

No. 27148¹BUFF FUEL & OIL CORPORATION ET AL. v. DELAWARE
& HUDSON RAILROAD CORPORATION ET AL.

Submitted November 12, 1936. Decided March 26, 1937

1. Rates on anthracite, in carloads, from the Pennsylvania anthracite regions to certain destinations in Saratoga, Schenectady, Otsego, Schoharie, Montgomery, Fulton, and Herkimer Counties in the State of New York, not shown to have been or to be unreasonable or otherwise unlawful. Complaints in nos. 27148, 27148 (sub-no. 1), and 27148 (sub-no. 3) dismissed.
2. Rates to certain other destinations assailed in nos. 27148 (sub-no. 2), 27148 (sub-no. 4), and 27148 (sub-no. 5) found unreasonable for the future but not shown to have been unreasonable in the past. Reasonable rates prescribed.

Harry C. Ames and Earle H. Bogardus for complainants.*Carleton W. Meyer, Daniel P. Loomis, Jervis Langdon, Jr., W. J. Larrabee, T. A. Harahan, E. D. Conklin, Wesley H. Maider, and J. Ledlie Hess* for defendants.*John J. Harvey and Norman F. Patton* for interveners.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS McMANAMY, PORTER, AND MILLER

BY DIVISION 3:

Exceptions to the examiner's report were filed by complainants and defendants replied thereto. Our conclusions differ in certain respects from those recommended.

Complainants are retail coal dealers in approximately 30 towns and cities located in Saratoga, Schenectady, Otsego, Schoharie, Montgomery, Fulton, and Herkimer Counties in the east-central part of the State of New York. By complaints filed in the title proceeding on September 23, 1935, and in sub-numbers 1, 2, 3, 4, and 5 on October 10 and 21, November 7 and 15, and December 16, 1935, respectively, it is alleged that the rates on all sizes of anthracite, in carloads, from the Wyoming, Lehigh, and Schuylkill anthracite

¹ This report embraces also No. 27148 (Sub-No. 1), *R. S. Hardie et al. v. Delaware & Hudson Railroad Corporation et al.*; No. 27148 (Sub-No. 2), *John G. Douglass et al. v. Delaware & Hudson Railroad Corporation et al.*; No. 27148 (Sub-No. 3), *Amsterdam Coal Company, Incorporated, et al. v. Delaware, Lackawanna & Western Railroad Company et al.*; No. 27148 (Sub-No. 4), *W. J. M. Huntzinger et al. v. New York, Ontario & Western Railway Company et al.*; and No. 27148 (Sub-No. 5), *Henry C. Jones, Sr., et al. v. Delaware & Hudson Railroad Corporation et al.*

regions in the State of Pennsylvania to destinations² in the above-mentioned counties were and are unjust and unreasonable. In subnumbers 1, 2, and 4 it is further alleged that the assailed rates were and are unduly prejudicial. The title case and subnumbers 1, 2, 3, and 4, referred to as the related cases, were heard jointly. Subnumber 5 was heard separately, and by stipulation of the parties thereto the testimony and exhibits in the related cases were made a part of the record therein. Complainants seek reasonable rates per ton of 2,000 pounds for the future and reparation on shipments which have moved within the statutory periods. Except as noted rates are stated in amounts per ton of 2,240 pounds and are exclusive of emergency charges that were authorized which are not in issue.

Hudson Valley Fuel Corporation, a producer of coke at Troy, N. Y., intervened in opposition to the complaint.

The origin territory, extending over an area of approximately 500 square miles in the northeastern part of Pennsylvania, is divided for rate-making purposes into the three regions referred to which are served by nine trunk-line carriers. The Delaware and Hudson Railroad Corporation, the Delaware, Lackawanna and Western Railroad Company, Erie Railroad Company, and New York, Ontario and Western Railway Company serve only the Wyoming region, which is nearest to the destinations here concerned. The Reading Company serves only the Schuylkill region, which is the most remote. The Lehigh and New England Railroad Company serves only the Lehigh region, which is intermediate. The Central Railroad Company of New Jersey and Lehigh Valley Railroad Company serve both the Wyoming and Lehigh regions, while the Pennsylvania Railroad Company serves all three. The majority of the complaining destinations are served either by the Delaware & Hudson, the New York Central Railroad Company or the West Shore Railroad.

