

## FINANCE DOCKET No. 12023

## ERIE RAILROAD COMPANY TRUSTEES OPERATION

---

*Submitted July 5, 1938. Decided July 14, 1938*

---

Certificate issued authorizing operation under trackage rights by the trustees of the Erie Railroad Company over the line of railroad of the Susquehanna Connecting Railroad Company, over a branch line of railroad of the New York, Susquehanna & Western Railroad Company, and over part of the line of railroad of the Wilkes-Barrie & Eastern Railroad Company, in Lackawanna and Luzerne Counties, Pa.

*H. A. Taylor and Paca Oberlin* for applicants.

## REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, PORTER, AND MAHAFFIE

BY DIVISION 4:

The Erie Railroad Company, debtor, on April 28, 1938, applied for authority to operate under trackage rights over the line of railroad of the Susquehanna Connecting Railroad Company, a wholly owned subsidiary of the New York, Susquehanna and Western Railroad Company, extending from a connection with the Wilkes-Barre and Eastern Railroad at Suscon to Old Forge, approximately 6.55 miles, together with the Florence Breaker branch thereof, approximately 1.96 miles; over the Jermyn No. 2 Breaker branch of the New York, Susquehanna & Western Railroad Company extending from a connection with the Susquehanna Connecting Railroad at Old Forge, approximately 1.46 miles; and over the part of the Wilkes-Barre & Eastern Railroad extending from Suscon to Plains, approximately 8.02 miles, together with the Westminster branch thereof, approximately 0.46 mile, a total of approximately 18.45 miles, all in Lackawanna and Luzerne Counties, Pa. No representations have been made by any State authority, and no objection to the application has been offered.

By our order entered on June 2, 1938, Charles E. Denney and John A. Hadden, trustees in reorganization proceedings of the Erie, were made parties to this proceeding with authority in all respects to proceed therewith.

Under a contract of April 1, 1897, the Susquehanna Connecting leased its line of railroad to the Wilkes-Barre & Eastern Railroad Company, which also included sublease of certain so-called mine

branches, known as the Winton, Dolph, Murray, Spencer, and Jermyn branches, that theretofore had been leased to the Susquehanna Connecting by the New York, Susquehanna & Western Railroad Company under an agreement of February 26, 1897. Under agreements made in 1906, 1915, and 1916, the Erie acquired the right to operate over the Dolph branch, the Winton branch, and the Murray and Spencer branches, respectively.

Effective on April 1, 1938, Joseph P. Jennings, trustee in reorganization proceedings of the Wilkes-Barre & Eastern, rejected and disaffirmed the above-mentioned contract of April 1, 1897, and all and each of the agreements for trackage or other rights dependent thereon.

The applicants state that to enable them to serve adequately mining operations and shippers in the localities, it is desirable for them to operate under trackage rights, for which authority is herein sought, and to continue for the present to operate over the Winton, Murray, Spencer, and Dolph mine branches, for which operation tentative arrangements have been made with Walter Kidde, trustee in reorganization proceedings of the New York, Susquehanna & Western. Under these arrangements the applicants are to maintain the mine branches and pay 1 cent a mile for each ton of freight transported thereover by them.

In 1936, freight handled over the line between Suscon and Plains amounted to 1,516,863 net ton-miles, and over the line between Suscon and Old Forge and the Jermyn No. 2 Breaker branch to 1,298,429 net ton-miles. The applicants believe that the annual volume of traffic handled in the future will be approximately the same as that in 1936.

The Jermyn No. 2 Breaker branch serves Old Forge. The Susquehanna Connecting Railroad serves Pittston Township and the boroughs of Moosic and Old Forge. The part of the Wilkes-Barre & Eastern Railroad in question serves Pittston, Jennings, and Plains Townships.

The applicants allege that the proposed trackage-rights operations are in the public interest, as by such operations service may be furnished by them to shippers and consignees whose traffic is billed to move over the Susquehanna Connecting Railroad and the Jermyn No. 2 Breaker branch to the connection of the Susquehanna Connecting Railroad with the Erie Railroad at Hillside Junction. Traffic to and from points on the Wilkes-Barre & Eastern Railroad between Suscon and Plains conveniently can be handled by the applicants in conjunction with the exercise of trackage rights over the Susquehanna Connecting Railroad.

