

FINANCE DOCKET No. 11791
WILKES-BARRE & EASTERN RAILROAD COMPANY
TRUSTEE ABANDONMENT

Submitted December 22, 1938. Decided January 17, 1939

Certificate issued permitting abandonment by Joseph P. Jennings, trustee of the Wilkes-Barre & Eastern Railroad Company, of a portion of a line of railroad in Luzerne, Lackawanna, and Monroe Counties, Pa.

W. T. Pierson, Paca Oberlin, Leo W. White, and W. B. Eilenberger for applicant.

Harold S. Shertz, C. Raymond Benzinger, Ezra Brainerd, Jr., George P. Ferguson, Henry Offerman, Walter T. Margetts, Jr., Randall J. Marsh, C. D. Ackerman, Roy M. Hauser, Martin T. Moran, Dale M. Learn, John Drewen, and J. H. Stofflet for protestants.

Thomas C. Zerbe for Department of Highways of Pennsylvania.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, PORTER, AND MAHAFFIE

BY DIVISION 4:

Exceptions to the report proposed by the examiner were filed by the protestants and the case was argued orally.

By application filed September 23, 1937, and amendment thereto filed April 20, 1938, Joseph P. Jennings, trustee of the Wilkes-Barre and Eastern Railroad Company, sometimes hereinafter called the Wilkes-Barre & Eastern, seeks permission to abandon that portion of the line of railroad extending in a general southeasterly direction from Suscon to Stroudsburg, approximately 54.004 miles, all in Luzerne, Lackawanna, and Monroe Counties, Pa. Protests were filed and a hearing was held at which a representative of the Pennsylvania Public Utility Commission presided with the examiner. No representations have been made by State authorities. All points mentioned herein are in the State of Pennsylvania unless otherwise designated. The term "applicant" as hereinafter used will have reference to either the Wilkes-Barre & Eastern, its trustee, or both, and the portion of the railroad sought to be abandoned will be referred to as the line.

The entire capital stock of the applicant is owned by the New York, Susquehanna and Western Railroad Company, hereinafter called the Susquehanna & Western. The latter, a subsidiary of 230 I. C. C.

the Erie Railroad Company, controlled through capital-stock ownership, owns and operates a line of railroad extending westerly from Jersey City, N. J., to Stroudsburg, approximately 99 miles. The applicant's line was constructed in 1892-93 as a continuation of the main line of the Susquehanna & Western, for the primary purpose of enabling the latter to reach the Wyoming region of the anthracite fields of northeastern Pennsylvania. It extends westerly and northwesterly from Stroudsburg, through Suscon, to Plains, a distance of approximately 62.024 miles. At Suscon, a point about 8.02 miles east of Plains, the applicant's line connects with the line of the Susquehanna Connecting Railroad Company, hereinafter called the Susquehanna Connecting. The latter is a wholly owned subsidiary of the Susquehanna & Western. Its properties consist of a main line extending northerly from Suscon to Old Forge, 6.55 miles, and a branch line, 1.96 miles long, known as the Florence Breaker branch. The main line connects with the Erie Railroad at Hillside Junction, a point midway between Suscon and Old Forge.

For many years prior to October 1, 1937, the properties of the Wilkes-Barre & Eastern, the Susquehanna Connecting, and the Susquehanna & Western, were operated as a continuous line of railroad extending easterly from the Wyoming coal region to tidewater. On July 18, 1893, the Wilkes-Barre & Eastern and the Susquehanna & Western entered into an agreement with respect to operation of the railroad of the Wilkes-Barre & Eastern, the construction of which was then in progress. Under this agreement, the Wilkes-Barre & Eastern agreed to pay the Susquehanna & Western the net earnings derived by the former from the operation of its railroad, after deducting fixed charges and operating expenses. The Susquehanna & Western covenanted that the gross earnings of the Wilkes-Barre & Eastern should be sufficient each year to enable the latter to pay all its operating expenses and all its fixed charges of every nature. The Susquehanna & Western further agreed to guarantee by endorsement the payment of the Wilkes-Barre & Eastern's \$3,000,000 of first-mortgage 50-year 5-percent bonds, both principal and interest. By indenture dated April 1, 1897, the entire property of the Susquehanna Connecting was leased to the Wilkes-Barre & Eastern for a term of 999 years, and the lessee undertook to pay both the principal and interest on \$500,000 first-mortgage bonds issued by the Susquehanna Connecting on March 1, 1897, and, among other things, to maintain the property, in good condition and pay the taxes thereon. Concurrently with the above-mentioned indenture, the Wilkes-Barre & Eastern and the Susquehanna & Western entered into a contract whereby the agreement of July 18, 1893, previously mentioned, was modified to include the properties of the Susquehanna Connecting.

