LAKE LINE APPLICATIONS UNDER PANAMA CANAL ACT.

No. 6381.

PENNSYLVANIA RAILROAD COMPANY AND NORTHERN CENTRAL RAILWAY COMPANY (ERIE & WESTERN TRANSPORTATION COMPANY—ANCHOR LINE).

No. 6504.

LEHIGH VALLEY RAILROAD COMPANY (LEHIGH VALLEY TRANSPORTATION COMPANY; LAKE LINE ONLY).

No. 6570.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY (MUTUAL TRANSIT COMPANY).

No. 6573.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY (WESTERN TRANSIT COMPANY).

No. 6603.

RUTLAND RAILROAD COMPANY (RUTLAND TRANSIT COMPANY).

No. 6615.

ERIE RAILROAD COMPANY (ERIE RAILROAD LAKE LINE).

No. 6616.

ERIE RAILROAD COMPANY (MUTUAL TRANSIT COMPANY ONLY).

No. 6624.

GRAND TRUNK RAILWAY COMPANY OF CANADA (CANADA ATLANTIC TRANSIT COMPANY ONLY).

No. 6631.

LEHIGH VALLEY RAILROAD COMPANY (MUTUAL TRANSIT COMPANY).

No. 6765.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY (RUTLAND TRANSIT COMPANY).

No. 6874.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY (MUTUAL TRANSIT COMPANY).

Submitted December 17, 1914. Decided May 7, 1915.

Upon applications of certain railroads under the Panama Canal act for an extension of time during which their interest in and operation of certain boat lines plying on the great lakes might be continued; *Held:*

1. That the physical fact of ports of call being served in common by the boats and the paralleling rails of the owning railroad establishes a case of competition existing between the owning railroad and its boat line.
2. That the case is the same where the railroad entity which owns the boat line also owns, through stock control, another railroad entity, or is an integral part of a system of railroad whose paralleling rails serve ports of call in common with the boats.
3. That where an owning railroad is a party to through all-rail routes or a member of "fast freight lines" or an association of railroads owning boat lines whose function is to keep the operation of their boat lines from interfering with the rail operations, the interest it thus maintains in common with the rail carriers whose rails do compete with its boat line is such an interest as the act provides against, and that it is possible for such an owning railroad to compete with its boat line for traffic, within the meaning of the act.
4. That the purpose of the Panama Canal act was to preserve to the common interest of the people, free and unfettered, the "water roadbed" via the Panama Canal. Also to restore all the water routes of the country to the same condition of freedom from domination that would reduce their usefulness as a natural means of transportation.
5. That Congress has decreed that there shall be a restoration of conditions which prevailed when railroads had no interest in and exercised no control over the boat lines plying upon the country's water routes. The inquiry in these cases is, Is the joint operation of these boat lines such as to make of them an exception?
6. That upon the respective records herein concerned, none of the several existing specified services by water is being operated in the interest of the public or is of advantage to the convenience or commerce of the people within the meaning of the act, and that an extension of the respective interests of the petitioners therein will prevent, exclude, and reduce competition on the great lakes. The application of each of the petitioners herein is therefore denied, effective December 1, 1915.

G. S. Patterson, Henry Wolf Biklé, and *C. C. McCain* for Pennsylvania Railroad Company, Northern Central Railway Company, Pennsylvania Company, and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

F. E. Williamson for Buffalo Chamber of Commerce.

J. H. Barnes for Commercial Club of Duluth.

H. C. Barlow for Chicago Association of Commerce.

Cassoday, Butler, Lamb & Foster for Freight Traffic Committee of Chicago Association of Commerce.

W. H. Follette for Follette lines.

G. R. Hall for Traffic Commission of Duluth.

G. S. Patterson for Erie & Western Transportation Company.

R. W. Barrett for Lehigh Valley Railroad Company.

C. J. Austin for New York Produce Exchange.

H. A. Taylor and *M. B. Pierce* for Erie Railroad Company.

Davis, Kellogg & Severance, S. W. Burr, and *F. J. Morley* for St. Paul Association of Commerce and Minneapolis Civic & Commerce Association.

O. E. Butterfield and *G. P. Lynde* for New York Central lines.

J. C. Lincoln for Merchants Association of New York.

W. L. Jenks for Port Hudson and Duluth Steamship Company.

E. W. Lawrence for Rutland Railroad Company.

L. T. Michener, P. G. Michener, and *L. C. Stanley* for Grand Trunk Railway Company of Canada.

J. L. Seager for Delaware, Lackawanna & Western Railroad Company.

H. La Rue Brown, special assistant to the Attorney General, for the United States.

REPORT OF THE COMMISSION.

