

DECISIONS OF

Pennsylvania Public Utility Commission

VOLUME 37



HARRISBURG, PENNSYLVANIA

1961

IT IS ORDERED: That approval of the application at A. 86041 be and is hereby denied.

APPLICATION OF DELAWARE, LACKAWANNA AND
WESTERN RAILROAD COMPANY

APPLICATION DOCKET No. 63912

Practice and Procedure—Motion to Dismiss—Premature Motions—Necessity for Hearing.

The Commission denied a motion made by the Department of Highways to dismiss a Commission Rule requiring the Department to show cause why a Commission order abolishing a railroad crossing should not be rescinded on the ground that the motion was premature because it assumed as proven facts matters which were not of record.

Warren, Hill, Henkelman and McMenamin by *Joseph C. Kreder* and *Harold C. Edwards* for Delaware, Lackawanna and Western Railroad Company.

Anthony L. Marino for Public Utility Commission.

Charles R. Bensinger for Borough of Stroudsburg.

Alex L. Bensinger for Pocono Mountain Chamber of Commerce, et al.

Grant W. Nitrauer for Township of Stroud.

John J. Pentz for Monroe County Commissioners and Bleakeyville Baptist Church.

Edward L. Williams for Stroud Union School District.

Kennard Lewis for East Stroudsburg Exchange Club.

Leo A. Achterman for County of Monroe.

John Rezzolla, Jr., for Department of Highways.

By THE COMMISSION, *September 8, 1959*:

The instant matter is before us upon petition of the Department of Highways of the Commonwealth of Pennsylvania to dismiss our Rule dated July 27, 1959, as to it. The Rule required the Department of Highways, and others, to show cause why our order of June 11, 1945, abolishing the railroad crossing, at grade, in the above-captioned proceeding, should not be rescinded.

The petition sets forth that at the time of issuance of our order dated June 11, 1945, the railroad crossing in question (called the Gravel Place crossing) was on State Highway Route 45060; that by virtue of the Act of August 19, 1953, P. L. 1177, the highway at said crossing was deleted from the State Highway System and thereby became and still is Township Route 670; and that all responsibility with respect to said Township Route is the responsibility of the Township of Stroud, Monroe County. No answer is filed to the motion.

The motion must be dismissed as premature because it assumes as proven facts matters which are not in the record.

The plenary powers exercisable by this Commission under the law generally, and especially under the railroad crossing sections of the Public Utility Law, 66 P. S. 1179, et seq., make it clear that, under the circumstances, it would be improper to grant petitioner the relief requested; **THEREFORE,**

IT IS ORDERED: That the instant Motion to Dismiss be and is hereby denied.

APPLICATION OF MAC-ROD TRANSPORT COMPANY

APPLICATION DOCKET No. 32909, FOLDER 5

Certificate of Public Convenience—Applications—Burden of Proof—Adequacy of Existing Service—Motor Carriers.

An application for a certificate of public convenience has the burden of establishing the need for the additional and proposed service; the burden has been defined in terms of the applicant's showing that the existing service is not of a type or character which satisfies the public need and convenience and that the proposed service would tend to correct or substantially improve that condition.