

DECISIONS OF

# Pennsylvania Public Utility Commission

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1942

The protestants have had a full, complete and fair hearing and were given every opportunity to develop their case. The evidence as presented by all parties has had our most careful consideration and has been exhaustively discussed in our prior order. The petition for rehearing, reconsideration, rescission and stay must be denied; THEREFORE,

NOW, to wit, October 29, 1940, IT IS ORDERED:

1. That the petition of Karns' Transfer, Inc., for rehearing, reconsideration and partial supersedeas be and is hereby denied.

2. That the petition of Hall's Motor Transit Company for interpretation and correction of the order of the Commission is granted, and the order issued at A. 20044, Folder 8, on September 4, 1940, be and is hereby modified as follows:

That no right, power or privilege is granted to transport property from Scranton to points on the route between Wilkes-Barre and Lock Haven via Highway Route 11, Berwick, Bloomsburg, Danville, Northumberland, Highway Route 15, Milton, Highway Route 14, Watsonstown, Montgomery, Muncy, Highway Route 15, Williamsport, Highway Route 220, Lock Haven, and vice versa.

3. That the petition of Reading Transportation Company, et al, for rehearing, reconsideration, rescission and stay be and is hereby denied.

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DEPARTMENT OF HIGHWAYS OF THE  
COMMONWEALTH OF PENNSYLVANIA

v.

THE DELAWARE, LACKAWANNA AND WESTERN RAIL-  
ROAD COMPANY, LEHIGH AND NEW ENGLAND  
RAILROAD COMPANY, COUNTY OF NORTHAMPTON,  
BOROUGH OF PORTLAND AND TOWNSHIP OF  
UPPER MOUNT BETHEL, NORTHAMPTON COUNTY

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COMPLAINT DOCKET No. 11231

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*Appropriation of property—practice and procedure.*

Where private property is appropriated under the Public Utility Law to



effect a crossing improvement, the owners of the property so appropriated must file an application with the Commission for a determination of their damage.

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*Forrest Mercer* and *Thomas C. Evans* for Department of Highways.

*G. W. Morgan* for Delaware, Lackawanna and Western Railroad Company.

*George P. Orlady* for Lehigh & New England Railroad Company.

*Everett Kent* for Borough of Portland and Upper Mount Bethel Twp.

*Samuel L. McCarthy* for County of Northampton.

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BY THE COMMISSION, *November 12, 1940*:

This matter is before us upon petition of the Commissioners of Northampton County, dated April 18, 1940, seeking an order directing Lehigh and New England Railroad Company and The Delaware, Lackawanna and Western Railroad Company to pay the County of Northampton certain sums of money to apply upon the sum or sums of money paid by the said county as compensation for damages to owners for property taken, injured or destroyed by reason of the execution of the improvement ordered at C. 11231.

The Public Service Commission report and order of March 8, 1937 at C. 11231 provides, inter alia, for the relocation of the crossing at grade at a point in the Borough of Portland, Northampton County, where the two main tracks of The Delaware, Lackawanna and Western Railroad Company cross the public highway approach to the interstate bridge over the Delaware River; the construction of a new crossing below grade at a point in the aforementioned borough where a public highway crosses the single track of Lehigh and New England Railroad Company; the abolition of a crossing at grade at a point in Mount Bethel Township, Northampton County, where a township road crosses four main tracks of the New Jersey Cut-off of The Delaware, Lackawanna and Western Railroad Company; and the abolition of a crossing at grade at a point in the Borough of Portland, Northampton County, where the single track of Lehigh and New England Railroad Company crosses Northampton Street.

The order further provides that the County of Northampton be responsible for the vacation and relocation, removal or demolition of non-utility structures, including occupied dwellings located upon property appropriated, and that any reasonable costs actually incurred by said county in connection with said vacation, relocation, removal or demolition shall be paid and borne by the same parties and in the same manner and proportion as herein provided for the payment of compensation for damages to the owners of property taken, injured or destroyed by reason of the improvement; that the County of Northampton pay all compensation for damages due to owners of property, exclusive of the respondent railroad companies and the Borough of Portland, for property taken, injured or destroyed in the execution of the improvement.

The order further provides that Lehigh and New England Railroad Company, having agreed so to do, pay the County of Northampton a sum or sums of money equal to \$7500, and that The Delaware, Lackawanna and Western Railroad Company, having agreed so to do, pay the County of Northampton a sum or sums of money equal to \$11,500 to apply upon the damages required to be paid by said County of Northampton.