MCCHORD, *Chairman:*

These cases are before this Commission upon petitions filed in accordance with the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act of August 24, 1912. The petitioners are rail carriers owning or having an interest in one or more boat lines with boats plying on Lakes Ontario, Erie, Huron, Michigan, and Superior, hereinafter referred to as the great lakes. There has been no order consolidating these cases, but they were heard together. Each case has been considered and decided upon its own record, but as all of the cases involve many points in common, they will be disposed of in one report.

The Anchor line, whose corporate title is Erie & Western Transportation Company, is owned jointly by the Pennsylvania Railroad Company and the Northern Central Railway Company, which latter company is operated under lease by the Pennsylvania Railroad Company, and operates 12 vessels serving the ports of Buffalo, Erie, Cleveland, Detroit, Mackinac Island, Milwaukee, Chicago, Sault Ste. Marie, Marquette, Hancock, Houghton, Superior, and Duluth. It may be noted that since the evidence in these cases was completed,

the Northern Central Railway Company has been merged with the Pennsylvania Railroad Company.

None of the ports served by the Anchor line is reached by the rails of the Pennsylvania Railroad Company except the interchange ports of Buffalo and Erie. The Pennsylvania Railroad Company, however, owns the Pennsylvania Company, which latter company operates a railroad with tracks reaching Cleveland and Chicago.

The Mutual Transit Company is owned by the Mutual Terminal Company, which in turn is jointly owned by the Lehigh Valley Railroad Company, the Erie Railroad Company, the Delaware, Lackawanna & Western Railroad Company, and the New York Central & Hudson River Railroad Company. The four dockets, Nos. 6616, 6631, 6570, and 6874, involve the independent applications of these roads and their indirect interest in this company.

The Mutual Transit Company operates 12 vessels serving the ports of Buffalo, Fairport, and Cleveland on Lake Erie; the ports of Gladstone and Green Bay on Lake Michigan; and the ports of Duluth, Hancock, Houghton, Hubble, Fort William, Port Arthur, and Westport on Lake Superior. Two of the owning railroads, viz, the Lehigh Valley Railroad Company and the Delaware, Lackawanna & Western Railroad Company, do not reach with their rails any of the ports served by this line other than the interchange port of Buffalo. The New York Central & Hudson River Railroad Company, over the Lake Shore & Michigan Southern and its other allied lines, reaches Chicago and Cleveland by rail, as does also the Erie Railroad, over the rails of its subsidiary, the Chicago & Erie Railroad Company.

The Lehigh Valley Transportation Company is owned by the Lehigh Valley Railroad Company and is in addition to this railroad's interest in the Mutual Transit Company line. The only port served in common by the rails and the boats of this line is Buffalo, the port of interchange.

The Western Transit Company is owned by the New York Central & Hudson River Railroad Company, and is in addition to that road's interest in the Mutual Transit Company. The boats of this line operate from Buffalo to Lake Michigan and Lake Superior ports, serving Chicago in common with the rails of this railroad system.

The Rutland Transit Company is owned by the Rutland Railroad Company, which in turn, through the ownership of 26 per cent of the stock, is controlled by the New York Central & Hudson River Railroad Company. Forty-eight per cent of the stock in the Rutland Railroad Company is in the hands of the public. The other 26 per cent was turned over to the New York, New Haven & Hartford Railroad Company by the New York Central &

Hudson River Railroad Company. This line runs boats between Ogdensburg, N. Y., and Milwaukee, Wis., and Chicago, Ill. The rails of the Rutland Railroad extend no farther west than Ogdensburg and serve no other port save this port of interchange, but, as before indicated, the rails of lines allied with the New York Central reach Chicago.