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By the terms of this contract, the obligations of the Wilkes-Barre & Eastern with respect to the Susquehanna Connecting were assumed by the Susquehanna & Western.

The Erie, the Susquehanna & Western, and the applicant are involved in reorganization proceedings under section 77 of the Bankruptcy Act, as amended, and their properties are operated by or under the direction of trustees. The trustees of the Susquehanna & Western, on October 1, 1937, disaffirmed the afore-mentioned contract between the applicant and the Susquehanna & Western, and on April 1, 1938, the trustee of the applicant disaffirmed the afore-mentioned lease. A witness for the applicant states that operation of the line sought to be abandoned is substantially the same as in past years, except for certain changes in service.

By our report and certificate dated July 14, 1938, in *Erie R. Co. Trustees Operation*, 228 I. C. C. 515, the trustees of the Erie were granted authority to operate under trackage rights over the railroad of the Susquehanna Connecting and certain branch lines, and over the portion of the applicant's line extending easterly from Plains to Suscon. The abandonment herein sought pertains to the remainder of the applicant's railroad extending easterly and southeasterly from Suscon to its terminus at Stroudsburg.

The proposed abandonment, however, would not preclude the Erie from participating in the coal traffic from the Wyoming region to tidewater points. As previously indicated, the lines over which the Erie has been authorized to operate under trackage rights serve a number of important coal-mining industries throughout that region. A branch line of the Erie extends northeasterly from a connection with the Susquehanna Connecting Railroad at Hillside Junction to a connection with the Erie's New York-Chicago main line at or near Lackawaxen, thus providing another route from the Wyoming coal region to tidewater points, north of and roughly paralleling the route of the Susquehanna & Western. The greater portion of the eastbound coal traffic from that region is routed over the northern route in preference to the Susquehanna & Western route, and the protestants allege that the management of the Erie has thus deprived the applicant of its proper share of such traffic. The applicant, on the other hand, has presented testimony showing that coal can be handled more efficiently and economically over the northern route owing to superior track conditions permitting the use of heavier motive power.

The line sought to be abandoned is a single-track railroad practically all of which is located in the Pocono Mountain region of northeastern Pennsylvania. The ruling grade is 1.65 percent westerly and 1.5 percent easterly. The maximum curvature is 12°. Most

of the track is ballasted with cinders and laid with 80-pound rail, but many of the curves have 90 and 100 pound rail. The track is in good condition for the limited service required of it but it is maintained only to the extent necessary to accommodate light motive power restricted to a speed of 25 miles an hour. The gradient, curvature, and light bridges permit the use of comparatively small locomotives capable of drawing only from 12 to 14 loaded cars of 50 tons each, whereas about 34 loaded cars can be drawn by the type of locomotives used on the Erie's branch line between the coal region and its main line, and from 110 to 125 loaded cars on the main line, composing the northern route. According to estimates made by the applicant, the net salvage value of the line is \$232,355.

The principal communities served by the line between its termini, from east to west, and the population of each, are as follows: Bartonville 135, Reeders 250, Pocono Summit 195, Naomi Pines 350, Pocono Lake 25, and Clifton 40. The only agency stations are Pocono Lake and Reeders, each located about 7 miles by highway from stations on the main line of the Delaware, Lackawanna & Western Railroad, hereinafter called the Lackawanna, which roughly parallels the applicant's line on the north between Scranton and East Stroudsburg. There are numerous cottages, hotels, and boarding houses within a radius of 5 miles of Pocono Lake, which are occupied during the summer season. The population of Pocono Lake is thus increased to approximately 1,200, but the applicant states that the hotels and boarding houses receive all their supplies by motortruck.

