

FINANCE DOCKET No. 14920

HOBOKEN FERRY COMPANY ET AL. ABANDONMENT

Submitted September 10, 1946. Decided October 10, 1946

Certificate issued permitting abandonment by the Hoboken Ferry Company, and abandonment of operation by the Delaware, Lackawanna & Western Railroad Company, of the ferry line extending from Hoboken, Hudson County, N. J. to West Twenty-third Street, Borough of Manhattan, city and county of New York, N. Y. Conditions prescribed.

H. L. Main, Douglas Swift, David I. Mackie, and Rowland J. Davis, Jr., for applicants.

Harris J. Klein, William Biederman, T. D. Pratt, Charles A. Pascarella, Louis Hays Dos Passos, Daniel J. Crecca, G. B. Johnson, Floyd D. Martin, Harold A. Sonn, Martin F. Buckman, William Machauer, Jr., Edward P. Trainer, W. J. Van Buren, B. M. Spiegel, Henry P. Schmidt, F. J. Jones, Leo Kirner, Arthur G. McKeever, William H. Bird, and James W. Danahy, for protestants.

Harold H. Fisher for New Jersey Board of Public Utility Commissioners.

J. L. Elliott and A. E. Lyon for Railway Labor Executives' Association.

J. Harry Mulhern for Public Service Interstate Transportation Company.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFFIE, MILLER, AND ROGERS

BY DIVISION 4:

Exceptions to the report proposed by the examiner were filed and oral argument was heard.

On May 2, 1945, The Hoboken Ferry Company and The Delaware, Lackawanna and Western Railroad Company, herein referred to as the Lackawanna, applied for permission to the former to abandon, and to the latter to abandon operation of, a ferry line extending from Hoboken, Hudson County, N. J., to West Twenty-third Street, Borough of Manhattan, city and county of New York, N. Y., approximately 1.33 miles, referred to as the Twenty-third Street Ferry. Protests were filed and a hearing was held. The New Jersey Board of Public

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Utility Commissioners, commuters' associations, individuals, trade associations, business firms, chambers of commerce, and various marine and railroad employees' organizations appeared in opposition to the proposed abandonment. A representative of the Railway Labor Executives' Association requested that, if abandonment is permitted, conditions be prescribed for the protection of employees similar to those in *Chicago, B. & Q. R. Co. Abandonment*, 257 I. C. C. 700.

Hoboken is the eastern terminal of the Lackawanna's rail lines. In connection with its passenger service, and for the transportation of vehicles, it operates 3 ferry lines or routes across the North River to points in New York City, using a pool of 13 vessels, namely the Twenty-third Street ferry, 24 hours a day, with a maximum of 3 boats; the route to Christopher Street, 0.8 mile, from 5 a. m. to 9 p. m., except Sundays, with a maximum of 2 boats; and the Barclay Street ferry, 1.67 miles, daily except between 12:30 a. m. and 5:45 a. m., with a maximum of 4 boats, leaving 4 boats in reserve. At the time of the hearing, the Lackawanna was operating the properties of the Hoboken under a lease which has since expired, viz, May 1, 1946, and the Hoboken's capital stock was owned by the Hoboken & New York Ferry Company, the capital stock of which, in turn, was owned by the Lackawanna. In *Hoboken Ferry Co. Control*, 267 I. C. C. 822, we authorized the Lackawanna to acquire control of the Hoboken by acquisition of its stock among the assets of the New York & Hoboken, the latter company to be dissolved, and to lease the Hoboken properties under a lease, expiring May 1, 1966. That lease provides that the lessee pay rental equal to the lessor's depreciation and retirement charges, maintain the properties and pay the lessor's property and franchise taxes.

The ferry line proposed to be abandoned has been in operation since 1905, and is now the only one terminating at West Twenty-third Street. If its abandonment is permitted, the Lackawanna proposes to operate the Christopher Street ferry 24 hours a day, 365 days a year, and to place an additional boat in service on that route. The Christopher Street terminal in Manhattan, is about 1 mile south of the Twenty-third Street ferry terminal.

