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Bellefonte, Lock Haven, Jersey Shore, Montoursville, Williamsport; (Route 49-F) Pittsburgh, Irwin, Jeannette, Greensburg, Latrobe, Blairsville, Johnstown, Portage, Altoona, Duncansville, Hollidaysburg, Williamsburg, Huntingdon, Mount Union, Lewistown, Newport, Harrisburg, Mechanicsburg, Carlisle, Newville, Shippensburg, Chambersburg, Gettysburg, Hanover, York, Columbia, Lancaster, Coatesville, West Chester, Chester, Marcus Hook and Philadelphia.

APPLICATION OF THE MOOSIC MOUNTAIN AND
CARBONDALE RAILROAD COMPANY

APPLICATION DOCKET No. 60214

Railroads—Charters and Franchises.

The Commission approved an application of a railroad to amend and supplement its Articles of Association in order to enable it to purchase another small railroad line which would effect an extension of its present line.

W. T. Pierson, Esq., for Applicant.

Leo W. White, Esq., for Joseph P. Jennings, Trustee.

Walter T. Margetts, Esq., for Commercial National Bank & Trust Co.

BY THE COMMISSION, *August 19, 1941:*

The Moosic Mountain and Carbondale Railroad Company extends in a general westerly direction from its junction with Erie and Wyoming Valley Railroad at Jessup, Blakely Township, Lackawanna County, a distance of 2.25 miles to the end of the line of railroad at Valuation Station 98+90 in Blakely Township, Lackawanna County.

The railroad company proposes to extend its present line of railroad by acquiring the sole remaining portion of Wilkes-Barre and Eastern Railroad extending from a point known as Suscon, Pittston Township, Luzerne County, a distance of about

8.02 miles through Jenkins Township to Plains, Plains Township, Luzerne County, and an additional 0.29 of a mile of right of way beyond the end of the track at Plains. On April 1, 1941, the railroad company filed an application at F. D. 13230 with the Interstate Commerce Commission under Section 5, Paragraph 2 of the Interstate Commerce Act for an order approving and authorizing the purchase by it of Wilkes-Barre and Eastern Railroad between Suscon and Plains. Robert E. Woodruff and John A. Hadden, Trustees of the property of Erie Railroad Company join in that application for authority to operate. The instant petition seeks a certificate of public convenience under Article II, Section 202(b) of the Public Utility Law, evidencing Commission approval of the amendment and supplement to the Articles of Association.

The Moosic Mountain and Carbondale Railroad Company was incorporated under the Pennsylvania Act of April 4, 1868, and the supplements thereto and the Articles of Association were filed with the Secretary of the Commonwealth on February 15, 1887, and letters patent issued by the Governor of the Commonwealth on the same date. The Articles of Association of The Moosic Mountain and Carbondale Railroad Company provide, inter alia, that the said company is to exist for a term of 999 years, and that the places from and to which the said railroad is to be constructed or maintained and operated are as follows; namely, beginning at a point at or near the City of Carbondale in the County of Lackawanna; at a connection with New York, Lake Erie and Western Railroad (or a branch thereof called the Jefferson Branch) and extending to a junction with the Erie and Wyoming Valley Railroad between the Marshwood Colliery and the City of Scranton in said County of Lackawanna.

Service to the public on The Moosic Mountain and Carbondale Railroad was from the time of its construction furnished by New York, Lake Erie and Western Railroad Company, corporate predecessor of Erie Railroad Company, and later by Erie Railroad Company, and is now furnished by Robert E. Woodruff and John A. Hadden, Trustees of the property of Erie Railroad Company, Debtor, in proceedings under Section 77 of the Bankruptcy Act as amended. The entire capital stock of The Moosic Mountain and Carbondale Railroad Company is held by the Erie trustees, except as shares are held by the directors, and the line of railroad is now operated by said Erie trustees.

The line of railroad which the applicant proposes to acquire is the sole remaining portion of Wilkes-Barre and Eastern Railroad Company and is presently operated by the trustees of Erie Railroad Company by authority granted by the Interstate Commerce Commission at F. D. 12023 and reported in 228 I. C. C. 515. Wilkes-Barre and Eastern Railroad Company, on or about September 29, 1937, filed its petition under Section 77 of the Bankruptcy Act as amended, and the proceeding is now pending in the District Court of the United States for the Middle District of Pennsylvania. On March 26, 1939, pursuant to a certificate issued January 17, 1939, by the Interstate Commerce Commission at F. D. 11791, service by Wilkes-Barre and Eastern Railroad Company between Stroudsburg and Suscon, a distance of about 54 miles, was discontinued and the line abandoned. The abandonment and discontinuance of service was approved by us and evidenced by a certificate of public convenience issued February 20, 1939, in the proceeding docketed at A. 39147. The trustees of Wilkes-Barre and Eastern Railroad Company have no equipment or personnel with which to operate the remaining portion of railroad, and own no other railroad property.

