McCHORD, *Commissioner:*

The report in this case was prepared by the examiner and served on the parties. Exceptions were filed by the complainant, and have been considered. We find that the report is in compliance with the facts, and that on the facts the conclusions reached by the examiner are correct, and the report is adopted. An order dismissing the complaint will issue.

No. 9706.

LEHIGH COAL & NAVIGATION COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted December 3, 1917. Decided June 25, 1918.

Refund of the actual expense incurred by complainant, under an agreement with the Pennsylvania Railroad Company, in furnishing barges and other equipment for the delivery of anthracite coal at destinations on or reached via the Delaware & Raritan Canal, authorized.

Henry S. Drinker, jr., for complainant.

George R. Allen for Pennsylvania Railroad Company.

Howard A. Lehman for Lehigh & New England Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

The examiner proposed the following report:

This is a proceeding brought to recover the cost of certain transportation facilities furnished by complainant in the movement of anthracite coal from mines in the Lehigh region in Pennsylvania to destinations on the Delaware & Raritan Canal and the Delaware River between April 4, 1913, and May 7, 1915. The facts, which were first brought to the attention of the Commission informally September 28, 1915, are as follows:

For a number of years defendant Pennsylvania Railroad Company, in connection with the Central Railroad Company of New Jersey and the Lehigh & New England Railroad Company, has maintained joint rail-and-water rates on anthracite coal from mines in Pennsylvania to destinations on or reached via the Delaware &

Raritan Canal. Under the arrangement in effect between the carriers participating in the through routes the expense of the water transportation is assumed by the Pennsylvania Railroad Company, hereinafter called defendant. That carrier, in order to provide for the movement by water, employed an independent contractor, who was paid for the use of the barges from Coalport (Trenton), N. J., to destination and for team towing on the canal and steam towing on the river.

Some time prior to 1908, the exact date not appearing of record, complainant undertook to avail itself of the joint rates established by defendants for transportation via the Delaware & Raritan Canal, but found upon investigation that the barges offered by defendant through its agent exceeded 100 tons capacity and were too large to reach the terminal facilities of certain of its consignees. Complainant thereupon applied to defendant for permission to substitute smaller barges, and, this being assented to, engaged an independent contractor to perform the water transportation at the rate paid by defendant for the same service. Under the arrangement then entered into it was agreed that if the complainant assumed the cost of the transportation on the canal and river defendant would reimburse it to the extent of the amount that the latter would have been required to pay for that portion of the through movement.

In May, 1915, the above arrangement was ordered discontinued as the tariffs made no provisions for the payment of the allowances in question. Investigation of the records developed that defendant had previously refunded to complainant the sum of $834.06, representing the amount the latter had paid for the water transportation between April 4, 1913, and December 1, 1914. At the request of defendant this amount was returned to it. Between April 22, 1915, and May 7, 1915, complainant had shipped 50 cars of coal, paying thereon, in addition to the tariff rates, the sum of $689.66 for boat freight, team towing, and steam towing. Payment thereof was declined by defendant.

Complainant contends that reimbursement of its actual expenses incurred in furnishing a transportation facility which defendants were under obligation to supply, under the circumstances hereinabove related, may properly be made under section 15 of the act, and that the refusal of the defendant to make refund has been occasioned solely by its neglect to incorporate in the tariffs the fact and the amount of the allowance. These contentions are admitted in defendant's answer.

The provision of section 15 applicable hereto is as follows:

> If the owner of property transported under this act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more

than is just and reasonable, and the Commission may, after hearing, on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

There is no question in this proceeding of the reasonableness of the amount involved. It represents in the aggregate the precise sum that the defendant would have borne if it had transported the shipments through to destination, and its payment would in no way inure to the pecuniary advantage of the shipper. As the matter now stands defendant has in its possession the sum of $1,523.72 which it was not contemplated should be retained by it, and complainant has sustained an expense of a like amount in rendering a service and furnishing an instrumentality included in the rate paid for transportation. The circumstances show that complainant is clearly entitled to the reimbursement of its actual expenses in this connection, and the Commission sees no objection to the adjustment sought.

No order authorizing the refund appears to be necessary herein. If such allowances are to be made in the future, however, they should be duly authorized by tariff in accordance with section 6 of the act.

McCHORD, *Commissioner:*

The foregoing proposed report was served under rules of procedure providing for the filing of exceptions thereto within 20 days. No exceptions were filed.

Upon consideration of the record we approve and adopt the proposed report. An order will be entered dismissing the complaint.