Numerous routes are available for the transportation of this traffic. They diverge in many directions from the origin territory and converge in a similar manner upon the destination territory. Distances over these routes vary substantially.

Most of the rates assailed are group rates, both as to origins and destinations. The rates applying from the Lehigh region to these

² Destinations named in the complaints are as follows: In no. 27148, Alplaus, Carman, Schenectady, Delanson, Esperance, Niskayuna, Pattersonville, Rotterdam Junction, Scotia, and South Schenectady in Schenectady County, and Ballston Lake in Saratoga County; in subnumber 1, Edmeston and Cooperstown in Otsego County; in subnumber 2, Richmondville, Cobleskill, Sharon Springs, Schoharie, and Middleburgh in Schoharie County; in subnumber 3, Amsterdam, St. Johnsville, Fort Plain, Fonda, Fort Hunter, and Canajoharie in Montgomery County; in subnumber 4, Johnstown and Gloversville in Fulton County; in subnumber 5, Little Falls, Frankfort, Ilion, South Columbia, Middleville, and Dolgeville in Herkimer County. These points collectively will be referred to herein as the complaining destinations. The complaint as to Dolgeville was withdrawn at the hearing and will not be further considered.

destinations are generally the same as from the Wyoming region and are regarded as base rates, while those from the more distant Schuylkill region are generally higher. The differential in rates from the Schuylkill region is usually absorbed by the producers, who are not parties to this proceeding. It is not assailed and will not be further considered. Because of the geographical and competitive situation and the number of routes available for the transportation of this traffic, extensive origin grouping is necessary and desirable. For the same reasons an unusually large destination group has been established which extends roughly from Mechanicville, N. Y., on the east, to Hornell, N. Y., on the west, and includes points on and south of the main line of the New York Central from Lyons to Rotterdam Junction, and thence the line of the Boston and Maine Railroad to Mechanicville, to and including the points on a line drawn through Reading Centre, Lornings, Earlville, Edmeston, Cooperstown, Sharon Springs, Delanson, Schoharie, and Lake Katrine, N. Y. This grouping arrangement was recognized in *Anthracite Coal Investigation*, 101 I. C. C. 363, 122 I. C. C. 527, where, in referring to the same general territory, the Commission said at page 536 of the second report:

Where, as here, grouping is so extensively employed at both origin and destination, and where so many reasons of sound public policy exist for treating the rate and routes collectively rather than individually, substantial differences in distance over routes whose use public convenience and necessity require may reasonably be disregarded; but the fact that the rates are to be applicable over all such routes must be given due weight in fixing their level. No specific difference, however, can be strictly adhered to in this rate structure without causing unwarranted violations of the fourth section and other serious complications.

Twenty-three of the complaining destinations are in an extensive group to which the base rates from the Wyoming and Lehigh regions are \$2.65 on egg, stove, and chestnut sizes, hereinafter called prepared sizes, and \$2.39 or \$2.27 on pea and smaller sizes, hereinafter called smaller sizes. The \$2.27 rate is restricted to the single-line route of the Delaware & Hudson and a few 2-line routes in conjunction with the Erie. The \$2.39 rate applies over all other joint-line routes. The other complaining destinations are on branch or short lines in territory adjacent to this group and take rates that are related to, or are made with reference to, the rates to the group points.

Complainants show the distances from certain points on the lines of the several originating carriers to complaining destinations, the assailed rates from and to these points, and the ton-mile earnings thereunder. For example, to Schenectady, which is the principal complaining point and representative of the destinations with which it is grouped, the distances shown for single-line hauls from nine

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points on the Delaware & Hudson range from 164 to 205 miles and average 180 miles. For joint-line hauls from six points on the New York, Ontario & Western they range from 171 to 187 miles and average 178 miles. From two points on the Lehigh Valley they are 269 and 338 miles. From four points on the Delaware, Lackawanna & Western they range from 232 to 252 miles and average 245 miles. From three points on the Erie they range from 284 to 298 miles and average 290 miles, and from one point on the Lehigh and New England the distance is 242 miles. In other instances it is shown that by some of the open routes to other destinations the distances are as great as 485 miles. Complainants' distances were computed from origins shown on freight bills and differ in many respects from those shown by defendants. Defendants point out that such points are generally concentration or billing points which, as a rule, are substantial distances from the mines where the coal originates. For example, there are 19 mines in operation on the Delaware & Hudson in the Wyoming region and the average distance from the mines to the concentration points ranges from 7 to 22 miles. From 9 mines on the New York, Ontario & Western, in the Wyoming region, the average distance to concentration points ranges from 9 to 92 miles, while from 50 mines on the Lehigh Valley in the Lehigh and Wyoming regions the average distance to such points ranges from 8 to 63 miles.

