

No. 11463.<sup>1</sup>

## LEHIGH VALLEY COAL COMPANY

v.

## DIRECTOR GENERAL, AS AGENT.

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*Submitted October 26, 1921. Decided July 8, 1922.*

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1. Rates on unprepared anthracite coal, in carloads, from various mines and culm banks on the Lehigh Valley Railroad in the Lehigh and Wyoming regions in Pennsylvania, to breakers in the same regions, for preparation or for reparation and reforwarding by way of that railroad, between June 25, 1918, and April 8, 1919, found to have been unreasonable. Reparation awarded.
2. Rates on the same commodity from Rahn colliery at Seek, Pa., to other collieries and washeries on the Lehigh & New England Railroad during June 25, 1918, and April 8, 1919, found to have been unreasonable. Reparation awarded.
3. Rates on buckwheat No. 3 coal from collieries and washeries in the Panther Creek mining district, Pa., to Power House (Hauto) Pa., during the period from January 1 to June 24, 1918, found legally applicable. Rate applicable from June 25, 1918, to February 28, 1920, found unreasonable to the extent that it exceeded 25 cents per gross ton. Waiver of undercharges authorized and reparation awarded.

*Carmalt, Hagerty & Wheeler, William G. Wheeler, and P. F. O'Neill* for Lehigh Valley Coal Company; *Samuel D. Matlack* and *George P. Orlady* for Lehigh Coal & Navigation Company; and *Thomas J. Perkins, Francis B. James, E. E. Williamson, Ewing H. Scott, and Wilbur LaRoe, jr.*, for Lehigh Valley Light & Power Company.

*John F. Finerty, Royal McKenna, Thomas M. Woodward, Fred W. Heid, and Paul C. Hamlin* for director general and various defendants.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

BY DIVISION 1:

These cases were heard separately, and exceptions were filed to the reports of the examiners, by one or more of the parties in each

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<sup>1</sup> This report also embraces No. 11192, Lehigh Valley Light & Power Company v. Director General, as Agent, and Lehigh & New England Railroad Company; and No. 11692, Lehigh Coal & Navigation Company v. Director General, as Agent.

docket, and the cases were orally argued. The issues are related, and will be disposed of in one report.

For convenience, Lehigh Valley Coal Company, the Lehigh Valley Light & Power Company, and Lehigh Coal & Navigation Company, the three complainants, will be referred to as coal company, power company, and navigation company, respectively. The navigation and coal companies are corporations engaged in mining and preparing anthracite coal, and the former also in the sale thereof. The power company is a public service corporation supplying electric current for light, heat, and power from its power house at Hauto, Pa., to industries, municipalities, and domestic users in eastern Pennsylvania.

Unless otherwise indicated, rates are stated in cents per ton of 2,240 pounds.

NO. 11463.

The coal company by its complaint, filed May 12, 1920, alleges that the rates charged on carload shipments of unprepared anthracite coal between June 25, 1918, and April 8, 1919, from mines and culm banks on the Lehigh Valley in the Lehigh and Wyoming regions in Pennsylvania to breakers in the same regions, for preparation, or for reparation and reforwarding by way of the Lehigh Valley, were unjust and unreasonable. We are asked to award reparation.

Unprepared coal includes run-of-mine and culm. The former is coal as it comes from the mine. The latter is fine coal which, until recently, was unmarketable. In preparing coal, it is run through a breaker, between a set of rollers, and over screens for the purpose of sizing and cleaning. Prior to 1901, the coal company had a breaker at each of its mines. In that year, while rebuilding a breaker, coal from the particular mine was transported in its unprepared state to a near-by breaker for preparation, the carrier having established a special rate for that movement. Since then, breakers have not been built or rebuilt at several mines, and the unprepared coal taken therefrom is moved to breakers located generally in the direction of the final rail destination, which in most instances is tidewater or the lake ports.

At the mines the coal company owns the land on which the tracks are located, and paid for the grading and the ties, while the Lehigh Valley put in and owns the rails. All the capital stock of the coal company is owned by the Lehigh Valley. For transporting the coal from mine to breaker old wooden cars are generally used. Heating pipes were installed therein by the coal company to facilitate and

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expedite unloading in cold weather; and some changes were made in the cars by the Lehigh Valley to facilitate their unloading. Run-of-mine coal is dumped into railroad cars from small mine cars at the mine. Culm coal is loaded by means of steam shovels at the culm banks. The Lehigh Valley places the empty cars above the loading points, where they are turned over to the coal company. After the cars are loaded they are picked up by the Lehigh Valley for movement to the breaker. The movement from mine to breaker ranges from 1 mile to 13 miles, the average being 7.5 miles.