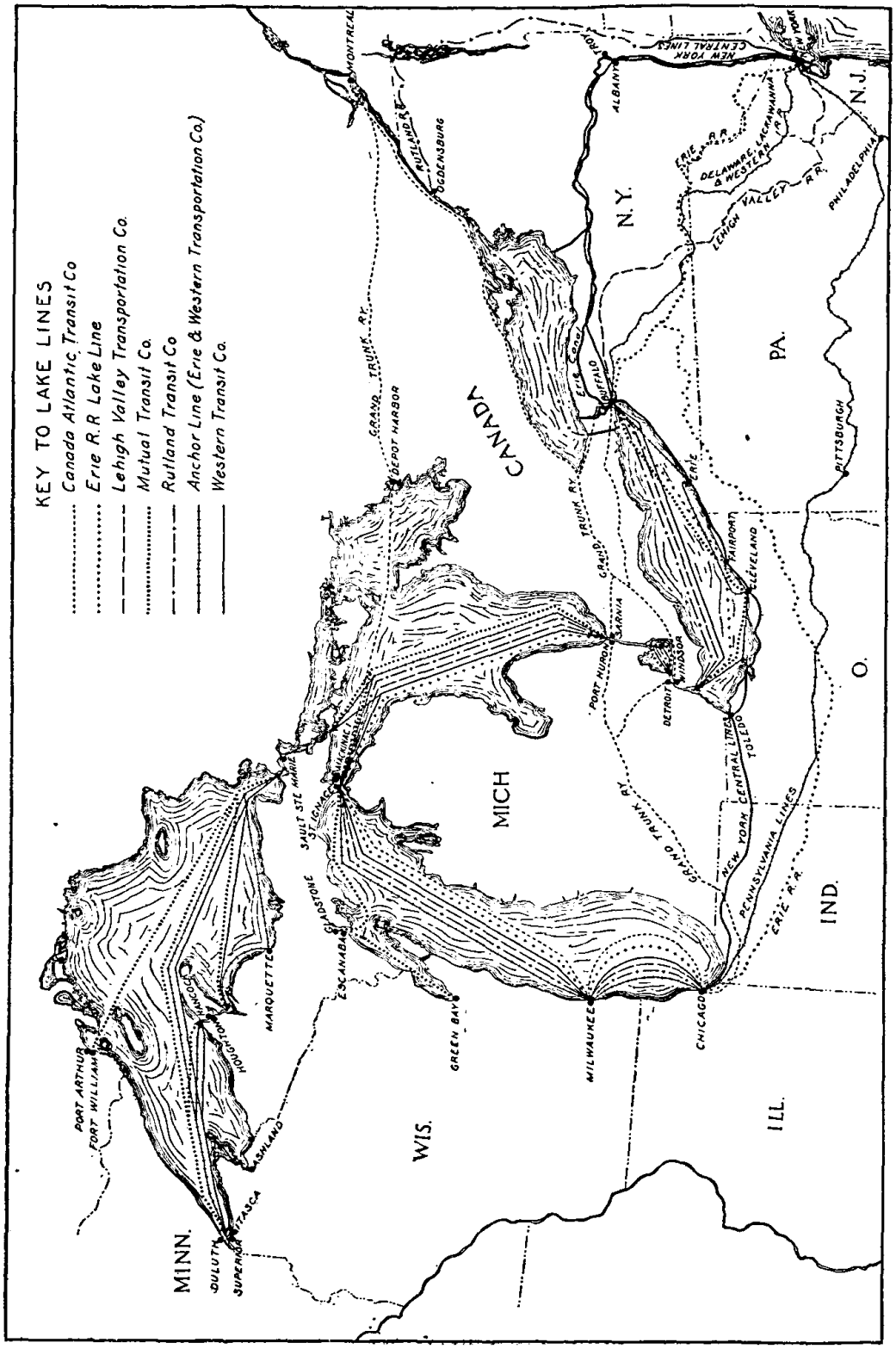
The Canada Atlantic Transit Company is owned by the Grand Trunk Railway Company of Canada, and operates a fleet of three steamers between Depot Harbor on Georgian Bay, in the province of Ontario, and Chicago and Milwaukee. Rails of the Grand Trunk Railway Company of Canada reach Depot Harbor, which is the only port served in common with the boats of its transit line, but by reason of its ownership through stock control of the Grand Trunk Western Railway Company, it reaches Chicago and Port Huron over the rails of that line.

The Erie Railroad lake line is simply the designation given to the boats which are operated by the Erie Railroad Company as a part of its system. There is no distinct corporate entity existing between the two, and the boat line and the railroad are operated as one system. These boats ply between the ports of Buffalo and Fairport, Ohio, on Lake Erie, serving Milwaukee, Wis., and Chicago, Ill., on Lake Michigan, and touching at Manitowoc. None of the ports served by the boats of the Erie Railroad is reached by the rails of that road other than the interchange port of Buffalo, but the Erie Railroad Company owns the capital stock of the Chicago & Erie Railroad Company, which operates a road from Marion, Ohio, to Chicago, and over the rails of this road it does reach Chicago in common with its boats.

The accompanying map shows the routes of each of these boat lines and the ports of call, together with the rail lines of the several petitioners.

The first controlling question arising under these applications is whether or not, within the meaning of the Panama Canal amendment, there is or may be competition for traffic between the vessels operated and the railroad interested in them.

This question would be easily answered in the affirmative if the ports of call were served in common by the boats and by the paralleling rails of the owning railroad. The physical situation would itself establish the case. It appears, though, that no such case is made out on the records here presented, since no two ports of call are served in common by the boats and the paralleling rails of the particular owning railroad entity. It is a fact, however, that in the case of the Pennsylvania Railroad Company, New York Central and Hudson River Railroad Company, Erie Railroad Company, and the Grand Trunk Railway Company of Canada, the railroad entity owning the boats or the



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interest therein also owns, or has an interest in, other railroad entities whose paralleling rails do serve ports of call in common with the boats.

