

DECISIONS OF

Pennsylvania Public Utility Commission

VOLUME 22



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erty taken, injured or destroyed by reason of the construction of the crossing at grade, in accordance with this order.

10. That, upon completion of the improvement, herein ordered, The Baltimore and Ohio Railroad Company furnish all materials and do all work necessary to maintain the crossing at grade, herein ordered constructed, and, in addition, maintain the crossing paving at all times in a smooth passable condition.

11. That, upon completion of the improvement, herein ordered, The Baltimore and Ohio Railroad Company furnish all materials and do all work necessary to maintain the standard cross-buck crossing warning signs installed in accordance with this order.

12. That the use and occupation of the crossing at grade, herein approved, shall cease and terminate on December 31, 1941.

13. That, on or before April 1, 1942, The Baltimore and Ohio Railroad Company, at its sole cost and expense, remove the rails, ties and other railroad facilities from within the limits of the highway at the crossing and restore that portion of the highway disturbed in such removal to a condition conforming with the portion of the highway adjacent to the crossing and install any additional facilities necessary to effect proper drainage of the highway at the location of the crossing.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY

COMPLAINT DOCKET No. 13429

Abandonment (of service)—Railroads.

The abandonment of service by a railroad is not proper or legally valid without Commission approval.

No appearances.

BY THE COMMISSION, *August 19, 1941*:

The Delaware, Lackawanna and Western Railroad Company filed applications on May 31, 1940, at A. 59558 and A. 59559, seeking our approval of the abolition of two crossings at grade, known as Frantz's and Keller's grade crossings at points where Barrett Township Highway routes Nos. 45575 and 45573 were formerly crossed by the track of the Mountain Home Branch of the railroad company in the Village of Mountain Home, Barrett Township, Monroe County.

Approximately 500 feet of the terminus portion of the Mountain Home Branch of The Delaware, Lackawanna and Western Railroad Company was abandoned and the tracks were moved by the railroad company. This removal permitted the Department of Highways of the Commonwealth of Pennsylvania to relocate State Highway Route No. 324 without constructing a new crossing at grade across the track of the railroad company. This same portion of the line of railroad formerly crossed at grade Barrett Township Highway routes Nos. 45575 and 45573, at points in the Village of Mountain Home, Barrett Township, Monroe County. The Delaware, Lackawanna and Western Railroad Company has not sought and has not received our approval of the abandonment of the portion of its Mountain Home Branch line of railroad. Therefore, under date of October 16, 1940, we, upon our own motion and under the provisions of the Public Utility Law, instituted the instant investigation for the purpose of determining whether The Delaware, Lackawanna and Western Railroad Company should file an application seeking Commission approval of the abandonment of service on that portion of its Mountain Home Branch, approximately 500 feet in length, extending from a point in the Village of Cresco to the terminus of the line in Barrett Township, Monroe County.

A copy of this investigation was served upon The Delaware, Lackawanna and Western Railroad Company, respondent, and answer thereto was filed with us on October 29, 1940.

The answer of the railroad company sets forth that the abandoned portion of its line of railroad formerly served only Skytop Lodge and Buck Hill Falls Inn, and that both of these parties had consented to the abandonment of this portion of line and at present receive the service of the railroad company at Sequine Siding, which is located nearby. The answer of the

railroad company also states that removal of the tracks without first seeking our approval was made at the urgent request of the Department of Highways and in the spirit of cooperation with the Commonwealth. Accordingly, it appears that The Delaware, Lackawanna and Western Railroad Company acted in good faith in this instance and without malicious attempt to circumvent the Public Utility Law.

However, the jurisdiction of the Commission is clear from the admitted factual situation viewed in the light of the provisions of the Public Utility Law and the applicable principles of general law: *Texas v. Pacific Ry. Co. v. Gulf, etc., Ry.*, 270 U. S. 266 (1926); *Colorado v. United States*, 271 U. S. 153 (1926); *United States v. Idaho*, 298 U. S. 105 (1936). The abandonment of service is not proper or legally valid without Commission approval, and an application for such approval must be filed; **THEREFORE,**

NOW, to wit, August 19, 1941, IT IS ORDERED:

1. That The Delaware, Lackawanna and Western Railroad Company file an application seeking Commission approval of the abandonment of service on that portion of its Mountain Home Branch approximately 500 feet in length, extending from a point in the Village of Cresco to the terminus of the line in Barrett Township, Monroe County.

2. That the investigation instituted October 15, 1940, for the purpose of determining whether The Delaware, Lackawanna and Western Railroad Company should file an application seeking Commission approval of the abandonment of service on that portion of its Mountain Home Branch, approximately 500 feet in length, extending from a point in the Village of Cresco to the terminus of the line in Barrett Township, Monroe County, be and is hereby terminated.

APPLICATIONS OF ALL AMERICAN AVIATION, INC.

APPLICATION DOCKET No. 59989, FOLDERS 1 AND 2

Carriers—Aviation—Facilities.

The Commission approved an application of a common carrier by aircraft