The applicants suggest that the discontinuance of the Twenty-third Street ferry may be said to be not an abandonment of their ferry service but merely a transfer of service from Twenty-third Street to Christopher Street, and that, therefore, it may be questioned whether this Commission's approval of the proposed change is required under section 1 (18) of the Interstate Commerce Act, under which this proceeding is brought. That section provides that no carrier by railroad subject to part I of the act shall abandon all or any portion of

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a line of railroad, or operation thereof, unless there shall first have been obtained from this Commission a certificate that public convenience and necessity permit of such abandonment. The term "railroad" as used in part I includes "ferries used by or operated in connection with any railroad." The Twenty-third Street ferry, therefore, is a line of railroad within the meaning of section 1 (18) of the act. The proposed abandonment of the Twenty-third Street ferry is not a relocation of terminal facilities in New York City, merely because the applicants propose to expand the operations of the Christopher Street ferry line to handle such traffic as may be diverted or transferred by it after the abandonment of the Twenty-third Street ferry. But even if it were considered a relocation of a terminal in a particular city, as suggested by the applicants, the proposed abandonment could not be lawfully accomplished except upon issuance of a certificate by this Commission permitting such abandonment. *Atchison, T. & S. F. Ry. Co. v. Railroad Comm. of California*, 283 U. S. 380, cited by the applicants, does not support their view that changes in terminals in a particular city may be accomplished without the authorization of this Commission. Extended discussion of that case is not necessary. It is sufficient to quote syllabus No. 1, thereof, which reads as follows:

The power of a State to compel interstate carriers to construct a union passenger station in a city is not superseded by the Interstate Commerce Act, *except* that the approval of the Interstate Commerce Commission must first be obtained, and its certificate of public convenience and necessity issued, with respect to rearrangement, extension and abandonment of tracks, and the use of the terminal facilities, involved in the proposed plan. P. 390. [Italics supplied.]

The proposed abandonment is similar to the abandonments of the ferries of the Central Railroad Company of New Jersey and the Erie Railroad Company between Jersey City, N. J., and West Twenty-third Street, New York, N. Y., authorized in 249 I. C. C. 269, and 252 I. C. C. 659, respectively. Each of those carriers continued ferry operations to other points in New York City.

It is clear that the proposed abandonment is one subject to the jurisdiction of this Commission under section 1 (18) of the act.

Under the date of January 29, 1944, the commissioner of the New York City Department of Marine and Aviation directed the Lackawanna to transfer its ferry service at West Twenty-third Street to two slips formerly used by the Erie railroad and Electric Ferries, located immediately north of the piers at present occupied by the Lackawanna. The present terminal is now occupied on a month-to-month basis under a permit revocable on 30 days' notice. Under date of May 17, 1945, the commissioner advised the West Side Association of Commerce, Inc., of plans for construction on the site of the Lackawanna piers, and in his letter of May 24, 1945, to the same

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association, he further stated that the city had not suggested or encouraged the abandonment of the Lackawanna ferry, but that the plans of his department are entirely anticipatory in order that, if the ferry is abandoned, the city will be prepared to keep the property in commercial use. The testimony in behalf of the applicants is that, although they have been permitted to continue the use of their present piers, there has been no change in the original directions of the commissioner, and that they were so informed in August 1945. Based on an examination made in June 1945, the applicants estimate they would have to spend about \$242,300 to place the two northerly piers in condition for their occupation and use.

The applicants assert that the Twenty-third Street ferry is being operated at a substantial out-of-pocket loss as a result of increased operating costs and the diversion of traffic therefrom by the successive openings of the Hudson & Manhattan Railroad Company tubes, serving downtown and uptown Manhattan, the Holland Tunnel between Jersey City, N. J., and Canal Street, Manhattan, the George Washington Bridge between Fort Lee, N. J., and West One Hundred and Seventy-eighth Street, New York City, and the Lincoln Tunnel between Weehawken and West Thirty-ninth Street; and that the proposed abandonment and the expanded service on the Christopher Street ferry will eliminate the losses sustained on the Twenty-third Street ferry and provide adequate service to the public.