Between January, 1914, and June 24, 1918, the rates on unprepared run-of-mine and condemned coal moved to breakers in the Lehigh and Wyoming regions for preparation, or for reparation and reforwarding via the Lehigh Valley were based upon the following scale:

|   | Per car for distances 10 miles and under. | Per car for distances over 10 miles. |
|---|---|--------------------------------------|
| 60,000-pound capacity car and under.....                | \$2.32                                    | \$2.90                               |
| 80,000-pound capacity car and over 60,000 pounds.....   | 3.14                                      | 3.93                                 |
| 100,000-pound capacity car and over 80,000 pounds.....  | 3.93                                      | 4.91                                 |
| 120,000-pound capacity car and over 100,000 pounds..... | 4.72                                      | 5.90                                 |
| 140,000-pound capacity car and over 120,000 pounds..... | 5.50                                      | 6.88                                 |

By General Order No. 28 of the Director General of Railroads, coal rates were increased 15 cents per ton, net or gross as rated, over the rates in effect June 1, 1917, if not so increased since that date. In addition, the resulting rates were increased certain amounts specified in the order, ranging from 15 to 50 cents per net ton. As to the traffic here in question, this latter increase was 15 cents. Transposing that net-ton increase to tons of 2,240 pounds made the additional increase 16.8 cents. Therefore, on June 25, 1918, a total increase of 31.8 cents per ton, minimum marked capacity of car, was made in the carload rates set forth in the foregoing table. Wherever possible the cars were loaded 10 per cent over the marked capacity.

Originally, General Order No. 28 provided a minimum charge of \$15 per car. On June 12, 1918, 13 days prior to the effective date of that order, a supplement thereto excluded coal and certain other commodities from that minimum. This supplement was not received in the office of the coal freight agent of the Lehigh Valley, and its tariff effective June 25, 1918, carried that minimum carload charge on coal. It was not removed from the tariffs until August 30, 1918. On account of this \$15 minimum, the coal company asserts that between June 25 and August 29, 1918, it paid \$41,411 over and above the increased per ton rates then in effect on 60,000-pound cars alone.

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The Lehigh Valley rates made effective June 25, 1918, constituted increases varying from about 275 to 500 per cent, the higher percentages resulting from the application of the \$15 minimum per car charge. Under these rates, the coal company urges it would have been obliged to shut down the mines at which there were no breakers, build new breakers, or rebuild those which had been abandoned. Considerable complaint was made by the coal company and others of these rates and, effective August 30, 1918, under freight rate authority No. 427, they were reduced to the following amounts, based upon the marked capacity of the car plus 10 per cent:

|   |        |
|---|--------|
| For distances 3 miles and under.....                  | \$0.17 |
| For distances over 3, to and including 10 miles.....  | .22    |
| For distances over 10, to and including 20 miles..... | .28    |

The rates of June 25, 1918, and of August 30, 1918, according to the chairman of the trunk line territory coal and coke committee of the railroad administration, "were arrived at practically arbitrarily." The committee originally recommended a scale of distance rates which were on a higher basis than the rates established under freight rate authority No. 427, but subsequently, after further conference at which the shippers contended that any advance of more than 25 per cent over the rates in effect June 24, 1918, would interfere with the production of coal, the committee recommended the rates established under that freight rate authority. In regard to the latter rates the committee stated "that the scale now proposed is a proper one \* \* \*, and \* \* \* as low as it can consistently recommend \* \* \*. This scale was only proposed in view of present conditions and should be subject to some proper advance when conditions again become normal."

Further complaint was made by shippers, including the coal company, of the August 30, 1918, rates. The United States Fuel Administration, which fixed the maximum prices operators could charge for coal during the time covered by this complaint, represented to the railroad administration that the continuance of these rates would curtail the production of anthracite coal and that some further reduction should be made to insure maximum production which was then desired. Effective March 23, 1919, under freight rate authority No. 5207, the rates were further reduced to the following:

|   |        |
|---|--------|
| For distances 3 miles and under.....                  | \$0.10 |
| For distances over 3, to and including 6 miles.....   | .15    |
| For distances over 6, to and including 10 miles.....  | .175   |
| For distances over 10, to and including 15 miles..... | .20    |

These were likewise based upon the marked capacity of the car plus 10 per cent. Through error the tariff of March 23, 1919, increased the rate from Tomhicken to Spring Mountain and Hazleton shaft

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from 28 to 90 cents. This was not corrected until April 9, 1919, when it was reduced to 20 cents, the basis provided in freight rate authority No. 5207.

