

DECISIONS OF

Pennsylvania Public Utility Commission

VOLUME 22



HARRISBURG, PENNSYLVANIA

1942



DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH
OF PENNSYLVANIA*v.*THE DELAWARE, LACKAWANNA AND WESTERN RAIL-
ROAD COMPANY, COUNTY OF MONROE, BOROUGH
OF MOUNT POCONO AND TOWNSHIP OF
PARADISE, MONROE COUNTY

COMPLAINT DOCKET No. 10756

Crossings—Appropriation of property (expense incident thereto)—Jurisdiction of Commission—Damages (determination by Common Pleas).

In crossing improvement proceedings the Commission has no authority to make an award for the costs and expenses incidental to the determination of the amount of damages due adjacent property owners for property taken, injured or destroyed.

When the Commission appropriates property in a crossing improvement proceeding, it may submit the question of the amount of damages due the owners thereof, to the local courts of Common Pleas for determination.

Forest Mercer for Dept. of Highways.

F. J. Murwine for Borough of Mount Pocono.

G. H. Morgan for Delaware, Lackawanna and Western Railroad Company.

Ira A. La Bar for George W. Crone of Shuckra and Carrie E. Lytle.

Asher Seip for himself.

BY THE COMMISSION, *February 17, 1941:*

This matter is before us upon petition of the Commissioners of Monroe County, dated October 8, 1940, seeking an order directing the Department of Highways of the Commonwealth of Pennsylvania and The Delaware, Lackawanna and Western Railroad Company each to pay to County of Monroe a sum equal to one-third of the sums paid by said county as com-

pensation for damages due to the owners for property taken, injured or destroyed by reason of the execution of the improvement ordered at C. 10756.

The report and order of The Public Service Commission of the Commonwealth of Pennsylvania, issued April 20, 1936, at C. 10756 provides, inter alia, for the abolition of the crossing at grade of State Highway Route No. 168 across three main tracks of The Delaware, Lackawanna and Western Railroad Company at a point in the Borough of Mount Pocono, Monroe County, about 75 feet east of the Mount Pocono station.

The order appropriates several portions of property for the purpose of the improvement, and provides that the County of Monroe pay all compensation for damages due to the owners, exclusive of the respondent railroad company, for property taken, injured or destroyed in the execution of the improvement. The order also provides that the Borough of Mount Pocono pay the County of Monroe, when and as certified by the Public Utility Commission, a sum or sums of money equal to \$5000 to apply on the property damages required to be paid by the County of Monroe; and that The Delaware, Lackawanna and Western Railroad Company and the Department of Highways of the Commonwealth of Pennsylvania, having agreed so to do, each pay the County of Monroe, when and as certified by the Public Service Commission, an amount equal to one-third of the amount of property damages paid by the county in compliance with the order in excess of the \$5000 ordered to be paid to the county by the borough.

A supplemental report and order of the Pennsylvania Public Utility Commission issued January 12, 1937, at A. 34651 and A. 34786, provides that the Borough of Mount Pocono forthwith pay to the County of Monroe the sum of \$5000 to apply upon the damages paid by the county in accordance with the report and order of the Public Service Commission issued April 20, 1936, at C. 10756.

The application of Amelia H. Fesmeir, S. Beatrice Cornish and Hyacinth C. Smith, seeking the determination of the amount of damages for property taken, injured or destroyed by reason of the improvement ordered at C. 10756 was filed with the Commission on February 3, 1939, and docketed at C. 10756, D. A. 6. On February 6, 1939, the Commission, under the provisions of Section 411 of the Public Utility Law, sub-

mitted to the Courts of Monroe County, wherein the property is located, the determination of the amount of damages to the aforementioned applicants.

The instant petition of the Commissioners of Monroe County, filed with the Pennsylvania Public Utility Commission and duly verified, shows that the Court of Common Pleas of Monroe County, on September 23, 1940, made an order fixing the damages in the amount of \$3000.

In addition to the above amount, it is stated in the petition that the county has expended the sum of \$7.75 as court costs and the sum of \$29 for expert appraisers' services, or a total of \$36.75 as necessary expenses in connection with the determination of damages.

The petition of the County of Monroe shows that the county has paid the sum of \$3000 as compensation for damages and the sum of \$36.75 for expert appraisers' services and court costs, or a total of \$3036.75, and requests that the Pennsylvania Public Utility Commission issue an order directing the Department of Highways and The Delaware, Lackawanna and Western Railroad Company each to reimburse the county one-third of the aforementioned total amount paid by the county in satisfaction of the instant claim.

In its answer to the petition, the Department of Highways offers no objection to reimbursing the county one-third of the amount awarded as compensation for damages, but does object to the payment of one-third of the additional costs incurred by the county.

The Commission has no authority to impose costs or decree payment for purposes other than those provided for by Section 411 of the Public Utility Law. This section of the law limits our jurisdiction to compensation for damages, which the owners of adjacent property taken, injured or destroyed may sustain, and to the allocation of the expenses of the construction, relocation, alteration, protection or abolition of a crossing upon the utilities or municipalities concerned. It does not refer to the expenses of condemning or ascertaining the value of the property taken. Therefore, the costs and expenses incidental to the determination of damages, which total \$36.75, cannot be allowed.

We are satisfied with the representations of the petition insofar as it relates to payments of compensation for damages

for property taken, injured or destroyed, and find that the County of Monroe should now be reimbursed by the Department of Highways and The Delaware, Lackawanna and Western Railroad Company for such payments to the extent specified in our order issued April 20, 1936, at C. 10756; THEREFORE,

NOW, to wit, February 17, 1941, IT IS ORDERED:

1. That the Department of Highways forthwith pay the County of Monroe One thousand dollars (\$1000) to apply upon the sum of Three thousand dollars (\$3000) paid by the County of Monroe in satisfaction of the aforementioned claim.

2. That The Delaware, Lackawanna and Western Railroad Company forthwith pay the County of Monroe the sum of One thousand dollars (\$1000) to apply upon the sum of Three thousand dollars (\$3000) paid by the County of Monroe in satisfaction of the above mentioned claim.

DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH
OF PENNSYLVANIA

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
COUNTY OF CLEARFIELD, CITY OF DUBOIS, CLEARFIELD COUNTY, TOWNSHIP OF SANDY, CLEARFIELD COUNTY, DUBOIS WATER COMPANY, PENNSYLVANIA ELECTRIC COMPANY, THE WESTERN UNION TELEGRAPH COMPANY, SYKESVILLE BOROUGH WATER COMPANY, SOUTH BRADY STREET PRIVATE WATER COMPANY, UNITED NATURAL GAS COMPANY AND THE BELL TELEPHONE COMPANY OF PENNSYLVANIA

COMPLAINT DOCKET No. 13348

Crossings—Counties—Appropriation of Property—Jurisdiction of Commission (removal of structures).

A county is such a municipality as may be "concerned" or "interested" in a crossing improvement within the contemplation of Section 409 (c) of the Public Utility Law.