Defendants show the average distances from the mines over short tariff routes as well as over all tariff routes over which anthracite is transported under the assailed rates. Such distances from the mines to each destination here concerned were determined by adding the actual engineering distances, from the mines to the clearance or concentration points, to the distances as published in the distance tariffs from such points to destinations. The average distances over the short tariff routes upon which defendants rely appear more nearly accurate than those shown by complainants, and afford a better basis for comparisons. Average distances as used herein, unless otherwise stated, are averages over short tariff routes from mines taking the base rates.

Based upon the distances used by complainants, the \$2.65 rate on prepared sizes to Schenectady yields gross ton-mile earnings ranging from 7.84 to 16.15 mills. That rate converted to a net-ton basis results in a rate of \$2.37 which, from and to the same points, yields from 7.07 to 14.45 mills per ton-mile.³ The rates of \$2.27 and \$2.39 on smaller sizes yield from 7.7 to 13.9 mills per gross-ton mile.

³ Earnings stated in mills are per net ton of 2,000 pounds per mile, except as specifically noted.

Complainants propose that a rate of \$2.05 per net ton on prepared sizes be established to Schenectady and certain other complaining points. That rate is equivalent to 104.2 percent of the rates under the so-called Holmes & Hallowell scale for distances ranging from 180 to 200 miles, and it is suggested that that percentage of that scale of rates, based upon the shortest distance, be used in determining rates from and to the points here concerned. In the computations made the origin grouping is disregarded. The Holmes and Hallowell scale was prescribed for application from Lake Superior ports to points in Minnesota, North Dakota, and South Dakota.

Many routes are available from the mines in the Wyoming and Lehigh regions to Schenectady. Distances over short tariff routes as shown by defendants range from 177 to 277 miles. The average is 220 miles. The rates to Schenectady over the single-line route of the Delaware & Hudson were originally prescribed in *Rates for Transportation of Anthracite Coal*, 35 I. C. C. 220, for all sizes, and those rates, subjected to the general authorized changes, are the present rates for single-line hauls. In *Anthracite Coal Investigation, supra*, the Commission affirmed the prescription of the rates for single-line hauls and prescribed a rate of \$2.88 on prepared sizes effective June 20, 1927, for all joint-line routes from the three origin regions. Effective December 20, 1927, the carriers voluntarily reduced the joint-line rates from the Wyoming and Lehigh regions to \$2.65 on prepared sizes and at the same time reduced the rates on other sizes to the present level. The \$2.65 rate on prepared sizes for an average distance of 220 miles yields 10.8 mills and the \$2.39 rate on smaller sizes for an average distance of 232 miles yields 9.2 mills, while the \$2.27 rate on smaller sizes, which is restricted to a relatively small number of direct routes over which the average distance is 185 miles, yields 11 mills. Alplaus and Carman are included within the Schenectady switching limits and take the same rates.

Delanson, Niskayuna, Rotterdam Junction, Scotia, and South Schenectady are destinations in the immediate vicinity of Schenectady and take the same rates. For the average distances to these points, ranging from 197 to 271 miles, the \$2.65 rate on prepared sizes yields from 8.7 to 12 mills, while the \$2.39 rate on smaller sizes yields 7.9 to 10.2 mills. The \$2.27 rate on smaller sizes applies only to Delanson, 197 miles, and South Schenectady, 216 miles, and yields 11.9 and 11.2 mills respectively.

Amsterdam, Fonda, Fort Plain, and St. Johnsville are on the main line of the New York Central beginning just west of Schenectady, and Patterson, Fort Hunter, and Canajoharie are on the main line of the West Shore Railroad just west of Rotterdam Junction.

