

DECISIONS OF

Pennsylvania Public Utility Commission

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Reported by

NICHOLAS B. DOBOSH, *Attorney-Examiner*

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can well lead to substandard and inadequate telephone service. It remains, therefore, for us to decide whether the construction of such a facility on the present site is in violation of Section 401 of the Public Utility Law, 66 P.S. §1171, which provides that every public utility shall furnish and maintain adequate and reasonable service and facilities.

In considering complainants' averment number 1 that the building will detract materially from the park and residential neighborhood, we must take cognizance of the fact that the record shows that respondent has complied fully with all applicable zoning requirements and that the Fairmount Park Commission has considered the impact of the facility in the area of the proposed park and given its approval to the structure. Under such circumstances, it is not the function of the Public Utility Commission to pass upon the impact of the respondent's building on the surrounding area. As to complainants' averment number 2, that respondent is unnecessarily wasting its assets, we must take cognizance of the fact that the testimony of record as discussed in this order does not indicate that respondent's decision to locate the facility at its present site instead of other possible locations is an abuse of managerial discretion warranting intervention by this Commission. Such a determination on our part does not of course imply any finding as to the propriety of the land and plant expenditures for rate making purposes; that issue must await the context of a rate proceeding.

After full consideration of all the facts of record, the Commission is of the opinion and finds that, for the reasons set forth above, the instant complaint should be dismissed; **THEREFORE,**

IT IS ORDERED: That the instant complaint be and is hereby dismissed.

APPLICATION OF DELAWARE AND HUDSON
RAILWAY COMPANY

APPLICATION DOCKET No. 97281

Public Safety—Railroad-Highway Crossings—Crossing Protection—Watchmen.

While finding that a railroad company should continue to maintain a watchman at a railroad crossing, the Commission stated, inter alia, that the safety, convenience and accommodation of the public was always of paramount concern to the Commission, particularly in such matters involving vehicular and railroad traffic, as well as pedestrians and school children utilizing railroad crossings, at

grade, within the various municipalities in the Commonwealth, it was cognizant that school bus operations and pedestrian traffic, including adults and school children, extensively used and apparently had increased at the crossing, and that the mere absence of accidents was not the sole criterion in determining the ultimate question as to the removal of rail-highway crossing protection.

James E. O'Brien and George H. Kleinberger for Delaware and Hudson Railway Company.

William F. O'Hara for Lackawanna County.

John R. Lenahan for Borough of Olyphant.

William E. Bethards for Pennsylvania Department of Transportation.

BY THE COMMISSION, *January 2, 1973*:

At a location in the borough of Olyphant, Lackawanna County, the single track of The Delaware & Hudson Railway Company crosses, at grade, South Valley Avenue (State Highway Route 168 Extension). Pursuant to our order of November 14, 1960, at A. 86553, and confirmed by our later order of August 27, 1962, automatically operated flashing light railroad crossing warning signals, short-arm highway gates and pedestrian sidewalk gates were installed at the crossing, in lieu of crossing gates manually operated by crossing gatemen on duty 24 hours daily from a tower at the crossing. The order also provided that a crossing watchman be on duty at the crossing between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. The Commission, in its order, found that the addition of sidewalk barriers, audible bells and flashing light signals to the gate protection presently offered would increase the protection for highway and pedestrian traffic at the crossing.

In this application, The Delaware & Hudson Railway Company seeks Commission approval of the discontinuance and removal of the watchman service presently afforded from 8:00 a.m. to 4:00 p.m., Monday through Friday.

Hearing was held in this proceeding on August 31, 1972, at which the applicant presented testimony through two witnesses and the protestants presented testimony through three witnesses.

A brief was filed by The Delaware & Hudson Railway Company.