The charges collected were the published tariff charges. The coal company asks for reparation in the amount of the difference between the charges paid and the charges which would have accrued under the scale of rates prescribed in freight rate authority No. 5207.

Our special permission No. 45950, granted on the application of the director general for the purpose of enabling carriers under Federal control to publish in an economical and expeditious manner the increases provided under his General Order No. 28, and setting aside temporarily certain formalities prescribed in our tariff rules governing the publication of new tariffs, provided that supplements to the new tariffs publishing the increases should carry this provision:

This supplement does not increase charges for terminal or transit service, or facilities switching, weighing, demurrage, car service, transfer, diversion, reconsignment, refrigeration, icing, storage, elevation, or other special services.

The coal company contends that the preparation of coal is a service quite similar to milling or fabrication in transit, and that since transit services are among those excluded under the above-quoted exception from the provisions of our special permission, the charges paid were illegally assessed, that the tariff under which they were levied is void, that the charges legally applicable were those under the tariff in effect June 24, 1918, and that the shipments were therefore overcharged. To this contention there are several answers.

1. The charges collected were published in a tariff, naming line-haul rates, and are not within the purview of the restriction above quoted.

2. The special permission referred to merely authorized a new and exceptional method of publishing the rates authorized under General Order No. 28, in the interest of expedition, and carried with it a waiver of some of the standing requirements of our tariff circular. It is obvious that it could not have had the effect of limiting the rate-making power of the director general during Federal control.

3. The Federal control act provided that during the period of Federal control, whenever in his opinion the public interest required, the President should initiate rates, fares, charges, classifications, regulations, and practices "by filing the same with the Interstate Commerce Commission." No order for the filing of rates as a condition precedent to the lawful initiation thereof is required by the act. The rates here attacked as illegal were filed with us by the President through his duly appointed agent. Failure of the director general

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to interpret our special permission No. 45950 in the manner sought by complainant herein does not defeat the validity of the rates published by him, under which most of the charges assailed were collected. These were the legally applicable rates. *Anaconda Copper Mining Co. v. Director General*, 57 I. C. C., 723.

The weighted-average cost per ton for the Wyoming district, as computed by the division superintendent for that district, was 11.09 cents, but it is stated for the director general that these figures take into consideration only the time consumed in handling loaded cars, and do not include important factors of expense which are ordinarily included in cost estimates. The weighted-average cost per ton for the Lehigh district, as shown by the division superintendent for that district, is 18.54 cents, but these figures are also incomplete and inconclusive. The superintendent of transportation of the Lehigh Valley testified that no accurate cost figures on the transportation of unprepared coal between mine and breaker could be prepared. The mine engines, which handle this coal, work at the breakers in connection with prepared coal and supplies for the mines, and also move commercial shipments to stations other than the mines. He stated that the records are not in sufficient detail to make a segregation in anything like accurate shape, and that it would be practically impossible to allocate the time devoted to each particular service, because various services performed are so interwoven.

Group rates apply on prepared coal. The mines and the breaker are, in each instance so far as this complaint is concerned, located in the same origin rate group. The coal company invites attention to the fact that if each mine had a breaker the prepared coal would be hauled by the carrier over the same route over which the unprepared coal now moves on its way to ultimate destination, at the group rate without any additional revenue. It is therefore urged by the coal company that cost figures should be based upon the expense to the carrier to perform this service over what it would cost if the coal were hauled as prepared coal from mine to destination. The contention of complainant needs some qualification. The maps included in the exhibits show that the breakers in most cases are located on sidetracks connecting with the Lehigh Valley's main lines. The exact distances from the main lines do not appear, but there is necessarily an out-of-line movement for the distance of the haul of the unprepared coal inbound from the main line to the breaker and of the prepared coal outbound from the breaker back to the main line. Moreover, the railroad company does not handle the unprepared coal to the breaker where the breaker is at the mine, whereas it does handle the unprepared coal from mine to breaker

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where the breaker is not at the mine, and this movement, involving the placing of loaded cars at points on sidetracks at the breaker, which points are presumably above the level of the main-line tracks, makes an additional service which is not performed by the railroad company at mines having a breaker. From one to three engines are used by the Lehigh Valley in connection with the movements here in issue, depending upon the location of the mine and the breaker from and to which the prepared coal is transported.

