

DECISIONS OF

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authorization to define and limit its extraterritorial service to such areas. Testimony presented at the hearing by applicant's witnesses discloses that the service areas sought to be certificated by applicant beyond its corporate limits were determined by engineering studies to represent the extent of the respective areas surrounding the city in which adequate public water service can be furnished by applicant. The record also shows that no competitive conditions will result from the operation of applicant's water service facilities in those areas.

Upon full consideration of all matters of record, the Commission is of the opinion and finds that applicant's proposal to define the territory beyond its corporate limits, wherein it seeks authorization to furnish public water service as set forth in the instant application, is necessary or proper for the service, accommodation, convenience, or safety of the public; **THEREFORE,**

IT IS ORDERED:

1. That the application of City of Erie at A. 88257 be and is hereby approved.

2. That a certificate of public convenience issue to the City of Erie evidencing Commission approval of the operation of facilities for the furnishing of water service to the public beyond its corporate limits in the Borough of Wesleyville, in Lawrence Park Township, and in designated portions of Millcreek and Harborcreek Townships in Erie County, as fully described in the instant application.

**APPLICATION OF ERIE-LACKAWANNA
RAILROAD COMPANY**

APPLICATION DOCKET No. 89824

Service Discontinuance—Railroad Companies—Stations—Adequacy Status.

A railroad company was refused permission to eliminate a local station agent in a borough and in lieu thereof substitute the agent in another municipality where it appeared that the substitution would create an inconvenience to the local shippers, the resulting savings appeared trivial when compared to the substantial overall operating revenues, and the restriction of the agency

to the handling of carload freight only would in effect remove the station from nationally distributed tariffs as a nonagency L.C.L. delivery point.

Warren, Hill, Hinkelman and McMenamin by *Cody H. Brooks* for Erie-Lackawanna Railroad Company.

Elizabeth Ehlich for Order of Railroad Telegraphers.

BY THE COMMISSION, *September 3, 1963*:

This matter is before the Commission upon application of Erie-Lackawanna Railroad Company for approval of a change in the status of its station located in the Borough of Plymouth, Luzerne County, from that of an agency freight station to that of a non-agency carload only freight station. A protest was filed against Commission approval of the application.

At the public hearing held at Wilkes-Barre on March 26, 1963, one witness testified on behalf of applicant and two of its exhibits were entered into the record. Counsel appeared on behalf of the protestant, cross-examined applicant's witness and offered photographic exhibits of the station building. A brief was filed by the applicant.

Plymouth Borough has a population of about 10,500 and contains numerous industries which use applicant's facilities. The station is located in the borough on the railroad company's Scranton Division, four miles via highway southwest of its agency station at Kingston. The station facilities consist of a freight station building and a team track. The local station agent is on duty from 7 a.m. to 11 a.m., and from 12 noon to 4 p.m., Mondays through Fridays, except holidays. No U.S. mail, telegrams or express are handled by the agent. The nonagency stations at West Nanticoke, Auchincloss, and Avondale are also under this agent's jurisdiction.

Carload freight at Plymouth is presently handled by local way-freight train, operating Mondays through Fridays, from Kingston. Less-than-carload shipments, since July, 1960, have been handled in rail ferry cars and/or in pickup and delivery service directly at patron's place of business by truck operating from the Kingston agency.

Applicant proposes, upon approval of the application, that its agency at Kingston, which is open from 8 a.m. to 12 noon and 1 p.m. to 5 p.m., would have jurisdiction of the then nonagency

Plymouth station and the aforesaid nonagency stations. Carload freight and less-than-carload shipments would continue to be handled as at present and notification and business transactions would be made by telephone, U.S. mail, and/or handled directly at Kingston. There would not be a telephone toll charge to Kingston. The Kingston agent would travel to Plymouth when necessary. No other railroad operates in Plymouth; however, motor common carriers render service in the area.

A recapitulation of applicant's exhibits, showing the results of its freight operation at Plymouth station, follows:

<u>Year</u>	<u>CARLOAD</u>		<u>LESS CARLOAD</u>		<u>Total Gross Revenue(b)</u>
	<u>Number</u>	<u>Gross Revenue</u>	<u>Number(a)</u>	<u>Gross Revenue(a)</u>	
1959	1,060	\$156,550	1,009	\$8,773	\$165,323
1960	1,593	241,969		4,852	246,821
1961	761	122,548		3,258	125,806
1962	2,270	224,971		6,360	231,331
1963	116 (2 mos.)	15,796		532	16,328

(a) Shipments since July, 1960 have been handled by truck through the Kingston agency.

(b) Applicant alleges that its share of gross revenues is 41.03 per cent.

Summarized out-of-pocket annual expenses of maintaining the Plymouth station are approximately \$7,934. However, the saving would be reduced due to the Kingston agent traveling to the non-agency stations.

Applicant's proposal to eliminate the local station agent at Plymouth who, in addition, has jurisdiction over the West Nanticoke, Auchincloss, and Avondale nonagency stations, and in lieu thereof substitute the agent at Kingston, would appear to create an inconvenience to the respective local shippers. In addition, the proposed saving appears trivial when compared to the substantial overall operating revenues, which no one alleges are not sufficient to cover the operating expenses.

It further appears that the portion of the application to restrict the agency to the handling of carload freight only would in effect remove Plymouth station from the nationally distributed tariffs as a nonagency L.C.L. delivery point and shippers would not be aware, except by research, that shipments of L.C.L. freight could be made at Plymouth.

Accordingly, upon full consideration of the matters and things involved, we find and determine that approval of the application

is neither necessary nor proper for the service, accommodation, convenience, or safety of the public ; THEREFORE,

IT IS ORDERED: That approval of the prayer of the application of Erie-Lackawanna Railroad Company, docketed at A. 89824, be and is hereby denied.

BOROUGH OF ELLWOOD CITY

v.

BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

COMPLAINT DOCKET No. 17665

Crossing Improvement Proceedings—Rail-Highway Crossing—Retaining Walls (restoration of)—Public Safety.

The Commission was of the opinion that justice and equity required that a borough, county, two railroad companies and the Department of Highways each bear a reasonable portion of the cost of restoring the retaining walls of a rail-highway crossing to a safe and satisfactory condition for public use.

Crossing Improvement Costs—Rail-Highway Crossings—Maintenance Costs (allocation of)—Definitive Order.

Since a borough, county, two railroad companies and the Department of Highways were not agreed as to their respective responsibilities for the present and future maintenance of an important rail-highway crossing, above grade, the Commission deemed it necessary and proper for the future safety of the public that a definitive order issue clearly setting forth the responsibility of the parties in respect thereto, and accordingly allocated the future maintenance of the crossing between the parties as best seemed just and reasonable.

Crossing Improvement Proceedings—Rail-Highway Crossings—Cost Allocation Agreements—Police Power—Contracts.

A contract with respect to the maintenance of a rail-highway bridge does not bind the Commission in allocating costs of the crossing improvement; every such agreement is entered into subject to the lawful exercise of the police power of the Commonwealth; the Commission may, under the Public Utility Law, allocate the costs of the improvement, leaving the parties thereafter to secure such reimbursement as they may be entitled under their contracts.

Marvin A. Luxenberg for Borough of Ellwood City.