The territory tributary to the line is described as second-growth woodland having little or no agricultural development. There are no industries at any point on the line between its termini except at Pocono Lake, where there are two buildings utilized for the storage of ice procured from the lake during the winter, and one retail lumberyard. The entire line is roughly paralleled by a concrete highway over which regular truck and bus services are rendered daily by a number of licensed motor carriers. Serviceable highways reach all communities on the line and considerable traffic to and from the tributary territory is handled by motor vehicles in preference to the railroad.

Passenger service on the line was discontinued on May 15, 1935, but a small amount of express traffic is still handled. Prior to October 4, 1937, service consisted of a freight train operated in each direction daily, except Sundays, but since that date the freight train has been making only three round trips weekly.

The number of passengers handled over the line gradually decreased from 400 in 1932 to 94 in 1934. Only 15 passengers were handled in 1935 prior to discontinuance of passenger service. Local

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freight, consisting mostly of ice, averaged 2,586 tons annually during the years 1932-36, inclusive. The principal commodities handled over the line in interchange movement are ice, forest products, coal, cement, petroleum products, fertilizer, grain products, and manufactured products. The total volume of interline traffic, of which over 70 percent consisted of ice, was 42,287 tons in 1932, 39,049 tons in 1933, 34,025 tons in 1934, 19,902 tons in 1935, and 21,245 tons in 1936. The greater portion of the business handled over the line is bridge traffic, which amounted to 96,186 tons in 1932, 104,171 tons in 1933, 107,961 tons in 1934, 97,185 tons in 1935, and 85,359 tons in 1936. About 51 percent of this traffic was anthracite originating in the Wyoming coal region. The testimony for the applicant is that 46,460 tons of coal were handled over the line in bridge movement in 1936, of which 22,086 tons, or approximately 50 percent, moved to Stroudsburg. The remainder moved to points in New Jersey and other points in the East on the Susquehanna & Western. There are no coal-shipping points on the line and the coal delivered to all stations thereon, excluding Stroudsburg, averaged only 25 carloads annually during the years 1932-36, inclusive. There is much discussion in the record whether the proposed abandonment would effect an increase in rates on so-called D. & H. coal from the Wyoming coal region to Stroudsburg. However, the question of rates is not of controlling interest. *Chicago, R. I. & P. Ry. Co. Trustees Abandonment*, 228 I. C. C. 87, 91.

The applicant has submitted income statements to show the financial results of operation of the line for the years 1932 to and including 1936, and for the first seven months of 1937. Considered as a separate unit of transportation, the results of operation for the five full years, in order, are shown as follows: Railway operating revenues, freight \$84,594, \$87,992, \$90,302, \$69,237, \$68,941, passenger \$175, \$37, \$49, \$9, none, all other \$361, \$139, \$259, \$327, \$96, total railway operating revenues \$85,130, \$88,168, \$90,610, \$69,573, \$69,037; railway operating expenses, maintenance of way and structures \$22,270, \$31,908, \$26,422, \$20,301, \$21,415, maintenance of equipment \$21,138, \$30,136, \$21,946, \$11,807, \$8,471, traffic \$928, \$1,578, \$1,015, \$890, \$973, transportation \$34,163, \$43,802, \$44,508, \$39,782, \$39,620, general \$2,324, \$4,558, \$3,352, \$3,159, \$3,963, total railway operating expenses \$80,823, \$111,982, \$97,243, \$75,939, \$74,442; railway tax accruals \$2,119, \$2,670, \$476, credit \$1,464, \$794; equipment rents, debit, \$13,221, \$9,550, \$21,064, \$28,148, \$23,815; net loss from operation \$11,033, \$36,034, \$27,221, \$35,978, \$30,014. The figures presented by the applicant with respect to the results of operation for the first seven months of 1937 show a net loss of \$31,452.

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Revenues were allocated to the line on a mileage-prorate basis. Expenses for maintenance of way and structures were determined actually as far as possible. The greater portion of the expenses for maintenance of equipment and transportation was allocated to the line on the basis of train, locomotive, or car miles.