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Little Falls, Ilion, and Frankfort are on both of these main lines a little farther to the west and intermediate to Utica, N. Y., to which rates the same as to Schenectady were prescribed in *Rates for Transportation of Anthracite Coal, supra*, and *Anthracite Coal Investigation, supra*. These points have always taken the group rates. The average distances thereto range from 243 to 274 miles and the \$2.65 rate on prepared sizes yields from 8.4 to 9.8 mills, while the \$2.39 rate on the smaller sizes yields from 7.5 to 8.8 mills.

Edmeston, South Columbia, Cooperstown, Sharon Springs, and Schoharie are located on branch or short lines. They were not specifically named in the orders fixing the rates to Schenectady and other points and they are not intermediate to points so named, but they take the group rates. The rates to Edmeston apply only from the mines on the Delaware & Hudson and New York, Ontario & Western and the average distance is only 123 miles. The rates of \$2.65 on prepared sizes and \$2.39 on smaller sizes yields 19.3 and 17.3 mills respectively. To South Columbia the average distance is 174 miles and the earnings under the \$2.65 and \$2.39 rates are 13.6 and 12.2 mills respectively. The average distances to Cooperstown and Sharon Springs are 145 and 165 miles respectively, and the respective earnings under the rate on prepared sizes are 16.3 and 14.4 mills, while the rate on smaller sizes yields 14.7 and 12.9 mills. Cooperstown is situated beyond points, not here complaining, to which the group rates apply, and any reduction in the Cooperstown rate would result in fourth-section departures. Sharon Springs is on a branch line of the Delaware & Hudson which connects with the main line at Cobleskill. Schoharie is on the Schoharie Valley Railway which is owned and separately operated by the Delaware & Hudson. It connects with the latter at Schoharie Junction. The average distance to Schoharie is 163 miles. Prior to March 22, 1934, combination rates of \$3.12 on prepared sizes and \$2.87 on smaller sizes were applicable to this destination, but on that date joint rates were established on the group basis and are now in effect. Under the present rates the earnings are 14.5 mills on prepared sizes and 13.1 mills on the smaller sizes. While the complainants allege that the rates to Edmeston, Cooperstown, and Sharon Springs are also prejudicial, no evidence was presented in support of this allegation.

The average distances from all mines to the complaining group destinations are 245 miles for the \$2.65 rate on prepared sizes, 248 miles for the \$2.39 rate on smaller sizes, and 179 miles for the \$2.27 rate on smaller sizes. Based on these distances the average earnings under the rates named are 9.7, 8.6, and 11.3 mills, respectively. These complaining points are among 175 or more points in the destination group to which the group rates here assailed are applicable.

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Reductions in the rates to complaining points within the group would probably affect rates to other points within the group territory. The total tonnage to the entire group in 1930 was 2,133,203 long tons of which 1,960,787 long tons, or 91.9 percent, were delivered to points receiving 5,000 or more long tons. Destinations taking 15,000 or more long tons received a total of 1,676,552 long tons, or more than 78 percent of the total group tonnage. To the latter points for average distances of 233, 239, and 185 miles the rates of \$2.65, \$2.39, and \$2.27 yield average earnings of 10.2, 8.9, and 10.8 mills, respectively, while to the group points as a whole for average distances of 237, 241, and 183 miles those rates yield 10, 8.8, and 11.1 mills, respectively. It is observed that the average earnings to the complaining points are slightly less than those to the group as a whole.

Esperance, Cobleskill, and Richmondville are on the main line of the Delaware & Hudson intermediate to Schenectady. In *Rates for Transportation of Anthracite Coal, supra*, specific rates were prescribed to Worcester, Cobleskill, Central Bridge, N. Y., and points beyond such as Troy, Albany, and Mechanicville, and those rates, subjected to the authorized general changes, are the present rates. The average distance to Cobleskill is 152 miles and the present rates thereto are \$2.27 on prepared sizes and \$2.02 on smaller sizes, which yield 13.4 and 11.8 mills. Richmondville is intermediate to Cobleskill and takes the same rates but, as the average distance thereto is 5 miles less, the yield is slightly higher, being 13.8 and 12.2 mills. Esperance is beyond Central Bridge and intermediate to Delanson and Schenectady. The average distance thereto is 166 miles, and the rates are \$2.52 on prepared sizes and \$2.27 on smaller sizes which yield 13.6 and 12.2 mills respectively. Prescribed rates on prepared sizes are, to Central Bridge \$2.39 and to Delanson \$2.65.