The record shows that the trustees of Erie Railroad Company, who now operate the sole remaining portion of Wilkes-Barre and Eastern Railroad between Suscon and Plains, desire to acquire this line of railroad through The Moosic Mountain and Carbondale Railroad and have agreed to pay a sum of \$41,000 for the same. The United States District Court for the Northern District of Ohio, Eastern Division, by order No. 305 dated May 28, 1941, authorized the Erie trustees to purchase the Wilkes-Barre and Eastern Railroad Company property for that sum. The United States District Court for the Middle Division of Pennsylvania, by order entered May 15, 1941, authorized the trustees of Wilkes-Barre and Eastern Railroad Company to sell the remaining portion of that railroad to the Erie trustees or their nominee for the sum of \$41,000.

The record further shows that the trustees of Erie Railroad Company desire to take title to Wilkes-Barre and Eastern Railroad Company property in the name of The Moosic Mountain and Carbondale Railroad Company, which is a wholly owned subsidiary of Erie Railroad Company, for the reason that Erie Railroad Company has never acquired railroads in its own name in the State of Pennsylvania and that Erie operation,

except through the several counties along the Delaware River, has been under lease or agreement or by stock control of the railroad companies owning the property. Erie Railroad Company is a corporation of the State of New York, and its corporate capacity under old special acts of the Legislature to own and operate a railroad in its own name appears to be limited to the several counties along the Delaware River through which the main line of Erie Railroad Company now operates. However, the special statutes limiting operation to certain counties do not exclude Luzerne County, where the present property of Wilkes-Barre and Eastern Railroad Company is located.

Counsel for the applicant contends that inasmuch as The Moosic Mountain and Carbondale Railroad Company is a wholly owned subsidiary of Erie Railroad Company, is a Pennsylvania corporation, has no mortgage indebtedness and is located in close proximity to Wilkes-Barre and Eastern Railroad Company, it seems most practicable that The Moosic Mountain and Carbondale Railroad Company be permitted to amend its charter so that it will be in a position to take title to Wilkes-Barre and Eastern Railroad property. The trustees of Erie Railroad Company wish to avoid the necessity of organizing a new company which would further complicate its corporate structure. The value of the line of railroad to be acquired is relatively small and before many years the mineable coal along the line will be exhausted and the line will have to be abandoned.

The presently owned line of The Moosic Mountain and Carbondale Railroad Company is operated by the Erie trustees by reason of their ownership of the capital stock, and not under any agreement or lease, and it is the intention of the Erie trustees to operate the line between Suscon and Plains in the same manner in the event the charter powers of The Moosic Mountain and Carbondale Railroad Company are lawfully enlarged.

The line of railroad of the petitioner and that portion of the line of railroad of Wilkes-Barre and Eastern Railroad Company which the petitioner desires to acquire, are connected by Erie and Wyoming Valley Railroad and Susquehanna Connecting Railroad. Erie and Wyoming Valley Railroad Company is a subsidiary of Erie Railroad Company and was operated in part since 1864 and wholly since 1898 by Erie Railroad Company or its predecessors under lease or through stock control.

and the Erie trustees are now operating this line of railroad under such stock control. Susquehanna Connecting Railroad Company is a subsidiary of New York, Susquehanna and Western Railroad Company. Pursuant to trackage agreements dated November 1, 1938, and authorized by the Interstate Commerce Commission (228 I. C. C. 515) the Erie trustees are operating over the railroad of Susquehanna Connecting Railroad Company.

No objections to the approval of the instant petition were submitted at the hearing held in this proceeding.

Upon full consideration of the matters and things involved, we are of the opinion and find that the service, accommodation, convenience or safety of the public require that the instant application be approved; **THEREFORE,**

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

1. That the instant application be and is hereby approved.

2. That a certificate of public convenience issue evidencing approval of the amendment and supplement to the Articles of Association of The Moosic Mountain and Carbondale Railroad Company to permit the purchase by The Moosic Mountain and Carbondale Railroad Company of the sole remaining portion of Wilkes-Barre and Eastern Railroad, extending from a point known as Suscon, Pittston Township, Luzerne County, a distance of about 8.02 miles through Jenkins Township to Plains, Plains Township, Luzerne County, and an additional 0.29 of a mile of right of way beyond the end of the track at Plains.

**APPLICATION OF W. D. GEORGE, THOMAS M. BENNER
AND THOMAS FITZGERALD, TRUSTEES FOR
PITTSBURGH RAILWAYS COMPANY**

APPLICATION DOCKET No. 60400

Abandonment (freight service)—Service.

The Commission authorized the abandonment of freight service by a railways company where it appeared its terminal building had been con-