Service on the Twenty-third Street ferry consists of trips in each direction as follows: Mondays to Fridays, inclusive, referred to as weekdays, 100 to 102, Saturdays 89, and Sundays 80. No important changes in the service have occurred since 1939.

Hourly counts were made of all passengers using that ferry in each direction during the week Sunday, May 13, 1945, to and including the following Saturday. East-bound passengers, that is from Hoboken to Manhattan, on Sunday (partly cloudy with rain in the evening) totaled 4,185, an average of 52 a trip. During the 5 days, Monday to Friday, (with 3 cloudy or partly cloudy days) the totals varied from 4,556, an average of 45 a trip, to 4,820, an average of 47 a trip. On Saturday (with rain, and clear in the evening) the total was 3,571, an average of 40 a trip. West-bound passengers on Sunday totaled 3,689, an average of 40 a trip; on Monday to Friday the number varied from 4,090 to 4,791, averages of 40 and 47; and on Saturdays 3,944, an average of 44 a trip. On weekdays passenger traffic in both directions generally commences to decline at 11 p. m., reaching its lowest ebb between the hours of 2 and 4 a. m., (15 to 37 passengers an hour to Manhattan, and 11 to 36 to Hoboken) and then increases more rapidly after 6 a. m. About 38 to 40 percent of the east-bound passengers

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use the ferry between 7 and 8:59 a. m., and from 43 to 46 percent of the west-bound passengers use the ferry between 4 and 6 p. m. The total number of east-bound passengers in that week was 30,887, and west-bound 30,259, which shows that the traffic is about the same in each direction. This fact is of importance, as will appear below, because of the method of the applicants to determine the number of railroad passengers using the Twenty-third Street ferry, the revenues allocated to the ferry for the handling of such passengers, and the revenues credited to it for local passengers.

In the week commencing Sunday, October 22, 1944, and ending the following Saturday, counts by hours were made of passengers holding railroad tickets, traveling west-bound on the ferry. On Sunday there were 1,587 such passengers, from Monday to Friday the average was 1,780, and on Saturday the total was 1,695. The daily averages of the classes of tickets used on the 5 weekdays were as follows: Monthly and weekly commutation, 549; 10-trip and 50-trip, 583; and one-way and round trip 648. In the week named, the Lackawanna had outstanding 11,408 New York commutation tickets.

Similar counts also were made of west-bound railroad passengers using each of the Lackawanna's three ferries on Wednesday, March 21, 1945, (foggy and rainy), and on three clear days Saturday March 24, and the following Sunday and Wednesday. East-bound passengers were not counted for the reason that they are not required to present their tickets when entering the boats, and it is impracticable to distinguish between railroad and local passengers.

For the purpose of ascertaining what proportion or percentage of its railroad passengers, whose tickets include transportation on the ferries, actually used its ferries, the Lackawanna obtained from the Hudson & Manhattan the numbers of passengers who used the tubes at the Lackawanna terminal in Hoboken on the above-named days in March 1945. By expanding the March figures to an annual basis, the Lackawanna obtained the following percentages: Railroad passengers using the ferries, 42.27 percent; those using the tubes, 51.97 percent; and those using neither 4.76 percent. By expanding the March 1945 count to a monthly, instead of to an annual basis, but eliminating the foggy and rainy Wednesday of March 21, 1945, and assigning a weight of 5 to the clear Wednesday of March 28, and a weight of 1 each to Saturday and Sunday, the following percentages were developed: Railroad passengers using the ferries, 43.66 percent, those using the tubes 52.10 percent; and those using neither 4.24 percent. The foggy and rainy Wednesday was disregarded because on such days less people use the ferries than on clear days. For example, on Wednesday, March 21, 8,916 railroad passengers used the 3 ferries,
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as compared with 11,509 on the following clear Wednesday of March 28, and on the first Wednesday, Hudson & Manhattan passengers at the Lackawanna terminal totaled 15,614, as compared with 13,202 on the following clear Wednesday.