Ballston Lake is on the main line of the Delaware & Hudson extending north of Schenectady to the Canadian border. It is outside of the group territory. The average distance thereto from Delaware & Hudson and Erie origins is 193 miles. For joint-line hauls from other origins it is 204 miles. Prior to July 13, 1935, the rates were \$3.28 on prepared sizes and \$2.92 on smaller sizes, but on that date, by agreement of the parties in No. 26961, McKain Company, Incorporated, v. Delaware & Hudson Railroad Corporation, the rates were reduced to \$2.77 and \$2.39 respectively, and the complaint therein was dismissed without report. The present rates yield 13.4 and 11 mills respectively. Complainant McKain Company is not assailing the rates in effect prior to July 13, 1935, but is here seeking the same basis as is sought for Schenectady. This point is beyond the switching limits of Schenectady and deliveries thereto necessi-

tate the stopping of through trains. Most of complainants' testimony regarding the rates thereto relates to competition with dealers in Schenectady who truck coal to that point. The complaint does not include an allegation of undue preference of Schenectady.

Middleburgh is a terminus of the Middleburgh & Schoharie Rail Road, an independently owned and operated short line that is now in the hands of a receiver. It connects with the Schoharie Valley at Schoharie. Prior to June 16, 1934, combination rates were applicable thereto and resulted in rates of \$3.42 on prepared sizes and \$3.17 on smaller sizes. On that date joint through rates of \$2.95 and \$2.69, which are 30 cents over the Schoharie rates, were established. The average distance to this destination is 170 miles, and the present rates yield 15.5 and 14.1 mills respectively. No evidence is offered in support of the allegation of undue prejudice.

Middleville is on a branch line of the New York Central, which connects with the main line at Herkimer, to which the rates are \$2.65 on prepared sizes and \$2.39 on pea and smaller sizes. The average distance thereto is 295 miles and the present rates of \$3.28 on prepared sizes and \$2.77 on smaller sizes yield 9.9 and 8.7 mills respectively.

Johnstown and Gloversville are on the line of the Fonda, Johnstown and Gloversville Railroad Company, which connects with the New York Central at Fonda. These complaining points are 6.5 and 10 miles, respectively, from Fonda. Complainants show that the distance from Packerton, Pa., on the Lehigh Valley to Johnstown is 311 miles, whereas defendants show that the average distance from 50 mines on the Lehigh Valley is 355 miles. From mines on other lines the average distances range from 215 to 380 miles and the average distance from all mines is 306 miles. Average earnings under the assailed rates of \$3.36 on prepared sizes, \$3.16 on pea size, and \$3.02 on smaller sizes for the distance given by complainants are 9.61, 9.03, and 8.61 mills, respectively, whereas for the average distance they are 9.8, 9.2, and 8.8 mills, respectively. From Mayfield Yard on the New York, Ontario & Western to Gloversville, the distance is 215 miles, while from nine mines on that line the average distance is 228 miles. From mines on other lines the average distances range from 219 to 383 miles and the average distance from all mines is 310 miles. Earnings under the assailed rate of \$3.60 on prepared sizes are 14.93 mills for the distance from Mayfield Yard and 10.4 mills for the average distance from all mines. Under the rates of \$3.40 and \$3.28 on pea size and smaller sizes earnings are 9.8 and 9.5 mills, respectively for the average distance. Complainants rely upon the rate of \$2.65 to

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Fonda as a basis for comparison and contend that spreads of 71 cents on prepared sizes as to Johnstown and 95 cents as to Gloversville for additional hauls of 6.5 and 10 miles, respectively, are unreasonable. Prior to July 20, 1931, combination rates of \$3.92 to Johnstown and \$4.16 to Gloversville were applicable on prepared sizes. The Fonda, Johnstown and Gloversville is an independently owned and operated railroad now in the hands of a receiver. It extends in a northerly direction from Fonda, over heavy grades, through a semimountainous territory and rises from an elevation of 295 feet at Fonda to 652 feet at Johnstown and 797 feet at Gloversville. It has been recognized generally as a short and weak line which participates in joint rates constructed by the use of arbitraries added to the regular group rates.

