WEST VIRGINIA CODE: §17-4-11

§17-4-11. Same -- Protest against order; hearing; appeal.

Any railroad company dissatisfied with the order of the state road commissioner directing the separation or elimination of grades at any point, may, within thirty days after the receipt by the State Auditor or attorney of record of such railroad company of a copy of the order directing the separation or elimination at such grades, file with the state road commissioner a protest giving the reasons of said railroad why such order should not be enforced. On the filing of such protest, the state road commissioner shall set down for hearing the matter in issue. On the hearing of the protest the state road commissioner shall hear all evidence which may be offered by any party upon the reasonableness of the separation or elimination of the grades, and if the commissioner, from the evidence, shall find that the construction of the work is necessary, he shall enter an order to that effect, and direct that the work shall be proceeded with in accordance with this article.

Any order entered by the state road commissioner pursuant to the provisions of this section shall be subject to judicial review by the circuit court of the county in which the grades to be separated or eliminated are located, or the circuit court of Kanawha county, upon the filing in such court or with the judge thereof in vacation, of a petition for appeal by the party or parties aggrieved by such order, within thirty days from the date of the giving of written notice of such order by the state road commissioner to the party or parties to the hearing of the protest by certified or registered mail.

The party or parties making such appeal shall forthwith send a copy of such petition for appeal, by certified or registered mail, to the state road commissioner. Upon receipt of such copy of such petition for appeal the state road commissioner shall promptly certify and file in such court a complete transcript of the record upon which the order complained of was entered. The costs of such transcript shall be recovered by the party substantially prevailing on appeal.

The court sitting in lieu of the jury, or judge thereof in vacation, shall, after due notice, conduct a hearing on the issues presented by such appeal and shall permit argument, oral or written or both, by the parties. The court shall permit such pleadings, in addition to the pleadings before the state road commissioner, as it deems to be required. Evidence relating to the making of the order complained of and relating to the questions raised by the allegations of the pleadings or other questions pertinent in the proceeding may be offered by the parties to the proceeding.

Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, any circuit court to which an appeal has been made as provided in this section, may, after due notice to and hearing of the parties to the appeal, issue all necessary and appropriate process to postpone the effective date of order of the state road commissioner complained of or to grant such other relief as may be appropriate pending final

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determination.

A circuit court to which an appeal has been made as provided in this section, may affirm, annul or revise the order of the state road commissioner complained of, or it may remand the proceeding to the state road commissioner for such further action as it directs.

The decision of the circuit court on an appeal from the state road commissioner shall be final, subject only to review by the Supreme Court of Appeals of West Virginia upon a petition for certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the state road commissioner.

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