From the foregoing the Lackawanna concludes that 43 percent of its railroad passengers entitled to ferry transportation actually use the ferries, 52 percent use the Hudson & Manhattan, and 5 percent use neither the ferries nor the tubes. This 43 percent is allocated to the three ferries as follows: Barclay Street, 68.3 percent, Christopher Street, 10.7 percent, and Twenty-third Street, 21 percent, or, stated otherwise, the Barclay Street ferry handles 29.37 percent of all Lackawanna railroad passengers who hold railroad tickets entitling them to use the ferries, the Christopher Street ferry 4.60 percent, and the Twenty-third Street 9.03 percent.

For purposes of reports for the years 1935-42 to the Transit Commission of New York, and for the years 1943 and 1944 to the Public Service Commission of New York, the Lackawanna estimated that 60 percent of its railroad passengers used its ferries, which was the same percentage used by Erie Railroad Company, and allocated 77 percent of the 60 percent to Barclay Street, 13 percent to Christopher Street, and 10 percent to Twenty-third Street. Of course, the adoption of the 43-percent figure in lieu of the 60-percent had the effect of reducing the total number of railroad passengers allocated to the 3 ferries, but the changes as between those 3 ferries increased the number of railroad passengers assigned to the Twenty-third Street ferry. For instance in the year 1944, under the 60-percent method, 982,817 were allocated to the Twenty-third Street ferry, as compared with 1,479,141 under the 43-percent method.

The following tabulation sets forth the traffic handled on the Twenty-third Street ferry for the years and period indicated:

Period	Vehicles	Local passengers	Railroad passengers
Year 1940.....	1,012,752	1,050,296	1,497,833
Year 1941.....	1,121,740	1,232,510	1,466,787
Year 1942.....	936,461	1,904,875	1,514,132
Year 1943.....	709,210	1,759,978	1,523,336
Year 1944.....	712,462	1,570,135	1,479,141
Year 1945 (6 months).....	309,090	676,065	766,005

It will be observed that the railroad passenger traffic on the ferry has been fairly constant. Local passengers carried per trip increased from 14.1 in 1941 to 25.2 in 1943, decreased to 22.5 in 1944 and to 19.5 in the first 6 months of 1945. The showing that in 1942 the number of local passengers per trip, 24.3, was less than in 1943, notwith-

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standing the 1942 figure is the largest total in the period under discussion, apparently arises from the fact that in 1942 the boats made about 8,500 more trips than in 1943. The total of both classes of passengers carried increased from 34.3 per trip in 1940 to 47.1 in 1943, decreased to 43.6 in 1944 and to 41.7 in the first 6 months of 1945. From the foregoing averages, it appears that in the years 1940-42 the boats made from 74,000 to 78,000 trips annually, and since 1942 at the rate of about 70,000 trips annually, which is approximately the service now furnished. The large increase in local passengers in 1942 is considered by the applicants as a temporary influx resulting from the abandonment of their so-called Fourteenth Street Hoboken ferry, which connected with no line of railroad, and operated between Fourteenth Street Hoboken and West Twenty-third Street. The Hoboken terminal thereof was condemned by the Government, and the ferry operations were discontinued on April 27, 1942. In 1941 it carried 3,587,414 local passengers and 872,274 vehicles. Since May 1942 the trend of local passengers on the Twenty-third Street ferry has been downward. In the month of May 1942 it carried 210,994 local passengers, as compared with 146,871 in the preceding month, with 93,328 in May 1941, with 153,145 in May 1943, and with 114,204 in May 1945. These figures support the applicants' suggestion that if the Fourteenth Street Hoboken ferry had been abandoned in 1941, the downward trend on the Twenty-third Street ferry would have commenced in that year instead of after May 1942. They point also to the fact that the total of such passengers in the first 6 months of 1945 was 676,065, or at an annual rate of 1,352,130, which is less than a 10-percent increase over the 1941 total, whereas the increase in 1942 was 50 percent of the 1941 total.