The petition of the Commissioners of Northampton County filed with the Pennsylvania Public Utility Commission June 7, 1940, and duly verified, shows that the County of Northampton has paid to date a total of \$44,810.25 as compensation for property damages to owners of property taken, injured or destroyed by reason of the improvement ordered at C. 11231. The names of the property owners and the respective amounts paid in settlement of each claim are as follows:

Griffith and Annie Davies.....	\$ 350.00
Ralph DeVivo and wife, Margaret DeVivo.	5,600.00
David Meyers Est.....	299.00
Mary Kurtz and husband, Robert Kurtz..	5,000.00
A. O. Allen Est.....	2,200.00
Charles Munsch .....	400.00
Philip C. Strunk.....	800.00
J. J. Lewis and Strunk.....	400.00
Luigi Antinocci and wife, Margaret Antinocci .....	299.00
Sabato Federico .....	350.00
Philip P. Sigafuss.....	1,600.00
Lolah Vanetten and husband, Losey Vanetten .....	3,500.00
Joseph Meculesky and Stella T. Meculesky	500.00
John Wilcox .....	800.00
John and Leonard Rinaldi.....	3,000.00



Clara E. Mackey.....	4,250.00
David Hoskin and wife, Mary Hoskin....	5,000.00
William H. Jacoby.....	25.00
E. M., S. M. and L. M. Uhler.....	275.00
S. M. Flitter, Atty. for John Williams....	460.50
S. M. Flitter, Atty. for Pa. Indep. Oil Co.	678.17
T. Fred Woodley, Atty for Edw. H. Stout.	500.00
Samuel J. and Lula Cooper.....	1,000.00
Clinton Carroll .....	285.00
R. T. and S. M. Barnes.....	299.00
Walter S. LaBarre.....	1,400.00
Lucy Sharp .....	50.00
James Weidman, Sr.....	1,914.75
Harvey and Rosa Strunk.....	2,890.00
Ed. H. Ellis, Inc. ....	137.63
Borough of Portland.....	547.20
Grand Total .....	<u>\$44,810.25</u>

The petition requests that the Pennsylvania Public Utility Commission issue an order directing Lehigh and New England Railroad Company to pay \$7500 to the County of Northampton and directing The Delaware, Lackawanna and Western Railroad Company to pay \$11,500 to the County of Northampton pursuant to the orders of The Public Service Commission of the Commonwealth of Pennsylvania issued March 8, 1937, at C. 11231.

The Delaware, Lackawanna and Western Railroad Company and Lehigh and New England Railroad Company have advised that they offer no objection to an order being made by the Commission as requested in the instant petition of the Commissioners of Northampton County.

An examination of the records of the Commission shows that only the following property owners listed in the petition filed with the Commission an application for the determination of the damages to their property taken, injured or destroyed by reason of the improvement ordered at C. 11231, all of which applications were certified to the Court of Common Pleas of Northampton County to determine the amount of damages:

Pennsylvania Independent Oil Company  
 John Williams  
 Samuel J. Cooper  
 Harvey W. and Rosa M. Strunk  
 James Weidman, Sr.  
 Walter S. LaBarre  
 Ralph T. and Sylvia M. Barnes



All the other property owners whose claims have been determined in the Courts of Northampton County failed to comply with the provisions of Section 411 of the Public Utility Law by filing an application with the Commission for the determination of the damages and allowing the Commission the discretion as to whether or not it shall determine those damages or certify the determination to the Court of Common Pleas of the county wherein the property affected is located.

In view of the fact that the extent of damages to the respective property owners has already been determined by the court, the Commission hereby certifies nunc pro tunc the determination of these damages by the Court of Common Pleas of Northampton County for the intended purpose of correcting the legal defect on the part of the respective applicants by their failure to apply to the Commission in the first instance. However, we desire to point out that by this action we do not propose to condone future applicants from first applying to the Commission by application and allowing to the Commission the discretion as to whether or not such damages shall be determined by us or shall be submitted to the respective courts of the county wherein the property is located; **THEREFORE,**

**NOW, to wit, November 12, 1940, IT IS ORDERED:**

1. That Lehigh and New England Railroad Company pay the County of Northampton the sum of Seventy-five hundred dollars (\$7500) to apply upon the sum of Forty-four thousand eight hundred ten dollars and twenty-five cents (\$44,810.25) paid by the county in satisfaction of the aforementioned claims.

2. That The Delaware, Lackawanna and Western Railroad Company pay the County of Northampton the sum of Eleven thousand five hundred dollars (\$11,500) to apply upon the sum of Forty-four thousand eight hundred ten dollars and twenty-five cents (\$44,810.25) paid by the County of Northampton as aforesaid.

3. That the determination of damages to the respective property owners above recited who failed to apply to the Commission in the first instance for such determination be and is hereby certified nunc pro tunc to the Court of Common Pleas of Northampton County.