The line of the Wilkes-Barre & Eastern between Suscon and Plains connects with the Delaware & Hudson Railroad at Yatesville.

228 I. C. C.

The service proposed to be performed on the lines is freight and switching. Most of the traffic handled is coal, of which a considerable volume is transported from points on the lines to points on the Erie Railroad, some for preparation into marketable sizes, which is considered a material public convenience.

The territory traversed by the lines is a typical mountainous anthracite-mining region having a scattered population. Most of the timber in the territory is second growth. The principal industry in the area other than coal mining is the Dupont Powder Company's plant located near Hillside Junction. There are some small industries.

Under a proposed agreement between Walter Kidde, trustee of the New York, Susquehanna & Western Railroad Company, the Susquehanna Connecting Railroad Company, and C. E. Denney and John A. Hadden, trustees of the Erie Railroad Company, the last-named trustees are granted the right to operate cars and locomotives upon and over the line of railroad of the Susquehanna Connecting and over the Jermyn No. 2 Breaker branch line of the New York, Susquehanna & Western, heretofore described. As consideration for the right granted, the trustees of the Erie agree to pay to the trustee of the New York, Susquehanna & Western 1 cent a mile for each gross ton of 2,240 pounds of coal and for each ton of 2,000 pounds of all other freight transported by them over the lines. In computing the amount to be paid, fractions of miles and of tons are to be charged for proportionately. Light engines and empty cars and nonrevenue equipment used for maintenance purposes may be transported by them free from mileage or trackage charges. They further agree to perform or cause to be performed, at their own cost and expense, such work and to furnish such material properly chargeable to maintenance as may be necessary to maintain the lines in reasonably safe and proper condition for operation thereover by them during the life of the agreement, including the restoration to such condition of any track or tracks that may be damaged by mine caves, provided the expense of such restoration shall not exceed \$600 in any full year. If it appears that the expense thereof will exceed that amount in any year the question as to which party shall pay such excess will then be agreed upon. It is expressly understood and agreed that the trustees of the Erie do not assume any liability for the payment of taxes upon or in respect of the lines or for the making of any additions and betterments thereto, other than on account of the restoration of mine-cave damages above stated. The agreement is subject to termination at any time by any of the parties thereto giving 90 days' notice in writing to the other parties.

There are certain other provisions, including such as usually may be found in trackage-rights agreements between railroad companies.

228 I. C. C.

Under a proposed agreement between Joseph P. Jennings, trustee of the Wilkes-Barre & Eastern Railroad Company, and C. E. Denney and John A. Hadden, trustees of the Erie Railroad Company, the latter trustees are granted the right to operate cars and locomotives upon and over the part of the line of railroad of the Wilkes-Barre & Eastern heretofore described. The terms, conditions, etc., of the agreement and those of the aforesaid agreement between the trustee of the New York, Susquehanna & Western, the Susquehanna Connecting, and the trustees of the Erie, are identical in all respects, except that the trustees of the Erie at their expense are to restore to reasonably safe and proper condition for operation during the life of the agreement any of the tracks that may be damaged by mine caves, provided the expense of such restoration shall not exceed \$1,500 in any full year. If it appears that the expense thereof will exceed that amount in any year the question as to which party shall pay such excess will then be agreed upon.

It is apparent from the record that the applicants' proposals are in the public interest.

We find that the present and future public convenience and necessity require operation under trackage rights by Charles E. Denney and John A. Hadden, trustees in reorganization proceedings of the Erie Railroad Company, over the line of railroad of the Susquehanna Connecting Railroad Company, over the Jermyn No. 2 Breaker branch of the New York, Susquehanna and Western Railroad, and over the part of the line of railroad of the Wilkes-Barre and Eastern Railroad Company, all in Lackawanna and Luzerne Counties, Pa., as described in the application. An appropriate certificate will be issued.

228 I. C. C.