The applicants submitted data as to the so-called "Trans-Hudson" passenger traffic, showing the number of passengers who crossed the river and the number thereof who used each of the classes of facilities available. A separate statement was submitted setting forth the total number of local passengers carried on all of the railroad-operated ferries, and on all Lackawanna ferries. The total of local passenger traffic on all ferries in 1944, as compared with 1935, decreased 50.8 percent, on all railroad-operated ferries decreased 54.8 percent, on other than railroad-operated ferries 35.9 percent, and on all Lackawanna ferries 44.3 percent. The Lackawanna ferries in 1944 carried 4,296,593 local passengers, as compared with 7,715,740 in 1935, but it must be borne in mind that the substantial decrease was not the result of decreases in passenger traffic on the Twenty-third Street ferry, but largely because of the loss of such business resulting from the discontinuance of the Fourteenth Street Hoboken ferry, and to a lesser ex-

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tent to decreases on the Barclay Street and Christopher Street ferries. Barclay Street local passengers decreased about 400,000 in the 10-year period, and Christopher Street about 560,000. Local passengers carried on the Twenty-third Street ferry increased from 819,866 in 1935 to 1,195,859 in 1939. The subsequent fluctuations in the volume of such traffic appear in the tabulation given above. In these circumstances, it is clear that the general downward trends cited by the applicants do not necessarily forecast substantial decreases of the Twenty-third Street local passenger traffic.

Details of revenues, hereinafter set forth, show that in the year 1940 and 1941 vehicular traffic accounted for about 80 percent of the total operating revenues each year, about 71 percent in 1944, and 70 percent in 1945, assuming that revenues for the year 1945 would be twice the amount shown for the first 6 months thereof. The largest amount of revenues from vehicles and the largest number of vehicles since 1940, occurred in 1941. Revenues from vehicles in 1944 were 30 percent less than in 1941, and 35.7 percent less in 1945, on the assumption above stated as to 1945. The number of vehicles in 1944 was 36.5 percent less than in 1941, and, in 1945, 44.9 percent less than in 1941, on the same assumption as to volume of the 1945 traffic.

Beginning with the year 1935, vehicular traffic on the Twenty-third Street ferry increased practically each year, reaching a peak of 1,121,740 in 1941. As shown in the above tabulation, it decreased in 1942 and again in 1943, and increased slightly in 1944. The discontinuance of the Fourteenth Street Hoboken ferry resulted in a temporary increase on the Twenty-third Street ferry, but that increase was more than offset by gasoline rationing which was commenced in May 1942.

Vehicles using the Holland Tunnel, which was opened in November 1927, increased each year to a peak of 14,731,415 in 1941, decreased in 1942 and 1943, but increased to 11,655,443 in 1944, about 20 percent more than in 1943. The first tube or tunnel of the Lincoln Tunnel was opened in December 1937. It has been used by an increasing volume of vehicles each year without exception. In 1944 it was used by 5,708,006, about 25 percent more than in 1943. The second tube was opened in February 1945. Vehicles using the George Washington Bridge, which was opened in October 1931, increased each year until 1941, when they totaled 9,379,981, then decreased in 1942 and again in 1943, but increased in 1944 to 7,137,130, or about 27 percent more than in 1943. It therefore appears that traffic decreased in the Holland Tunnel and on the bridge as well as on the Lackawanna ferries in 1942 and 1943, but increased in 1944. However, the increases on the ferries, percentagewise, were very small. On the Twenty-third

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Street ferry it was less than one-half of 1 percent. In the Holland Tunnel, the 1944 vehicular traffic was 18 percent less than in 1941, on the bridge, 23 percent less, and on the Twenty-third Street ferry, as previously stated, 36.5 percent less.