It is urged that this does not establish a case within the meaning of the act and that the act only applies to cases where there is competition, actual or potential, between the boats and the rails actually operated by the owning entity. This position takes no account of the extremely broad language used, to define the character of interownership which the act was meant to reach:

> From and after the 1st day of July, 1914, it shall be unlawful for any railroad company or other common carrier subject to the act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.

The unsoundness of the contention is at once manifest when it is seen how in every case the act could be evaded by a reorganization incorporating the paralleling rails which reach the port of call into a railroad entity distinct from the entity owning the boats, with the real ownership, through stock control, remaining as before. The contention is faulty and is contrary to the spirit as well as the letter of the act.

The interest existing between the several portions of the New York Central system and the several boat lines in which it is a stockholder is the kind of interest which the act was intended to reach. The same is true of the Pennsylvania system, the Erie, and the Grand Trunk. Each of these four systems has such an interest as the act defines in a boat line or lines which does or may compete with rails forming the respective system.

The case of the Rutland Railroad Company and its interest in the Rutland Transit Company presents another phase of a like situation, since it is allied with the New York Central system. Here the boats, as well as the paralleling rails, are owned by separate entities which in turn are partly owned by the common entity, the New York Central. The community of interest or interownership is just as potent in this case as in the above-mentioned cases. It should be noted that the extent of the common interest is in no wise specified in the act. The boats of the Rutland Railroad do or may compete, therefore, with the rails of the system.

It might occur that these railroads might relieve themselves of the operation of the act by simply canceling the service to Chicago, the common point, but this would not be so. A situation where

competition prevails might be said to be the antithesis of monoply. In canceling the boat service to a concentrating port like Chicago the railroads would have used their ownership to produce the inhibited result. This amendment to the act to regulate commerce was primarily intended to secure to the commerce of the country, moving via the Panama Canal, freedom from control by the transcontinental rail lines which might be affected and thereby to promote competition between these carriers and vessels plying on this water route. It was then thought wise to extend the same legislative idea to water transportation "elsewhere" in the country. So that this part of the amendment, *construed alone*, demands a cessation of any interest or control tending toward monopoly or a lessening of that competition between rail and water routes which would prevail under separate ownership and management.

The case presented by the applications of the Lehigh Valley Railroad Company and the Delaware, Lackawanna & Western Railroad Company requires a further consideration of the relation these roads bear toward the traffic hauled, or, rather, which might be hauled, by their boat lines. As before noted, the boat lines owned or in which these railroads have an interest, with the exception of the interchange port of Buffalo, serve no points in common with the rails of any part of the owning railroad system.

Each of these roads, however, is a party to through all-rail routes and joint rates to all the ports served by its boats with respect to westbound and eastbound traffic. All of the principal carriers in central freight association territory concur in these rates, including the lines west of Buffalo, which form parts of systems controlled by the petitioning trunk line carriers. The concurrences in the Lehigh Valley rates are shown in Lehigh Valley R. R. I. C. C. B–9000. The concurrences in the Delaware, Lackawanna & Western rates are shown in Delaware, Lackawanna & Western R. R. I. C. C. No. 9400. These carriers in common with all other trunk line roads make through passenger fares from points on their lines to all central freight association points, including ports served by their boats, in connection with all central freight association carriers who concur in C. L. Hunter's Trunk Line Tariff I. C. C. A–75; Joint Passenger Tariff No. 15. They are also members of the Lake Lines Association and are parties to certain fast freight line arrangements. The effect of such alliances on their boat lines indicates that these railroads are parties to arrangements which make them competitors of their boat lines.

The through all-rail routes and joint rates which these roads maintain with carriers connecting at their lake interchange ports for points beyond, including the ports served by their boats, are legitimate and necessary arrangements for the convenience and facility of their rail transportation.

These petitioners, in connection with all central freight association territory rail carriers, as shown by their concurrences, are the joint makers of tariffs publishing joint through rates for the all-rail transportation to and from the ports served by their boats. The only thing to indicate that the entire all-rail haul is not performed by their respective lines is the concurrence of their connections in these rates. Together with their connections they make a through line from the east to the lake ports over which both eastbound and westbound traffic moves all rail. They originate the westbound traffic and control its routing. The actual result of these arrangements is the same as if these petitioners owned the rails reaching these ports.