A complainant operating a coal yard at Johnstown competes with dealers who receive their shipments at Fonda, Fort Plain, or Fort Hunter and deliver by trucks to customers in the Johnstown-Gloversville area. For 8 or 10 years prior to 1932 this complainant received shipments at New York Central stations and trucked direct to customers in the same manner as his present competitors do. In September of that year, when the rate structure was the same as at present, he purchased a coal yard at Johnstown and now receives his shipments there. It is not shown wherein he has been injured or damaged.

Complainants maintain that the assailed rates are unreasonable as compared with distance rates on coal applicable in western territory and from Alabama, Tennessee, and Kentucky coal districts to points in the South and in the Mississippi Valley. There is no indication that transportation conditions are relatively such that these comparisons may form the basis for a definite conclusion. Comparisons are made also with the rates published by defendants for similar distances on other low-grade heavy-loading commodities, such as crushed stone, woodpulp, common brick, slag, concrete fence posts, and bituminous coal. Defendants maintain that the rates instanced on crushed stone and brick are depressed, and state that, with the exception of bituminous coal, there has been no movement of any of these commodities under the rates instanced.

Complainants make no comparisons with rates on anthracite generally established. Reference is made to certain reduced rates to destinations in Pennsylvania, and general reference is made to voluntary reductions which the carriers have made in the rates on anthracite to certain other points. For example, the rates to Chicago, Ill., and points west thereof were reduced \$1 per ton and that reduction was graded back to many points east of Chicago. Also

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rates to New England points and points in Westchester County in the State of New York and other points in and outside of New Jersey were voluntarily reduced.

The rates assailed have not been increased since January 1, 1910, except by the general authorized increases. Rates to many of the complaining points have been prescribed by this Commission and rates now established are at or below the prescribed level. Related rates are maintained to other complaining points.

Defendants compare the earnings under the assailed rates with the earnings under rates approved or prescribed for application to other destinations for similar average distances. For example, to Camden, N. J., 136 miles, the rate of \$2.65 yields 17.4 mills; to Baltimore, Md., 200 miles, the rate of \$2.84 yields 12.7 mills; to Washington, D. C., 238 miles, the rate of \$3.09 yields 11.6 mills; to Willsboro, N. Y., 310 miles, the rate is \$3.43 and yields 9.9 mills; to Wilmington, Del., 139 miles, a \$2.69 rate yields 16.6 mills; and to Atlantic City, N. J., 203 miles, the rate of \$3.28 yields 14.4 mills.

Complainants maintain that the assailed rates are unreasonable when considered in connection with the changes in circumstances and conditions that have occurred during the past four years. It is stated that much of the anthracite traffic has been lost to truckers of so-called bootleg coal, and that competitive fuels such as fuel oil, coke, and foreign mixtures are displacing anthracite. It is urged that the carriers be required to adjust the anthracite rates to meet these competitive conditions. The production of anthracite declined from 73,828,000 long tons in 1929, to 49,399,000 long tons in 1933, or approximately 44 percent. Complainants attribute this decline to high freight rates and to the competition of other fuels. During the same period the production of bituminous coal decreased about 40 percent, and the production of coke about 54 percent. While it is shown that from 1926 to 1930, inclusive, the production of crude petroleum increased about 50 percent, no figures are submitted to show the production in later years or what proportion of the production has been used as fuel. Defendants show that from 1930 to 1934 the total anthracite tonnage to all complaining points decreased about 2 percent. To Schenectady, the principal complaining point, the tonnage increased somewhat less than 1 percent.

Mine prices of anthracite have increased materially since 1913. For example, the price of stove coal, as representative of prepared sizes, has increased from \$3.27 to \$7.25 per net ton or an increase of 121.86 percent. As a result of the general authorized changes and voluntary reductions in the rates on anthracite the present level of the rates to complaining destinations is about 35 percent higher than the January 1, 1910, level. Without the voluntary reductions, the

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present level would be about 62 percent higher than the 1910 level, and had all the authorized changes applicable on merchandise traffic been applied on anthracite rates the cumulative increase since 1910 would be about 90 percent.