Gasoline rationing was discontinued Wednesday, August 15, 1945. The following 2 days were holidays. Comparisons of the number of vehicles which used the tunnels and bridge and the applicants' 3 ferries during the week commencing on the following Friday and ending with the next Thursday, with the same days (not dates) in 1944, show increases of 43,802 in the Holland Tunnel, about 18.80 percent, 30,636 in the Lincoln tunnels, about 28.17 percent, 50,271 on the George Washington Bridge, about 28.82 percent, 3,648 on the Barclay Street ferry, about 41.5 percent, 99 on the Christopher Street ferry, 1.44 percent, and a decrease of 118 on the Twenty-third Street ferry, about 0.78 percent.

The capacity of a ferry boat is 15 or 16 vehicles of assorted kinds and sizes. In the week of August 1945, mentioned above, the Twenty-third Street ferry carried 14,905 vehicles in 1,350 trips, an average of 11 a trip, or about 71 percent of capacity. Vehicles per trip decreased from 14.6 in 1941 to 10.2 in 1944, and to 8.9 in the first 6 months of 1945. The percentages of capacity in each of the 5 years 1940-44 and the first 6 months of 1945, were 90, 94, 78, 66, 66, and 57, respectively. An officer of the Lackawanna testified that even if the Twenty-third Street ferry were operated at 100-percent capacity for vehicular traffic, it could not be operated at a profit. Of course, that conclusion is based on the existing operating expenses and the present level of rates, which rates were reduced the last time on May 1, 1943, as to trucks exceeding 20 feet in length.

The applicants are of the opinion that the Christopher Street ferry, with 24-hour service, and the additional boat, can handle about two-thirds of the vehicular traffic now handled by the Twenty-third Street ferry, and such additional passengers who may desire to use it. The present service on the Christopher Street ferry totals 8,599 boat-hours annually.

It will be increased to 17,354 boat-hours under the proposed schedule. The additional cost on the Christopher Street ferry is estimated at \$224,000, annually, approximately 60 percent of the total operating revenues assigned to the Twenty-third Street ferry in 1944, and about 84 percent of the revenues from vehicular traffic in that year. The Lackawanna anticipates that the greater part of the railroad passengers now using its Twenty-third Street ferry will use its other ferries, if the former is abandoned, but it "may well expect to lose a greater proportion" of the local passengers. Loss of railroad pas-

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sengers on the ferries, of course, would have no effect upon the revenues of the Lackawanna system, because railroad tickets can be purchased only to New York and the holders thereof are entitled to use the ferries without any additional charges. Loss of local passengers, however, would reduce Lackawanna revenues. A witness for the applicants expressed the view that, with the improved service on the Christopher Street ferry, the Lackawanna will not lose "any great amount" of the vehicular traffic, "once the users of the ferries become convinced that Christopher Street is as handy as Twenty-third Street." His opinion was based in part on the differences in running time on the two ferries. The running time between Hoboken and West Twenty-third Street, because of the flow of the river, varies from 8 to 14 minutes, while on the Christopher street route it is fairly uniform, ranging from 6 to 7 minutes. An added advantage is that the Christopher Street piers permit quicker and easier berthing of the boats. However, it appears from testimony of the protestants that the available street space at Twenty-third Street is larger and less congested than at Christopher Street.

The applicants do not anticipate the return of traffic to the 1942 level because, since the termination of the war and lifting of gasoline rationing, they expect trucks and passenger cars will use the tunnels, and also because there will be a decrease in mail, express, and so-called war business.