According to computations made from the statements submitted by the applicant, the gross revenues derived from operation of its entire railroad, including the Susquehanna Connecting, averaged \$184,614 annually for the years 1932 to 1936, inclusive, of which \$80,504 was allocated to the 54 miles of railroad sought to be abandoned and \$104,110 to the remaining 17 miles. The expenses of operating the applicant's entire railroad, including the Susquehanna Connecting, averaged \$200,362 annually for the years in question, of which \$88,086, or \$1,631 a track-mile, was charged to the portion sought to be abandoned and \$112,276, or \$6,604 a track-mile, was charged to the remaining portion. Endeavoring to explain the seemingly disproportionate revenues allocated to the two portions of the applicant's line, counsel for the applicant states, in effect, that the 54 miles of railroad over the mountains produce relatively light revenue while the remaining portion of the line, including the Susquehanna Connecting, produces heavy revenue because most of the coal handled thereover is interchanged with the Erie Railroad at Hillside Junction. A detailed statement presented in evidence by the applicant shows that in 1936 the total volume of coal traffic originating on and handled over the remaining portion of the line was 135,645 tons, of which 47,170 tons, or approximately one-third, moved over the portion sought to be abandoned. A witness for the applicant states that the maintenance-of-way expenses are proportionately greater on the remaining portion of the line for the reason that it has a greater traffic density and that the operating expenses charged to it are in proportion to the volume of traffic handled thereover. However, the witness further states that it has about the same physical characteristics as the portion sought to be abandoned and that it uses the same motive power. According to the applicant's figures, as previously indicated, the remaining portion of the line handles about three times as much coal traffic as the line sought to be abandoned but its operating expenses are shown to be about six times as much for each mile of track including the branch lines. The figures presented by the applicant suggest that the expenses charged to the remaining portion may be excessive. The record, however, affords no definite means of making the proper allocations.

The applicant has submitted two statements showing the effect of the proposed abandonment on the net railway operating income of the system and the unit members thereof, one of which is appli-

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cable to the Susquehanna & Western and the other to the Erie, including the Chicago & Erie. According to the first statement, the railway operating revenues accruing to the Susquehanna & Western from the traffic handled over its line to and from the line sought to be abandoned for the years 1932 to and including 1936, in order, were \$74,869, \$67,665, \$68,279, \$57,089, and \$47,403. After deducting the cost of handling this traffic, computed by the use of the ratio of operating expenses and taxes to the total railway operating revenues of the Susquehanna & Western, the net profit for those years, respectively, was \$13,925, \$11,165, \$12,133, \$12,976, and \$9,632. According to the other statement, the railway operating revenues accruing to the Erie, including the Chicago & Erie, from the traffic in question for the same years, in order, were \$69,840, \$68,178, \$64,394, \$49,152, and \$48,514. After deducting the cost of handling this traffic, based on freight operating ratios ranging from 62.05 to 66.78 percent, the net profit for those years, in order, was \$23,201, \$25,151, \$23,221, \$17,503, and \$18,411. The sum of the net profits earned by the Susquehanna & Western and the Erie, including the Chicago & Erie, as shown in both statements, was \$37,126 in 1932, \$36,316 in 1933, \$35,354 in 1934, \$30,479 in 1935, and \$28,043 in 1936. By crediting the line sought to be abandoned with the last-mentioned amounts, the statements show that its operation from the standpoint of the Erie system as a whole resulted in net profits of \$26,093 in 1932, \$282 in 1933, \$8,133 in 1934, and net losses of \$5,499 in 1935, and \$1,971 in 1936.

The applicant has outstanding \$2,665,000 of first-mortgage 5-percent bonds, issued June 1, 1892, and maturing on June 1, 1942. According to testimony of a representative of the Commercial National Bank & Trust Company of New York, acting as temporary trustee under the mortgage, the applicant defaulted in payment of interest on these bonds which became due on June 1, 1937, for the apparent reason that the Susquehanna & Western failed to furnish the applicant with funds for that purpose pursuant to the terms of the agreement of July 18, 1893, previously mentioned.

Evidence tending to establish that the present and future public convenience and necessity warrant continued operation of the line was adduced by the testimony of witnesses representing certain business interests of Pocono Lake and Stroudsburg.