The all-rail connections of the Lehigh Valley Railroad Company and the Delaware, Lackawanna & Western Railroad Company, which participate in the through route west of Buffalo, are capable of delivering to these roads at Buffalo many times the volume of eastbound tonnage that it would be possible for these roads to originate through the medium of their own boat lines and deliver to their rails at Buffalo. These petitioning roads, therefore, are very solicitous to promote and improve their relations with their western rail connections. Through route arrangements are reciprocal, since the entire movement of traffic is not in the one direction. So the one most potent way in which these petitioning roads can encourage a routing of the eastbound traffic from these western rail connections over their rails is to route as much westbound traffic as possible over the particular connection or connections which are able to furnish the most eastbound traffic. The westbound traffic which is so routed is necessarily diverted from the boats of these petitioners. This sacrifice of the boat lines is small when compared to the gains made by these petitioning carriers in the interchanging of all-rail traffic. The eastbound all-rail traffic in almost every instance might just as well be turned over at Buffalo to one of the several rivals of the petitioners extending east. The striving or rivalry for this eastbound traffic causes these petitioners to divert westbound traffic from their boats, and when they do this they are competing with their boats within the meaning of the act as amended.

That the existence of paralleling through all-rail routes to which joint through rates are applicable, in which the petitioning railroad participates, is a circumstance bringing any application under this amendment within its provisions, seems clear when the amendment is considered in its application to the railroad ownership of, or interest in, boats operating through the Panama Canal. Neither at the time the amendment became a law, nor now, is there any transcontinental rail line owned or operated by a single railroad or system of railroads in the United States. If, therefore, the participation of a petitioning

railroad in such through route arrangement does not constitute an arrangement by which it is possible for it to compete with its boats operating through the Panama Canal from and to common points, then this amendment, as applied to traffic through the Panama Canal, is of no effect.

The "fast freight line" was the forerunner of the through route and had its origin in the lack of arrangements for the interchange of equipment. These fast freight lines acquired large numbers of freight cars and made arrangements with certain roads over which it was desired to establish a through service. This through service could be established by using several different combinations of roads, so there was the same rivalry and striving between these several roads to be members of the particular fast freight line as exists under through route arrangements. The through route established, their business then is to solicit through shipments of freight to move all rail over the "line" that has been organized. To this end soliciting offices were established in many trade centers. The participation in these "fast freight lines" entails the same sacrifice on the part of these petitioners' boat lines as was pointed out with respect to the through route arrangements. These roads are members of "fast freight lines" which are still in existence, and in the nature of things the best interests of their boat lines are made subservient to the interests of their rails, which, of course, are of much greater importance.

The Lehigh Valley Railroad Company is a party to and has a proprietary interest in the Traders Dispatch and the Lehigh Valley-Wabash Dispatch, fast freight lines reaching Chicago and Milwaukee, ports served by boats of the Lehigh Valley Transportation Company. This petitioner in the year 1913 contributed $69,208.27 to cover its share toward the maintenance of the Traders Dispatch.

The Delaware, Lackawanna & Western Railroad Company is a party to and has a proprietary interest in the Lackawanna-Lake Shore line, operating over petitioners' line to Buffalo, then over the Lake Shore & Michigan Southern Railroad and its western connections to Chicago and points west; the Lackawanna-Michigan Central line, operating over petitioner's route to Buffalo and then over the Michigan Central and its western connections to Chicago and points west; the Wabash-Lackawanna Dispatch, operating over petitioners' rails to Buffalo, then over the Wabash Railroad and its western connections to Chicago and points west; and the Lackawanna line, operating over petitioners' rails to Buffalo, thence over the New York, Chicago & St. Louis Railway Company and its western connections to Chicago and points west. For the year ending December 31, 1913, the Delaware, Lackawanna & Western paid to the Lackawanna line as its propor-

tion of maintaining the same, $87,758.57, which went in part to defray expenses of maintaining freight-soliciting agencies in Chicago, Cincinnati, Des Moines, Indianapolis, Kansas City, Peoria, St. Louis, and St. Paul.

The Lehigh Valley Railroad Company insists that if its participation in these fast freight lines and contributions to them is wrong and contrary to the law, it is ready and willing to make any changes that might be suggested by the Commission. While such a position is commendable, these cases are to be tried on facts, not promises for future performances, and under the amendment, the Commission is empowered only to pass on the facts of past and present conditions as presented.

It is to be noted that the Rutland Railroad Company is a party to "fast freight lines," known as the Rome, Watertown, and Ogdensburg route and the Rutland-Michigan Central route, which are lines serving western points in competition with the boats of the Rutland Transit Company. It is also a party to through routes and joint rates to the ports served by its boats.

The Lake Lines Association is an "understanding organization" which, while claiming not to be an organized agency, has held meetings, the records of which, as shown in the evidence presented in these cases, indicate that its function is to insure a "proper" management of these lines, from the viewpoint of the railroads, which could not have been possible if their operation were unrestrained. The whole arrangement might be classed as a "get together movement" to which all the roads here petitioning are parties. While these two petitioning roads which are here specifically under consideration may not directly compete with their boat lines over the rails of their systems, their membership and activity in this association or participation in any like understanding places them in a position inimical to the best interests of their boat lines. Placed in such an attitude these roads, through the agency of other roads with which they are "partners," become the competitors of their own boat lines.