Defendant compared the rates assailed with the rates on unprepared coal on other railroads in this region before and on June 25, 1918, to show that the rates of the Lehigh Valley were lower than on many of the other roads named, and that the rates on some of these roads, prior to June 25, 1918, were as high as or higher than those which became effective on the Lehigh Valley August 30, 1918. Under freight rate authority Nos. 427 and 5207 the rates on these roads, including the Lehigh Valley, were all based upon the same distance scale. The following, in part an excerpt from a table submitted by defendant, compares some of these carriers' rates effective June 24, 1918, and under freight rate authority Nos. 427 and 5207.

|  | Miles. | June 24, 1918, rates. | Resulting from freight rate authority. |           |                                |           |
|--|--------|-----------------------|--|-----------|--------------------------------|-----------|
|  |        |                       | No. 427, dated Aug. 5, 1918.           |           | No. 5207, dated Mar. 11, 1919. |           |
|  |        |                       | Distance.                              | Rates.    | Distance.                      | Rates.    |
| Lehigh Valley:<br>Between certain points.....                | 1-10   | Cents. 8              | Miles. 1-3                             | Cents. 17 | Miles. 1-3                     | Cents. 10 |
|  |        |                       | 3-10                                   | 22        | 4-66                           | 15        |
|  |        |                       |  |           | 7-10                           | 17.5      |
| Do.....  | 11-13  | 10                    | 11-20                                  | 28        | 11-15                          | 20        |
| C. R. R. of N. J.:   |        |                       |  |           |                                |           |
| Parrish washery to Nottingham colliery.....                  | 2      | 30                    | 1-3                                    | 17        | 1-3                            | 10        |
| Various collieries to Stanton colliery.....                  | 15     | 35                    | 4-10                                   | 22        | 4-6                            | 15        |
| Delaware & Hudson: Between Carbon-dale and Wilkes-Barre..... | 16     | 35                    | 4-10                                   | 22        | 4-6                            | 15        |
|  |        |                       |  |           | 7-10                           | 17.5      |
| D., L. & W.: Clearview shaft to Oxford breaker.....          | 2      | 10                    | 1-3                                    | 17        | 1-3                            | 10        |
| Erie: Between certain points.....                            | 3      | 15                    | 1-3                                    | 17        | 1-3                            | 10        |
| Philadelphia & Reading: Between certain points.....          | 1.3    | 10                    | 1-3                                    | 17        | 1-3                            | 10        |

<sup>1</sup> Average.

<sup>2</sup> Maximum.

Defendant does not contend that the rates effective June 25, 1918, were reasonable when considered in connection with the further haul of the prepared coal, but it does contend that they were reasonable for the service in and of itself. It shows that they were much lower than the rates on commercial coal between the same points.

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It is, however, practically conceded by defendant that if consideration is to be given to the fact that the coal, after preparation, moved outbound to market, the distance scale of rates set forth in freight rate authority No. 427 would have been reasonable for application on the shipments which moved on and after June 25, 1918. The distance scales above mentioned were conditioned upon reshipment on or via the line moving the unprepared coal inbound. The fact that this coal after preparation did move beyond can not be disregarded.

We find that during the period involved the rates charged were unreasonable to the extent that they exceeded the scale of rates set forth in freight rate authority No. 427. We further find that complainant made the shipments as described and paid and bore the charges thereon, and was damaged thereby to the extent of the difference between the charges collected and those which would have accrued on basis of the rates herein found reasonable, and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

NO. 11692.

By complaint filed August 7, 1920, the navigation company alleges that the rates charged on unprepared coal from Rahn colliery at Seek, Pa., to other collieries and washeries owned by it at Seek, Tamaqua, Lansford, Coaldale, and Hauto, Pa., for preparation for the market during the period from June 25, 1918, to March 18, 1919, were unjust and unreasonable. We are asked to award reparation. All these collieries and washeries are on the Lehigh & New England in the Lehigh coal district in eastern Pennsylvania. The unprepared coal involved in this case is as it comes from the mine and consists of from 60 to 65 per cent coal, the remainder being slate, rock, and other foreign substances.

The tariffs of the Lehigh & New England show the distances from Seek (Rahn colliery) to Tamaqua as 2.5 miles; to Lansford, 2.5 miles; to Coaldale, 1.4 miles; and to Hauto, 3.5 miles. The tariffs do not show the distance from Rahn colliery to Greenwood washery at Seek, but it was testified that the distance between these points is about 1.25 miles.