The financial results of operation of the Twenty-third Street ferry in each of the 5 years 1940-1944 and the first 6 months of 1945, are shown as follows: Revenues, railroad passengers \$34,862, \$34,140, \$35,242, \$35,456, \$34,427, and \$17,829; local passengers \$44,338, \$49,752, \$74,345, \$71,489 \$63,908, and \$27,424; vehicles \$362,122, \$380,344, \$314,889, \$262,665, \$265,378, and \$122,302; other, of miscellaneous character \$10,017, \$9,781, \$9,369, \$11,133, \$11,715, and \$6,373; totals \$451,339, \$474,017, \$433,845, \$380,743, \$375,428, and \$173,937. Operating expenses, maintenance of way and structures \$26,319, \$19,963, \$6,364, \$26,546, \$12,050, and \$4,297; maintenance of equipment \$91,710, \$85,039, \$128,579, \$130,384, \$106,520, and \$57,053; transportation \$285,951, \$301,916, \$350,062, \$370,070, \$388,982, and \$197,355; totals \$403,980, \$406,918, \$485,005, \$527,000, \$507,552, and \$258,705; railway tax accruals in amounts varying from \$15,306 to \$19,783 for each of the years and \$9,266 for the first 6 months of 1945; producing net operating incomes of \$30,943, \$52,054, *\$69,424*, *\$166,040*, *\$150,577*, and *\$94,034*. (Italic indicates deficits). The applicants' comptroller estimates the out-of-pocket loss in 1945 at \$200,000.

Railroad passenger revenue is allocated to the ferry on the basis of 2.3275 cents a trip or ride by the 43 percent of such passengers as-

certained, as heretofore explained. The revenue per ride is 1.75 cents a passenger-mile, this being the average earned from all classes of passenger traffic on the Lackawanna, multiplied by 1.33 miles, the distance traversed by the ferry. The protestants contend that trips should be computed at 3 cents each, on the ground that this Commission approved a 3-cent per ride allocation in *Ferry Charges Between Weehawken and New York City*, 231 I. C. C. 181, and also that the ferry should be credited 3 cents per trip for each railroad ticket which entitles the purchaser to the use of the ferries, or 100 percent of the Lackawanna's railroad passengers who are entitled to ferry transportation, sometimes referred to as potential passengers, instead of the 43 percent who actually used them. In the Weehawken case, above cited, the Commission, division 2, among other things considered three methods of allocation of revenues from rail-ferry passengers. It stated that the 3-cent allocation, which apparently was suggested by the report in *Hoboken Commrs. v. Delaware, L. & W. R. Co.*, 78 I. C. C. 582, decided April 9, 1923, appeared to be the most equitable method. The applicants argue that inasmuch as at the time of the decision in the last-cited case the basic passenger fare in coaches was 3.6 cents a mile, as compared with the present rate of 2.2 cents a mile, the reasonableness of the 2.3275 cents for 1.33 miles is clear and incontestable. They contend further that the rate for rail-ferry passengers should be less than the rate for local passengers. If 3 cents were used instead of 2.3275 cents, revenues credited for railroad passengers would be increased less than \$10,000 annually. In support of the allocation of revenues from 43 percent of its railroad passengers, the Lackawanna contends that the blanket Hoboken-New York rates cover transportation to and from Hoboken as well as transportation to and from New York City; that such rates are analogous to the freight rate structure under which the same rates apply to Hoboken for local delivery as to New York City piers; that, similarly, there are many situations where a ticket purchased for one destination may be used to several destinations, citing examples; that the blanket rate is no more than a reasonable rate for the commutation service to and from Hoboken, and if a passenger uses both rail and ferry services it is necessary to apportion the rates between the two services, even though this may result in the rail service being credited with less than a reasonable amount for such service, but where a passenger uses only the rail service to Hoboken and does not use the ferry, there can be no justification for taking away a part of the rate from the rail service which was actually performed and crediting it to the ferry for a service which was not rendered; and that therefore the allocation should be made on the basis of actual and not potential use. If 100 percent of the railroad passengers, or the potential passengers, were allocated to the

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Twenty-third Street ferry at 3 cents a trip, as contended for by the protestants, the railroad passenger revenue in 1944 would be increased about \$68,770, and at 2.3275 cents about \$45,635, and the loss from operation decreased correspondingly. This method of allocating rail-passenger revenue on the basis of actual, rather than potential, use was not questioned in *Erie R. Co. Ferry Abandonment*, 252 I. C. C. 659, nor in *Hoboken Commrs. v. Delaware, L. & W. R. Co.*, *supra*. The method used herein by the applicants appears to be a reasonable one.