An ice company owns two buildings, or plants, located on the applicant's line at Pocono Lake about 7 miles by highway from the main line of the Lackawanna. The buildings were constructed over 40 years ago for the purpose of storing natural ice for future shipment by rail. A representative of the corporation testified that the value, less depreciation, of the two buildings, including equipment, is

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\$69,582, and that practically all of the corporation's investment therein would be lost if the line were abandoned. However, one of the buildings has not been in use for the past three years and the witness states that the corporation has not made any money in the natural-ice business since 1931 or 1932. Most of the ice is shipped over the applicant's line from Pocono Lake to Pittston and Plains, in the vicinity of Wilkes-Barre. Other shipments are consigned to Paterson, Passaic, and Blairstown, N. J. According to the witness, the total number of tons shipped by rail was 33,525 in 1932, 28,990 in 1933, 23,600 in 1934, 22,326 in 1935, 20,467 in 1936, and 29,034 during the first nine months of 1937.

A coal company and a lumber company have their yards located in Stroudsburg on the Susquehanna & Western a short distance beyond the easterly terminus of the applicant's line. A witness who is general manager of both these companies states that the coal company received 18,000 tons of coal from the Wyoming region in 1936 and 16,500 tons in 1937, all of which moved to Stroudsburg over the applicant's line. If the applicant's line were abandoned, Stroudsburg's inbound coal traffic from that region could be moved over the Lackawanna Railroad, but the latter has no interchange connection with the line of the Susquehanna & Western in East Stroudsburg and therefore the coal company would have to handle its inbound coal by truck from the Lackawanna's freight yards, a distance of from 1 to 2 miles. The witness states, in effect, that he has investigated the possibility of trucking inbound coal from the Wyoming region directly to Stroudsburg but found that the trucking cost would be so great that his company could not remain in competition with other coal dealers in Stroudsburg. However, the testimony is that the applicant reduced intrastate freight rates on such coal several years ago for the sole purpose of meeting truck competition and that an application for a further reduction of rates for that purpose was recently disapproved by the Pennsylvania Public Utility Commission. It appears that another coal business in Stroudsburg, comparable in size to the coal concern managed by the witness, and operated in competition therewith, receives approximately 70 percent of its coal by truck from coal breakers in the vicinity of Wilkes-Barre or Scranton. The latter concern offers no objection to the proposed abandonment. The lumber company managed by the witness above referred to has a business establishment or plant in Stroudsburg on the Susquehanna & Western and another plant on the applicant's line at Pocono Lake. The record does not show that the Stroudsburg plant deals in anything except lumber, but the plant at Pocono Lake deals in lumber, building material, lime, cement, coal, and hard-

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ware. The witness failed to state the volume of traffic delivered to or forwarded from either plant, but he stated that the Stroudsburg plant paid freight charges in the amount of \$2,200 in 1936 and \$3,000 in 1937. There is nothing in his testimony to show that the Stroudsburg plant would be materially affected by the proposed abandonment, but he stated that the transportation needs of the plant at Pocono Lake could not be served by trucks because their services are unreliable. The witness further stated that the plants at Stroudsburg and Pocono Lake represent an investment of \$58,000 and \$14,000, respectively, and that the latter plant would go out of business if the branch were abandoned.

There is an iron foundry located on the applicant's line in Stroudsburg, about 2 miles west of the Susquehanna & Western, which receives pig iron, coke, sand, and bituminous coal by rail. It maintains its own siding and its sole rail connection is with the line sought to be abandoned. According to the testimony of the assistant general manager of the foundry, it received 36 carloads of freight, or 1,468 tons, in 1937, and shipped 1 carload, or 25 tons, outbound. During the first six months of 1938 it received 10 carloads, or 410 tons, and shipped 2 carloads or 46 tons. Of the 36 carloads of inbound traffic above shown, only 2 carloads appear to have been shipped over the applicant's line from the west. The record indicates that 34 carloads were shipped from the east over the Susquehanna & Western Railroad and that the applicant received little or no revenues therefrom. The foundry, employing an average of about 50 persons, has a book value of \$60,000 but its assessed value for local taxation purposes is only \$14,000. Practically all of its outbound traffic is less-than-carload freight, which is moved by truck from the foundry to the Lackawanna station in East Stroudsburg for shipment. Its outbound traffic is not shipped via the applicant's line for the alleged reason that the applicant has inadequate facilities.