The lake lines in which the petitioners are interested have been shorn of the initial rate-making power. This power has been usurped by the trunk line association of which the petitioners are members. The through rates controlled by this authority, in which the boat lines are merely concurring carriers, determine for the shipper which lake line must be used. The particular route is controlled by applying arbitrary switching charges at Buffalo, which compel the through lake-and-rail traffic to move via the predetermined lake line. The zones of territory to be served and those not to be served by the lake lines are also determined by this outside authority. This is accomplished by maintaining a scale of rates, not subject

to competition, that forces traffic by either all-rail or lake-and-rail routes, as desired by the trunk line association. The interest and concern of the trunk line association in fixing these different combinations of rates is simply the solidified interest of the several member railroads, whose individual interests have been above indicated.

What has been said with special reference to the petitioners Lehigh Valley Railroad Company and the Delaware, Lackawanna & Western Railroad Company applies with equal force to each of the other petitioners herein, since each is a party to through all-rail routes reaching the several ports served by their boats, as well as a member of the Lake Line Association.

From a consideration of all the circumstances the Commission is of opinion, and finds, that each of the applicants here involved does or may compete for traffic with the lake line or lines in which it has an interest.

In the present cases, however, which are not applications for the extension of a service operating through the Panama Canal, the finding that competition, actual or potential, exists does not *ipso facto* require the separation of the petitioning railroads from the boat lines in which they are interested within the meaning of the act.

In extending to all water commerce the legislative idea above referred to, of unrestricted competition between rail lines and water routes, a proviso was prescribed where such water commerce was not routed through the Panama Canal, as follows:

> If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July 1, 1914.

Each of the applicants strongly urges that the boat line or lines in which it is interested is being operated within this proviso of the act, and quite an array of conditions now prevailing are advanced in support of this contention.

It is urged that the experience has been that the boat lines have been a losing proposition as a distinct operating unit, but that by reason of the financial strength of the owning railroad the boats have been kept in service, though operating at a loss, and that this condition could not or would not prevail if it were not for the joint ownership; that the boats would otherwise disappear from the lakes, and that thus keeping these boats in the service is "in the interest of the public and is of advantage to the convenience and commerce of the people."

Whether the poor financial statements presented by certain of the lake lines are due to inherent natural difficulties or the course of opera-

tion induced by the joint control, is a question of considerable doubt on the records presented here. By reason of the particular accounting plan that has been followed, a material deficit is shown, whereas, according to the apparently more accurate system employed by the Commission's examiners of accounts, the same line, viz, the Mutual Transit Company, shows profitable operation. The explanation of the system employed made by the auditor of this line was that it was devised to avoid taxation of the profits that would otherwise have been shown. It also appeared as the opinion of an official of one of the lines that the condition was due to the fact that the differential between the lake-and-rail rate and the all-rail rate was too small to encourage a remunerative amount of traffic to move, and he intimated that if the joint control did not exist, the boat lines would lower their rates to a point where their bottoms would be filled.

It is urged, however, that though such independent operation might be more remunerative, it would necessarily become irregular and irresponsible, and that joint ownership has furnished the shipping public with a regular and uninterrupted service, which is admittedly of advantage to the convenience and commerce of the people. To render this regular service, it is said, the boats must move whether under light or full cargo, and experience indicates that the cargoes are light most of the time, entailing expensive operation, a policy of operation that can only be maintained under joint ownership.

The joint ownership and operation guarantees to the public the responsibility of the lake service, it is contended, to the same degree that the responsibility of the service of the owning railroad is assured.

It is urged that under the joint ownership and operation, a duplication of records and much work is obviated and many terminal expenses are reduced, all of which tend to more economical transportation and a lower cost for the lake haul, in the interest of the public and of advantage to the convenience and commerce of the people.

In further support of the contention, it is urged that the increased powers of this Commission under the act as it is now amended confer full jurisdiction to regulate and control the lake line situation, so that the railroads can not in the future so use the boat lines they own as to stifle competition on the great lakes. It is pointed out that this Commission may require the establishment of physical connections between the dock of the water carrier and the rails of any rail carrier or carriers subject to the act and prescribe the terms and conditions under which such construction is to be performed; that through routes and maximum joint rates may be established between and over rail and water lines, and that the Commission may determine the terms and conditions under which they shall be operated; that maximum rail proportional rates may be established and the traffic to which and the vessels to which same apply may be determined;

that where there is an extension of the joint service as now operated, the rates, schedules, and practices of the water carriers will have to be filed with the Commission and be subject to the same supervision as that exercised over the railroads in this respect.