A traffic count taken April 10, 1959, at the South Valley Avenue crossing, which was admitted at the hearing held October 2, 1959, in A. 86553, shows the following highway and railroad traffic at that crossing, between the hours of 8:00 a.m. and 4:00 p.m.:

<i>South Valley Avenue</i>	<i>Friday, 4-10-59</i>	<i>Saturday, 4-11-59</i>
Autos	8,359	8,495
Trucks	873	580
Public buses	42	36
Bicycles	13	46
School buses	26	0
Adults	659	763
Children	420	307
Freight trains	8	7
Light engines	1	2

A traffic count, compiled by the applicant and admitted at the hearing held August 31, 1972, as applicant's Exhibits Nos. 3 and 5, in this proceeding, shows the daily highway and railroad traffic at the South Valley Avenue crossing, between the hours of 8:00 a.m. and 4:00 p.m., as follows:

<i>South Valley Avenue</i>	<i>Wednesday, 4-26-72</i>	<i>Saturday, 4-29-72</i>
Autos	2,649	3,030
Trucks	432	229
School buses	30	2
Bicycles	47	123
Adults	190	188
Children	293	230
Freight trains	4	3

Public bus operation has been suspended over the South Valley Avenue crossing.

Testimony presented by Randolph J. D. Kelly, Assistant Chief Engineer for The Delaware & Hudson Railway Company, discloses that there have not been any accidents involving contact between pedestrians, automobiles, trucks or buses with trains in the five year period preceeding the filing of the instant application on May 10, 1972.

He testified that the reduction in the motor vehicular traffic over the South Valley Avenue crossing from 1959 to 1972 is due to the opening of State Highway Route 35062, which occurred in August 1963, about eight months after the automatic protection was placed in service at the South Valley Avenue crossing. State Highway Route 35062 joins South Valley Avenue just south of the crossing and extends along the easterly side of the railroad track to the borough of Winton.

According to the witness, the railway company is not getting the full return from its investment from the protection presently installed at the South Valley Avenue crossing because of the necessity of providing watchman protection at the crossing. The witness stated that the savings to the company, by the discontinuance of the crossing watchman protection, would amount to \$8,020 in wages and \$1,600 in taxes, for a total of \$9,620 yearly.

He further testified that the decline in the number of school buses operated over the South Valley Avenue crossing, between 1959 and 1972, is no doubt due to the fact that a parochial school in the borough of Olyphant is now closed, and the pupils are now transported by bus across South Valley Avenue crossing to other schools.

John Walker, Terminal Trainmaster for The Delaware & Hudson Railway Company, testified that there is a siding track leading from the main track, south of the South Valley Avenue crossing, which is used about once or twice a month to serve the Olyphant Colliery and that, depending upon the number of cars in the train, the switching movements might operate the crossing protection at the crossing. He also testified that the speed of train movements over the South Valley Avenue crossing has been reduced from 45 miles an hour, when the traffic count was made in 1959, to 30 miles an hour in 1972. This reduction in speed is due to mine cave settlements.

Mr. William Nefak, Street Commissioner and special police officer for the borough of Olyphant, a protestant, testified that on numerous occasions, the automatic protection at the South Valley Avenue crossing would not function, leaving the crossing gates in a down position, and it would be necessary to physically direct vehicular and pedestrian traffic across the track. He stated that these malfunctions simultaneously occurred at other crossings in the area.

Mr. Nefak further testified that subsequent to the forming of a new school district, comprising the boroughs of Throop, Dickson City and

Olyphant, in 1970, called the Mid-Valley Jointure, more children now use the South Valley Avenue crossing than in 1959, and that the additional children come from Throop and Dickson City. Dickson City is west of the railroad track and consequently, those pupils are not required to cross the track. The pupils from Throop are transported by bus.

He also testified that the St. Patricks Parochial School building is to be used for special classes of mentally retarded and physically handicapped children, who will be transported by private vehicles and other types of motor vehicles to the school from all parts of Lackawanna County, and that some of the transportation facilities will cross the South Valley Avenue crossing.

Protestant's Exhibit No. 1, which was prepared under the direction of Mr. Nefak and admitted at the hearing held August 31, 1972, is a traffic count of cars and pedestrians crossing the railroad track at the South Valley Avenue crossing from July 10 to July 14, 1972, inclusive, between the hours of 8:00 a.m. and 4:00 p.m., and is as follows:

<i>Date</i>	<i>Cars</i>	<i>Pedestrians</i>
Monday, July 10	2,976	399
Tuesday, July 11	3,010	375
Wednesday, July 12	3,109	401
Thursday, July 13	3,195	425
Friday, July 14	3,225	450

The exhibit also shows that on school days there are approximately 30 school buses with 60 pupils per bus, and about 400 to 500 pupils on school days crossing the track at the South Valley Avenue crossing. The figures relating to the number of pupils crossing the track is greatly in excess of that shown in the traffic count submitted by the applicant, which shows that the total pedestrian traffic over the crossing on April 26th was 486, of which 293 were children, and on April 29th was 418, of which 188 were children.

