cost and expense, furnish all materials and do all work necessary to reconstruct the highway approaches to the altered crossing between points in the existing highway located respectively about 125 feet north of, and about 150 feet south of the altered crossing; the northerly approach to be graded for a width of 28 feet and constructed on a descending grade of about 5.5% from the point of beginning north of the crossing to a point about 15 feet north of the outside rail of the northerly track, and thence on a level grade to the said outside rail; the southerly approach to be graded for a width of 28 feet and constructed on a descending grade of about 2% from the outside rail of the southerly track to a point about 10 feet south thereof, and thence on a descending grade of about 11.5% a distance of about 130 feet to the end of the highway improvement.

6. That the Borough of Winton, at its sole cost and expense, furnish all materials and do all work necessary to provide satisfactory approaches between the altered portion of Hill Street and all borough streets or roads presently intersecting the same.

7. That the Borough of Winton, at its sole cost and expense, install and thereafter maintain adequate drainage facilities to effect proper drainage of the highway at the crossing, herein ordered altered.

8. That the Borough of Winton, at its sole cost and expense, furnish all materials and do all work necessary to install and thereafter maintain a standard advance railroad crossing warning sign at a proper location along the highway on each side of the crossing, herein ordered altered.

9. That any relocation of, changes in or removal of any adjacent structure, equipment or other facilities of any public

utility, located within the limits of any highway, which may be required as incidental to the execution of the improvement herein ordered, be made by said public utility at its sole cost and expense and in such a manner as will not interfere with the construction of the improvement.

10. That any relocation of, changes in or removal of any adjacent structure, equipment or other facilities of any public utility, located beyond the limits of any highway, which may be required as incidental to the execution of this improvement herein ordered, be made by said public utility and in such a manner as will not interfere with the construction of the improvement.

11. That New York, Ontario & Western Railway Company, Frederic E. Lyford, Trustee, 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 the alteration of the crossing in accordance with this order.

12. That the County of Lackawanna pay all compensation for damages due to the owners, exclusive of New York, Ontario & Western Railway Company, Frederic E. Lyford, Trustee, for property taken, injured or destroyed by reason of the alteration of the crossing in accordance with this order.

13. That all wire construction of any public utility over or under the grade of the tracks of the railway company at the crossing at grade, herein ordered altered, be in conformity with General Order No. 13, dated February 27, 1917.

14. That, upon the completion of the improvement herein ordered and its opening to public use, New York, Ontario & Western Railway Company, Frederic E. Lyford, Trustee, at its sole cost and expense, furnish all materials and do all work necessary thereafter to maintain properly the crossing pavement of the crossing, herein ordered altered.

15. That, upon completion of the improvement and its opening to public use, the Borough of Winton, at its sole cost and expense, furnish all materials and do all work necessary thereafter to maintain properly the remainder of the improvement, including the highway approaches to the crossing, herein ordered altered.

16. That all work necessary to complete the improvement, herein ordered, be done in a manner satisfactory to this Commission and be fully completed on or before August 1, 1940.