In passing on the question of whether or not the particular boat line is being operated within the proviso of the act it is necessary to first determine the purpose of the legislation which gave rise to these petitions. From an examination of the congressional debate from which the act emerged, it is at once clear that the spirit which undoubtedly prompted this legislation was a desire to preserve to the common interest of the people, free and unfettered, the "water roadbed" via the Panama Canal, which was nearing completion. Coupled as it is, the legislative purpose of the other parts of the amendment with respect to waters "elsewhere" must necessarily have been to restore all the water routes of the country to the same condition of freedom from any domination that would reduce their usefulness.

For any case to be within the spirit of this proviso it is necessary to show a situation in which are present all the elements which prevail, or would prevail, were the water service independently operated. On a watercourse where the boats and boat lines are free from domination or control by the railroads, and where they are left to survive as their merit or the ingenuity of their owners makes possible, there will be, and always is, a healthy rivalry and striving between such boat lines themselves and with paralleling railroads for all suitable and available traffic. There is competition. This rivalry manifests itself in several ways. The rates charged fluctuate according to economic principles, and the shipper enjoys invariably, as a result, lower charges for the transportation routed over such waterways and thereby reaps a return from the "nation's highway." Necessarily, coincident with the lowering of the rate, there is a rivalry in service which is an equally strong weapon of competition. The condition is one which results in the beneficial use of the waterways accruing to the shippers. As far as this legislation concerns water routes elsewhere than through the Panama Canal, the spirit and purpose of it is to restore to the people the beneficial use of the natural common highways.

The right to use the waterways of the country as a means of transportation is a natural right, but this right may not be abused to the injury of others, and it is the public right that the waters be so used as to return benefit to the people.

The waterways of the country furnish ready-made roadbeds for transportation routes, on which the rates for shipment may be made low because of this physical fact. But these arteries of commerce,

without boats to ply on them, are useless for transportation purposes. And although there may be many boats plying on these water routes, they may be so operated as to produce practically the same condition of things as would exist were there no boats afloat.

As a natural and usual course of experience, where a railroad acquires and undertakes to operate a competing boat line, the rate for the water transportation ceases to be influenced solely by those ordinary conditions which affect such traffic, because a new element is introduced into the situation, namely, the interest of the owning railroad.

This discussion of general principles points the basis for the legislation here under consideration. If such is the basis, what is the purpose of the legislation, if it is not to relieve the watercourses of the country from the domination of the rail carriers?

Congress has decreed that there shall be a restoration of conditions which prevailed when railroads had no interest in and exercised no control over the boat lines plying the country's water routes. That the legislation might not be arbitrary but be effective within constitutional limitations, certain provisions were made so that in given instances which form exceptions to the usual experiences in cases of joint ownership, such ownership may be continued. To comply with this legislative direction, however, it is necessary to divorce the railroads from their boat lines, unless the particular case comes within the exception as provided. If this is not the result, of what avail is this legislation?

The inquiry in these cases is, therefore, Is the joint operation of these boat lines such as to make of them an exception? Or, in the words of the statute, Is the service by water being operated in the interest of the public, and is it of advantage to the convenience and commerce of the people, and will an extension and a continuance thereof exclude, prevent, or reduce competition on the route by water under consideration?

The contentions of petitioners as to responsibility and regularity of this service under joint operation lose weight when it appears that there has been no lowering of the cost of water transportation accompanying them. It appears from correspondence passing between a boat-line manager and an official of the owning railroad, which forms a part of these records, that this manager attributes the small tonnage hauled by his line, and the consequent small revenues, to the fact that the differential between the lake-and-rail rates and the all-rail rates is too small. He urged a larger differential, assuring his superior that such a policy would enable him to profitably operate the boat line.

Instead of lower rates in prospect, it is made to appear that it is only the greater financial strength of the owning railroads that

enables the present boats to operate, as it is contended that certain boat lines are being operated at a loss. If this be true, then there is no prospect for lower rates under continued joint ownership, and the public is reaping little benefit from this waterway, and the situation is almost the same and will be the same as if no waterway existed.