Mr. John Metrisko, Superintendent of the Olyphant School District, testified that the schools in Olyphant, which are part of the new school district, are located on the westerly side of the railroad track, and comprise the senior high school, which enrolls students from Dickson City, Throop, and Olyphant, and the elementary school which enrolls the elementary children from Olyphant plus two elementary classes from Throop. The junior high school is located in Dickson City. He testified that the establishment of the Mid-Valley Jointure has increased the operation of daily school bus traffic over the South Valley Avenue crossing, from one bus to nine buses.

He further testified that children formerly attending parochial schools in Olyphant will now be transported by bus to Dunmore Central Catholic School, and that the buses will be required to cross the South Valley Avenue crossing.

Edward Prokop, Assistant Superintendent of the Mid-Valley School District, testified that there has been an increase in both vehicular and pedestrian traffic over the South Valley Avenue crossing since the formation of the new school jointure. He also stated that his testimony would be similar to the testimony presented by Mr. Metrisko, if asked the same questions.

William E. Bethards, Assistant Attorney General, representing Department of Transportation, stated that the department has no objection to the approval of the application, provided no costs are assessed against the department.

The safety, convenience and accommodation of the public is always of paramount concern to this Commission, particularly in such matters as herein involving vehicular and railroad traffic, as well as pedestrians and school children utilizing railroad-highway crossings, at grade, within the various municipalities in this Commonwealth.

While it is evident from our review of the testimony and exhibits admitted at the hearing held August 31, 1972 that rail traffic has decreased, that there has been a reduction in the speed of trains now operating over the crossing, and that there has been no accidents involving vehicles, pedestrians and trains since 1959 when the automatic protection and the watchman services were installed, we are also cognizant from the record, that school bus operations and pedestrian traffic, including adults and school children, extensively use and apparently has increased at the crossing, and that the crossing is also used in the transportation of handicapped children in private vehicles. In our opinion, the mere absence of accidents is not the sole criterion in determining the ultimate question as to removal of rail-highway crossing protection in proceedings such as hereinbefore this Commission, nor in this particular instance, after our considered and complete review of the present record, is this Commission fully convinced that the removal of the protection as requested by applicant herein would be in the best interest of the public; accordingly, we will deny the application presently before us.

We, therefore, are of the opinion and find that the railroad company should continue to maintain the watchman at the crossing, as required

by our previous order of August 25, 1962, at A. 86553; THEREFORE,

IT IS ORDERED: That the application be and is hereby denied.

APPLICATION OF THE BOROUGH OF MILLERSBURG

APPLICATION DOCKET No. 97514

*Public Safety—Rail-Highway Crossings—Substandard Vertical Clearance—
Emergency Service Predominant—Commission policy (relaxation of).*

While the Commission was reluctant to grant its approval to below-grade rail-road-highway crossings having substandard vertical clearance, it could not, in the subject proceeding, preclude a community's inherent right to provide adequate emergency services and fire protection to all its residents regardless of their geographical location in the municipality; such necessity, together with the accessibility of the crossing to but local traffic, did therefore, in the subject proceeding, justify a relaxation of Commission policy.

Lloyd R. Persun for Borough of Millersburg.

Richard A. Mehley for Penn Central Transportation Company.

Herbert G. Zahn for Pennsylvania Department of Transportation.

BY THE COMMISSION, *January 2, 1973*:

Borough of Millersburg, Dauphin County, proposes to construct a new below-grade crossing where Keystone Street, reconstructed, will cross, below grade, the tracks of Penn Central Transportation Company, in said borough. Hearing upon the matter was held November 1, 1972.

At that hearing, a plan submitted as applicant's Exhibit No. 3 shows that the roadway to and through the crossing will pass beneath the west span of the existing bridge structure, on tangent alignment, on approximately level grade, graded to a width of 25 feet and paved with bituminous base and surface courses to a width of 20 feet. The vertical clearance is restricted to 9.25 feet.