To certain of these points, including Greenwood washery, complainant made shipments from Rahn colliery between June 25 and August 15, 1918, aggregating 65,188.50 tons on which charges were collected at a commodity rate of 40 cents, and between August 15, 1918, and March 18, 1919, shipments aggregating 370,207.81 tons, on which charges were collected at a distance rate of 17 cents for distances of 3 miles and under. No authority appears for the application of the distance basis of rates between Rahn colliery and Green-

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wood washery, and there was no rate legally in effect on the shipments which moved from and to those points between August 15, 1918, and March 18, 1919.

Prior to June 25, 1918, the charges applicable on this traffic were published as switching charges, and were \$1.60 per car of 80,000 pounds capacity or less, and \$2 per car of over 80,000 pounds capacity to Greenwood washery and Tamaqua, Coaldale, and Lansford collieries; and \$2.40 and \$3, respectively, to Hauto washery. On June 25, 1918, under authority of General Order No. 28, these charges were canceled and a rate of 40 cents per ton was established. August 15, 1918, and March 18, 1919, the scales of rates provided in freight rate authorities Nos. 427 and 5207, respectively, were established. On October 11, 1919, specific commodity rates of 10 cents were established from Rahn colliery to Greenwood washery and to Tamaqua and Coaldale collieries, and 15 cents to Lansford colliery and Hauto washery. These rates as increased under the general increase authorized by us on July 29, 1920, are still in effect. The navigation company contends that the charges collected from June 25 to March 18, 1919, were unreasonable to the extent that they exceeded those which would have accrued on basis of the distance scale established March 18, 1919, namely, 10 cents for distances 3 miles and under, 15 cents for 6 miles and over 3 miles, and 17.5 cents for 10 miles and over 6 miles.

The average movement of this traffic from Rahn colliery when these shipments moved was 54.8 gondola carloads per day, of which 41.3 carloads were moved to Greenwood washery, 12.6 carloads to Tamaqua colliery, and the remainder to the other collieries and washeries. The cars were generally of 100,000 pounds capacity, but occasionally of 80,000 pounds. Most of the cars used were owned by the Lehigh & New England and were retained by that carrier in this service and not permitted to be loaded with prepared coal to go off the line. Other cars used in this service were received by the Lehigh & New England from its connections at Tamaqua and Hauto.

The tracks and yards at the various loading and unloading points are owned by the navigation company, but are maintained by the Lehigh & New England. The navigation company owns all the capital stock of the latter road.

The empty cars were moved by the Lehigh & New England from its main line over the spur leading to Rahn colliery and placed in a yard just west of the mine, from which point they were moved by gravity under the loading chute by the navigation company's employees. After being loaded with the unprepared material, the cars were again moved by the navigation company's employees, by gravity, upon two tracks in a yard just east of the mine.

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The service performed by the Lehigh & New England is not materially different from that performed by the Lehigh Valley in Docket No. 11463. The cars loaded with unprepared coal at Rahn colliery were taken from this point by the carrier's engine and moved in trains of from 15 to 20 cars for about three-fourths of a mile down grade to the main line and thence to the various breakers and washeries. The maximum grade between Rahn colliery and the other collieries and washeries is 1.14 per cent. One engine and a crew of five men were required to perform this service.

With regard to the return empty movement from the breakers to Rahn colliery, complainant observes that if the Lehigh & New England had permitted its cars used in this service to go off its line, the cars containing unprepared coal from Rahn colliery to the other collieries and washeries when emptied could have been loaded at those points with prepared coal from the market.

The contentions of the parties herein, including the position of the director general with reference to the significance which we may attach to the further movement outbound as a determinant of a reasonable rate inbound, are substantially similar in this case to what has been set forth in connection with Docket No. 11463, and will not be repeated here.

We find that the rates applicable from and to the points in question during the period from June 25 to August 14, 1918, inclusive, were unreasonable to the extent that they exceeded the scale of rates set forth in freight rate authority No. 427; that the rates applicable on and subsequent to August 15, 1918, were not unreasonable; and that a reasonable rate for application on the shipments which moved from Rahn colliery to Greenwood washery between August 15, 1918, and March 17, 1919, inclusive, would have been 17 cents, minimum marked capacity of the car plus 10 per cent. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby to the extent of the difference between the charges collected and those which would have accrued on basis of the rates found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

NO. 11192.

The power company alleges that the charges collected during the period from January 1 to June 24, 1918, on all shipments of anthracite boiler fuel from collieries and washeries at Coaldale, Hauto, Lansford, Nesquehoning, Seek, and Tamaqua, in the Panther Creek mining district of Pennsylvania, to its power house at Hauto were illegal, and that the rates charged from June 25, 1918, to the end

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of the period of Federal control were unreasonable. We are asked to award reparation. The complaint herein was filed February 6, 1920.