Prices of anthracite at the mines vary with the seasons of the year. During the winter months of 1935-36, 30-day credit prices per net ton of 2,000 pounds on the various sizes f. o. b. mines were as follows: Egg \$6.75, stove \$7.25, chestnut \$7, pea \$5, buckwheat \$3.25, rice \$2.25, and barley \$1.40. During the spring and summer months of 1935 the prices of egg, stove, nut, and pea ranged from \$1 to \$1.50 less, rice was 15 cents less, while buckwheat and barley remained constant throughout the year. Those prices were subject to discounts of 20 cents per ton on egg, stove, and nut sizes, 15 cents on pea sizes, 10 cents on buckwheat, and 5 cents on rice and barley, if paid within 15 days of date of shipment.

On November 1, 1935, the prevailing retail prices per net ton on the different sizes of anthracite at the several complaining destinations ranged from \$12 to \$13.25 on stove, \$10.75 to \$13 on nut and egg, \$9.75 to \$11 on pea, \$8.25 to \$9 on buckwheat, and \$7 to \$7.45 on rice. At Schenectady, for example, stove coal was retailing for \$13.15 cash. At that time the price at the mine was \$7.25. Adding thereto the freight rate of \$2.37 per net ton and the emergency charge of 15 cents, the resulting cost was \$9.77 to the dealer. Retail prices are lower during the summer months, but the dealers' margins remain approximately the same throughout the year. In substantially all instances the dealers' gross margins are in excess of the freight rates.

Complainants say that the retail price of anthracite should be \$2 per ton lower to enable them to meet the competition of dealers in other fuels and to compete with dealers who truck coal from the mines and undersell the local dealers. Competition with anthracite trucked from the mines does not appear to have serious results. During the period of a year approximately 16,300 gross tons were trucked into Schenectady, Otsego, Schoharie, and Montgomery Counties. Under the rates here assailed that tonnage would produce revenue of approximately \$40,000. Defendants point out that since the total tonnage to the group territory is in excess of 2,000,000 tons, a reduction of only 10 cents per ton in the rate would deprive carriers of more than \$200,000 in revenue, that it is not at all probable that a reduction of 10 cents per ton in the freight rates to these destinations would attract any of the tonnage that is now moving by truck, and that it is quite probable that reductions in rates and prices for anthracite would affect rates and prices for competitive fuels. It is claimed that the difference between the cost of anthra-

cite, plus the freight rates, on the one hand, and the selling price on the other, is insufficient to enable the retail dealers to make expenses plus a reasonable profit. Reductions in the assailed rates would not necessarily result in an adjustment in selling prices that would tend to encourage the consumption of anthracite. Complainants of course are entitled to rates within lawful standards, but we are not convinced, except as appears below, that the rates assailed exceed the limits of lawfulness.

Complainants request that the rates on anthracite to the complaining destinations be published in amounts per net ton instead of per ton of 2,240 pounds as at present, but no evidence was offered to show any unlawfulness in the present practice.

We find that the assailed rates are and for the future will be unreasonable to the extent that they exceed or may exceed \$2.65 on prepared sizes and \$2.39 on smaller sizes to Middleburgh, \$2.90 on prepared sizes and \$2.64 on smaller sizes to Middleville, \$3.02 on prepared sizes and \$2.76 on smaller sizes to Johnstown, and \$3.26 on prepared sizes and \$3 on smaller sizes to Gloversville. We further find that, with the foregoing exceptions, the rates assailed are not shown to have been or to be unreasonable or otherwise unlawful. Orders will be entered dismissing the complaints in nos. 27148, 27148 (sub-no. 1), and 27148 (sub-no. 3), and requiring the establishment of the rates found reasonable in nos. 27148 (sub-no. 2), 27148 (sub-no. 4), and 27148 (sub-no. 5).

MILLER, *Chairman*, dissenting in part:

I am unable to agree with the finding of the majority that the rates to four of the points here involved are unreasonable. Middleville, one of the four points, is located on a branch line of the New York Central, where the traffic is light and where many curves and adverse grades prevail. The other three points to which the rates are found unreasonable are located on short lines now in bankruptcy and over which, as in the case of Middleville, traffic is light and operating conditions are difficult. I can find no justification for reducing the badly needed revenues of these weak lines. The rates which the majority condemn compare favorably with other rates in that general territory, many of which have been prescribed by this Commission.

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