Stroudsburg and East Stroudsburg, each containing about 6,000 inhabitants, are separate boroughs, but they are built close together and have the appearance of one community. The secretary of the Monroe County Chamber of Commerce testified of the importance of Stroudsburg as an industrial center and its needs for rail transportation facilities. He states that there are about 30 industries in the town and that 18 of them have an investment of approximately \$1,106,000 in land, buildings, and equipment. However, it appears that practically all of the industries in question are served by the Susquehanna & Western and that they would not be deprived of rail transportation facilities if the applicant's line were abandoned. The record does not show the industries, if any, on the Lackawanna in East Stroudsburg.

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The applicant's station agent at Suscon, testifying on behalf of the protestants, states that there are two open routes for the movement of coal from the Wyoming region to tidewater, one of which is over the applicant's line via Stroudsburg, known as the Stroudsburg route, and the other is via Hillside Junction over the Erie's northern route, previously mentioned. The gist of his testimony is that for several years the Erie management has instructed him to forward shipments of coal over the northern route in preference to the Stroudsburg route, and that during the year 1937 between 1,200 and 1,500 carloads were thus diverted from the applicant's line. In rebuttal, a witness for the applicant explains that the rate on coal between the points of origin on the applicant's line and tidewater is \$2.39, of which the applicant receives a division of 75 cents for a relatively short haul to the Erie connection at Hillside Junction. The record indicates that the length of such haul is 9 or 10 miles. If the shipments are made over the Stroudsburg route instead of over the northern route, the applicant receives a division of 86 cents, or a difference of only 11 cents for the 54-mile haul over the mountains from Suscon to Stroudsburg. Whether such divisions are reasonable is not a matter for determination in this proceeding, but in view of the meager additional division for the long haul over the mountains it is obvious that the diversion of traffic to the Erie line was beneficial rather than detrimental to the interests of the applicant.

On argument, counsel for the protestants states, in effect, that the applicant's business was purposely ruined by the Erie in its endeavor to secure the traffic that the applicant's line originally was designed to handle, that there would be as much need for the applicant's line at the present time as in the past if the Erie would not divert such traffic over its northern route, and that abandonment of the applicant's line would precipitate abandonment of the line of the Susquehanna & Western. The record affords no doubt that the applicant's line would be greatly needed and could be operated at a profit if it were the Erie's only avenue of traffic between the Wyoming coal region and tidewater points, but that is not the situation in this case. The evidence is that the traffic in question can be handled more efficiently and economically over the northern route. There is no evidence of record concerning the probable effect of the proposed abandonment upon the business of the Susquehanna & Western. Whether it can be operated successfully, independently of the applicant's line, is not a question for determination in this proceeding.

Argument on behalf of the railroad brotherhoods is that there are from 40 to 45 employees now in service on the applicant's line who fear their dismissal from service if the line be abandoned. However,

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the testimony is that a number of such employees, owing to seniority rights, are eligible for employment on other lines of the Erie system.

The Department of Highways, Commonwealth of Pennsylvania, urges that our certificate herein be conditioned upon the removal by the applicant of its railroad facilities occupying public highways, and the restoration of such highways to a condition safe for public travel. We are of opinion that this is a matter which does not affect the question of public convenience and necessity, but which should be adjusted between the Commonwealth and the applicant.

There is no doubt that the trustees of the Erie are endeavoring to achieve more efficient and economical operation and it is clear that any saving resulting from improved operating conditions on its subsidiary lines is beneficial to the system as a whole. On the other hand, any loss resulting from the operation of subsidiary lines, or any unnecessary expenditures for maintenance and operation of duplicate lines where the traffic of both could be handled over one line, is detrimental to the system as a whole. Irrespective of the question whether or not the line sought to be abandoned has been operated at a loss in past years from the standpoint of the system as a whole, or whether or not it could be operated at a profit if the Erie management chose to route more traffic thereover, the fact remains that the Erie does not need and public convenience and necessity do not require two lines of railroad between the Wyoming coal region and tidewater.

It is clear that continued maintenance and operation of the line sought to be abandoned would impose an undue burden upon the applicant and upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment by Joseph P. Jennings, trustee of the Wilkes-Barre and Eastern Railroad Company, of that portion of the latter's line of railroad extending in a general southeasterly direction from Suscon to Stroudsburg, in Luzerne, Lackawanna, and Monroe Counties, Pa., described in the application.

An appropriate certificate will be issued.

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