The main line of the Lehigh & New England runs through the Panther Creek mining district from Nesquehoning on the east through Hauto, Lansford, Coaldale, and Seek, to and beyond Tamaqua on the west. It connects with the Central Railroad of New Jersey at Nesquehoning and Hauto and with the Philadelphia & Reading at Tamaqua. Complainant's power house is located at a point west of Hauto station and is reached by a spur track, about 1 mile in length, owned and maintained by the power company. The grades, ascending and descending, along the main line, reach a maximum of 1.53 per cent. The daily coal consumption of the power house is about 20 carloads of approximately 47.7 tons each. The entire supply is obtained from collieries and washeries of the navigation company, located on the defendant carrier's line in the Panther Creek district.

Charges were collected on shipments made from January 1 to June 1, 1918, at a rate of 18 cents; from June 2 to June 24, 1918, at a rate of 22 cents; and from June 25, 1918, to July 18, 1919, at a rate of 50 cents, 10 cents of which was subsequently refunded to the power company by defendants upon the assumption that the tariff carrying the 50-cent rate was not applicable. From July 18, 1919, to the end of the period of Federal control a rate of 40 cents was collected. The 18-cent and 22-cent rates were collected in accordance with the local freight tariffs of the Lehigh & New England effective May 28, 1915, and June 2, 1918, respectively, on file with the Public Service Commission of Pennsylvania. Copies of these tariffs were submitted by the power company and are part of the record in this case. The tariffs provided for rates on "Buckwheat coal, culm and bank dirt," in carloads, minimum weight 15 gross tons, applying from stations in the Panther Creek district, including Hauto and Hauto (Storage Yards) to "Power House (Hauto), Pa." The 50-cent rate was contained in a tariff filed with us effective June 25, 1918, and included increases under General Order No. 28. This tariff named the same commodities and the same stations as the tariffs which had carried the 18-cent and 22-cent rates.

Prior to June 25, 1918, there was contemporaneously in effect another tariff published by the Lehigh & New England carrying per car rates for switching "anthracite boiler fuel (sizes, rice and smaller)," from or to Coaldale, Hauto, Lansford, Nesquehoning, Seek, and Tamaqua. The rates to "Hauto, Pa.," from the named stations ranged from \$1.80 to \$2.65 per car of 80,000 pounds or less,

and from \$2.25 to \$3.25 per car of over 80,000 pounds. This tariff was in effect from August, 1915, to June 24, 1918, and on file with the Pennsylvania commission. A copy was submitted by the power company and is a part of this record. On June 25, 1918, this switching tariff was superseded by a new schedule containing rates of 40 cents per ton, instead of a per car charge, on "anthracite boiler fuel (sizes, rice and smaller)," applicable from, to, or at the same stations as named in the superseded tariff, but omitted the words "switching charges."

It is the power company's contention that the rates provided on anthracite boiler fuel in the switching tariffs and, after June 25, 1918, in the local freight tariff, on anthracite boiler fuel were the legally applicable rates and not the 18, 22, and 50 cent rates carried in the successive tariffs on "buckwheat coal, culm and bank dirt" to Power House (Hauto).

To determine whether or not the two series of tariffs were concurrently applicable on the power company's traffic it will be necessary to determine, first, whether the commodity shipped to the power company's plant came under the commodity descriptions in both series, and, second, whether the point of destination was the same. The points of origin named in the two series were, with one exception, identical.

There are three sizes of anthracite coal known as buckwheat. The coal used by the power house was buckwheat No. 3, or barley. The next size larger is buckwheat No. 2, or rice. The coal was used by the power company as boiler fuel and is commonly so used. The tariffs carrying rates on "buckwheat coal" and the tariffs carrying rates on "anthracite boiler fuel (sizes, rice or smaller)" obviously included within their descriptions the commodity used in the power company's plant.