No doubt, under joint operation, certain economies can be effected, but these economies have not manifested themselves in a reduced lake-and-rail transportation cost to the public. Instead of any reduction in lake-and-rail rates they have been steadily advanced under joint ownership. Beginning about 1900, when trunk line control over the lake lines was becoming perfected, the first-class lake-and-rail rate from New York to Chicago has been advanced by successive increases from 54 cents to 62 cents; the rates on the other classes have been correspondingly advanced. In 1910, according to statements in the records which were not controverted, the trunk line interests agreed that the lake-and-rail rates should actually be advanced to the all-rail basis, and thus wipe out the differential except on first class, which was to be advanced from 62 to 70 cents. This action was only thwarted by the refusal of a foreign railroad owning a lake line to acquiesce therein. These successive advances, as the records show, have had the effect not only of preventing an increase in lake line tonnage, but in diverting from the lake routes to the all-rail lines, part of the tonnage which formerly moved on the lakes. Furthermore, there is much in the records tending to show that the very purpose of these advances in lake-and-rail rates was to divert tonnage to the all-rail lines. As a direct result of this rate policy of the owning railroads, the lake boats have operated with small cargoes, although their operating expense was almost as great as if they had been fully loaded. This has in turn resulted in a high operating cost to the lake lines per unit of freight. Does not this policy fully explain the lake line deficit? Again, do not such facts make clear that whatever economies might be realized by joint ownership are offset by the waste resulting from the unfair use of vessel tonnage in the interest of the owning railroads? The railroad control of these boat lines can not be said to be in the public interest when the policy of these railroads has been, by an artificial rate structure to deprive the public of the natural benefits that would flow from a free use of this waterway.

In deciding these cases, the Commission is required to judge as to whether or not these boat lines are being operated in the public interest under joint ownership, and then it must say whether the continuance of this operation will result in reducing, preventing, or excluding competition on the route by water.

That the joint ownership and operation of these boat lines has resulted in no real benefit to the people and that the operation is

not in the interest of the public or of advantage to the convenience and commerce of the people is established by the facts as above indicated, and a complete monopoly is exercised by the owning railroads over the lake line situation through the medium of the Lake Line Association.

The arguments that the increased powers of the Commission have remedied the situation are faulty, since it does not appear that this Commission has any special jurisdiction under this amendment to stop the operation of this Lake Line Association or to prevent the establishment of some other like arrangement later on. These arguments also lose weight in view of the fact that the increased jurisdiction of the Commission will be just as available in the control of the lake line situation hereafter under independent operation of the lake lines, as under a continued joint operation. The public will enjoy all the benefits contained in the amendment through the enlargement of the Commission's jurisdiction with respect to water transportation and at the same time, and in addition, there will accrue such benefits as will result when water rates and service are influenced by competition.

After divorcement this Commission may still regulate just as fully as under joint control, the through rail-and-water rate, fixing a reasonable maximum. It may also fix the maximum rail proportional of such through rate. It may still require the physical connection between the dock of a water line and the rails of any and all carriers serving a port of interchange.

The records here show no instance where the boat lines owned by the different rail carriers have actively competed for traffic with one another or with the paralleling railroads under the régime of joint ownership and operation. Under independent operation each of the lines which is now owned and operated by a railroad, in order to survive, will become a competitor of every other boat line and of every paralleling railroad for all traffic which moves by the great lakes or which might move over that route, and the result of such operation will be reflected in the character of service furnished the public and in the rate charged therefor.

The boat lines operating on the great lakes in conjunction with the barge lines operating on the Erie Canal furnish a through water route from western lake ports to the eastern seaboard. It is significant from the records in these cases that the through route arrangements and the interchange of traffic between lake lines and these canal barge lines have been terminated under the joint ownership of the lake lines, and the traffic has practically disappeared, to the injury of the boat lines and of the Erie Canal barge lines on eastbound traffic. It is contrary to the interests of the owning railroads operating from Buffalo east, for their boat lines to continue any through operating

arrangement with these canal barge lines for the movement of eastbound traffic. There is no power in this Commission to require the establishment of a through route between these railroad-owned lake lines and barge lines operating the Erie Canal, but under divorcement the lake lines will be free to make arrangements for the through carriage of freight in connection with the Erie Canal barge lines, and it will be to their interest to do so. The interests of the shipping public will be conserved, and those of the boat lines will be bettered in this respect under divorcement.

These boat lines under the control of the petitioning railroads have been first a sword and then a shield. When these roads succeeded in gaining control of the boat lines which had been in competition with paralleling rails in which they were interested, and later effected their combination through the Lake Line Association, by which they were able to and did drive all independent boats from the through lake-and-rail transportation, they thereby destroyed the possibility of competition with their railroads other than such competition as they were of a mind to permit. Having disposed of real competition via the lakes, these boats are now held as a shield against possible competition of new independents. Since it appears from the records that the railroads are able to operate their boat lines at a loss where there is now no competition from independent lines, it is manifest that they could and would operate at a further loss in a rate war against independents. The large financial resources of the owning railroads make it impossible for an independent to engage in a rate war with a boat line so financed.

From a consideration of all the circumstances and conditions disclosed by the respective records herein, the Commission is of opinion and finds that none of the several existing specified services by water herein concerned is being operated in the interest of the public or is of advantage to the convenience or commerce of the people within the meaning of the act, and that an extension and a continuance thereof will prevent, exclude, and reduce competition on the great lakes. The application of each of the petitioners herein is therefore denied, effective December 1, 1915. An order will be entered accordingly.