The movement of coal from the Lansford colliery to complainant's power house will be taken as representative of the movements in issue. Empty cars, in trains of 30, are moved by the railroad company from the Hauto yard to the Lansford west yards, thence in cuts of about 20 cars to the storage yard above the Lansford colliery. From this point they are "drifted down" by gravity by the coal company's employees to the breaker and loaded by them, again drifted down by gravity to an inspection platform, and thence into the loaded-car yard just below the colliery, where they are received by the railroad company. The carrier switches back to the breaker for reparation such cars as have been condemned after inspection, and takes out all the others for which billing instructions have been received. Cars ready to go forward are moved to the Lansford west yards,

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where they are classified and assembled into trains. Cars destined to complainant's power house, together with all those for movement beyond Hauto over the Central of New Jersey, are hauled in trains of 25 to 30 through a tunnel 0.75 mile long and carried past Hauto station to tracks immediately west of the Hauto scale. The locomotive which draws the cars through the tunnel is detached from the cars about 300 feet west of the scale, and the cars are drifted onto the scale by gravity, weighed, and drifted into the Hauto classification yard immediately beyond. Here the cars destined for complainant are separated from the others, and are picked up in cuts of 10, pulled out to the carrier's main line just east of the classification yard, and then moved back past the scale to the power-plant hold track. From this track they are pushed in cuts not exceeding five cars in summer weather and two or three cars at other times, over the track of the power company to its interchange yard 1 mile away, where the service is completed. There is a grade of 3.3 per cent on the track leading to the complainant's tracks, and a grade of 3 per cent on complainant's track to the interchange. Empty cars received from the power company are returned to the Hauto yard. Defendant states that the locomotives employed in this service are heavy eight-wheel locomotives, weighing up to 207,800 pounds exclusive of tender, and that only 4 of the total of 61 owned by the railroad company weigh more than those used in transporting complainant's shipments.

The tariffs on anthracite boiler fuel provided that the rates applied between the stations named therein. Hauto was specifically named as one of these stations. "Power House (Hauto)" was not specifically named in these tariffs. The tariffs on buckwheat coal, culm, and bank dirt did specifically name "Power House (Hauto), Pa.," as the point to which the rates therein applied. In these tariffs "Hauto" was included among the points of origin, as was also "Hauto (Storage Yards)." The tariffs in which specific rates to "Power House (Hauto)" were shown were the only applicable tariffs and the rates charged in accordance therewith were the only applicable rates. The rate applicable, therefore, from June 25, 1918, to the end of Federal control was 50 cents. The refund of 10 cents from this rate made by defendants on shipments from June 25, 1918, to July 18, 1919, was unlawful. On shipments made subsequent to July 18, 1919, there are outstanding undercharges of 10 cents per ton.

It is the power company's view that the service performed in handling fuel to its plant was a switching service within an industrial switching district. Defendants consider it to have been a line-haul service. By whatever name the service be designated, the rate of 50 cents applicable to Power House (Hauto) was initiated by the

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President in accordance with the Federal control act, and was specifically named, in tariffs filed to become effective on June 25, 1918, as the legal rate. The question to be determined is whether that rate was just and reasonable for the services rendered. That question will now be considered.

The service performed in moving coal to the power house differs in a number of ways from the movement of coal to boiler houses and power plants of the navigation company located at or near the several stations in the Panther Creek district. The boiler or power houses of the navigation company supply power for coal operations and are located on sidetracks within station limits. The rate charged for hauling anthracite boiler fuel to these plants was 40 cents on and after June 25, 1918, as compared with the 50-cent rate applicable on the power company's traffic. According to defendants, 50 per cent of the fuel used at any boiler or power house of the navigation company is switched from the breaker included in the particular operation unit served by that power house. The remainder is obtained from other collieries where there are no separate power plants. The average haul of the coal so obtained is 3 miles. The average haul to the power company's plant from 11 points of origin is 4.4 miles; the average weighted haul in 1919 was 3.84 miles, 1 mile of the haul being over the power company's track. The coal hauled to the navigation company's plants is not weighed, being billed at the marked capacity of the car plus 10 per cent. Empty cars in this operation are generally switched from the boiler house to the breaker near by and loaded. Empty cars from the power company's plant are hauled back to the Hauto yards and from there distributed to various loading points in the district.

The coal used by the power houses and boiler plants of the navigation company included condemned coal, whereas the power company's plant does not use such coal. It was testified that the percentage of coal condemned will run from 18 to 20 per cent. The coal condemned out of shipments intended for the power company, when not used by the navigation company, has to be switched back by the railroad company to the breaker for reparation. This double handling of part of the condemned coal, defendants contend, should be taken into account when comparing the rates for the respective hauls. Defendants admitted that the cost of the switching out and back of this coal was reflected in the 50-cent rate on prepared coal hauled to the power company's plant. This cost was not disclosed and it would be difficult to ascertain. The service is not separable, but is connected with the ordinary operations of mining and shipping coal. It appears that the lower rates on boiler fuel to plants of the navigation company were originally established for the service performed in hauling coal in intraplant movements at each mine or colliery.

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Changes in the methods adopted by the navigation company in supplying power for its operations, changed in some respects the character of the haul required to transport fuel to its power plants, at least to the extent of 50 per cent of the tonnage moved.

In support of its allegation that the rate was unreasonable *per se*, the power company submitted a cost study based on estimates of cost per gross ton for 1919, from which it concludes that 20 cents would have been a reasonable rate. The computations may be summarized as follows:

|   | Cents. |
|---|--------|
| Car cost per gross ton (based on 125 cars as the average number assigned to this movement).....         | 4. 45  |
| Locomotive cost per gross ton (based on 11 freight switching locomotives working 2,070 hours each)..... | 7. 97  |
| Other costs per gross ton.....  | 1. 91  |
| Total.....  | 14. 33 |
| Operating ratio for 1919.....   | 74. 25 |
| Reasonable rate on basis of operating ratio for 1919.....   | 19. 3  |

Using another estimate, based on the engine-hour cost for freight road locomotives, the power company arrives at a rate of 18.58 cents. With these computations as a basis, the power company estimates that the 40-cent rate charged yielded on this traffic an operating revenue per mile of road more than double the average on all traffic for the entire road, and a profit per net ton twice as great as that yielded by all other traffic for an average haul of 37.42 miles. It concludes that a rate of 20 cents would have allowed on the property investment a return in excess of 6 per cent.

The analysis was made upon the theory that the service rendered was a pure switching service. Defendants criticise it generally on the ground that it makes no proper allowance for items of terminal service and others included under the road accounts of carriers, and further, if considered as simply a switching service, that it assumes that the cost of handling these movements is the same as the average of all the other traffic of the railroad.

For illustration, in arriving at 1.91 cents in the computation of "other costs per gross ton" complainant has taken the total of 252,571,910 revenue freight ton-miles for the whole road, and finds that the aggregate of 1,566,488 revenue ton-miles for the power-house fuel is 0.62 per cent of the total ton-mileage for the road in 1919. Applying this 0.62 per cent to the total for the road of \$1,119,181.99 for all operating expenses other than locomotive and car costs for the same year, the sum of \$6,941.17 is derived, which is said to represent the total amount chargeable to the Hauto boiler fuel for the year. Dividing this last amount by the tons moved, namely 363,827, the resulting figure of 1.91 cents is obtained for the item of costs per ton, other than locomotive and car costs.

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Defendant takes complainant's basic data and, employing the average operating ratio for six years, which is found to be 56.75, in connection with a computation of costs based upon gross tons moved instead of ton-miles as used by complainant, arrives at a figure of approximately 40 cents as a fair earning for the traffic involved. The data upon which these computations are based were concededly incomplete.

Among other conditions brought to our attention are the heavy grade encountered by the carrier in making delivery of these shipments, the number of engine movements necessary to complete the movement of the loaded and empty cars, and the two terminal services and the classification services performed. Our attention also was called to local rates of other carriers, ranging from 40 to 70 cents, within the anthracite region of Pennsylvania for comparable distances, but with no showing as to the tonnage moved under those rates or the transportation conditions attending the movement. There was also contemporaneously in effect the director general's rate of 40 cents on unprepared coal for local hauls within this district, which involved a service as expensive as that to complainant's power house.

October 25, 1921, the Public Service Commission of the Commonwealth of Pennsylvania, upon a full analysis of the cost studies and other evidence submitted, found that the rate for the movement during the period from March 1, 1920, to August 25, 1920, was unreasonable to the extent that it exceeded 25 cents per gross ton, and to the extent that it exceeded 35 cents after the latter date. We see in this record no reason to reach a different conclusion with respect to the period immediately preceding. At the average carload weight of 47.7 tons a rate of 25 cents would yield a revenue of nearly \$12 per car.

The present corporate title of the complainant power company is Pennsylvania Power & Light Company.

We find that the rates charged on shipments which moved from January 1 to June 24, 1918, were legally applicable, and that the rate applicable from June 25, 1918, to February 28, 1920, was unreasonable to the extent that it exceeded 25 cents per gross ton. We further find that complainant made shipments under the rate found unreasonable and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges collected and those that would have accrued at the rate found reasonable; and that it is entitled to reparation from the Director General of Railroads, as agent, in that amount, with interest. The amount of reparation due can not be determined from the record, and complainant should comply with Rule V of the Rules of Practice. Collection of the outstanding undercharges may be waived.

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