Local passenger revenues represent receipts from one-way 5-cent fares, 10-trip tickets at 30 cents, and 21-trip tickets at 60 cents. The amounts shown are actual so far as west-bound passengers are concerned, and the east-bound revenues, while in effect actual, were apportioned on the percentage relation basis between the west-bound local revenues on the applicants' three ferries, because after east-bound passengers pay their fares at Hoboken it is not practicable to determine which of the three ferries they use.

Vehicular revenues reflect actual collections on the west-bound movement, and an apportionment of the actual amounts collected on east-bound movements on the Christopher Street and Twenty-third Street ferries in the proportions obtained from collections made on the west-bound movements on both ferries, this being necessary because but one booth is used in Hoboken for those two lines. Based on a study segregating revenues from mail, express, and passenger automobiles, a witness for the applicant concludes that about one-half of the 1944 vehicular revenues was from commercial vehicles. Railway Express vehicles are credited on the basis of 60 cents per vehicle, which would be the commercial rate, although no actual revenues are collected therefor. Mail trucks are assessed at the regular commercial rate of 57 cents a truck.

The operating expenses shown by the applicants represent actual out-of-pocket costs. No charges are included for overhead expenses, or rental and taxes on the property at Hoboken. Charges for repairs, depreciation, and operation of floating equipment are based on the number of ferryboat crew-hours operated in connection with the Twenty-third Street ferry to total ferryboat crew-hours operated by all Lackawanna ferries. This apportionment was necessary because the boats are often operated interchangeably between the three ferry lines. Certain expenses at Twenty-third Street, not detailed (but no doubt principally maintenance of wharves and docks, and such transportation expenses as station employees, and station supplies and expenses, which include rental paid New York City for the Twenty-third Street piers), prior to April 27, 1942, were apportioned between the Twenty-third Street ferry and the Fourteenth Street Hoboken ferry.

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The principal items of expense and the variations therein are shown as follows: Maintenance of wharves and docks \$21,968 in 1940, \$3,288 in 1942, \$16,148 in 1943, \$9,416 in 1944, and \$2,905 in the first half of 1945; repairs on floating equipment \$59,235 in 1941, \$71,684 in 1944, and \$39,127 in the first half of 1945; depreciation, floating equipment \$23,759 to \$33,205 annually; station employees from \$49,964 in 1940 to \$64,668 in 1944; station supplies and expenses from \$43,044 in 1940, to \$55,686 in 1944; wages of crews from \$116,436 in 1940 to \$141,929 in 1944 and \$71,873 in the first half of 1945; fuel \$68,218 in 1940 to \$112,043 in 1944, and \$54,402 in the first half of 1945; and other supplies and departmental expenses \$7,042 in 1940, \$11,009 in 1944, and \$5,849 in the first half of 1945.

As indicated above, total passenger revenues in 1944 were about \$19,000 more than in 1940, but vehicular revenues decreased about \$97,000 and total revenues about \$76,000, but operating expenses increased about \$103,500. Comparison of the same items in 1941, the year which produced the greatest amount of revenue in the 5-year period under discussion, with 1944, discloses that passenger revenues increased about \$14,500, vehicular revenues decreased \$115,000, total revenues decreased \$98,600, but operating costs increased \$100,600. The applicants estimate that if the 1944 level of expenses had been in effect in 1940 and 1941, the deficits in net railway operating incomes would have been about \$70,000 and \$48,000, respectively. On the same basis the net operating income from the three ferries, \$40,833 in 1940 and \$76,674, in 1941, would have been deficits of \$28,845 and \$17,791, respectively.

The applicants predict that operating expenses in the future will increase, rather than decrease, citing the fact that in June 1945 the price of coal was increased 50 cents a ton, which increased fuel expenses on the ferry about \$10,000 annually, and also that they are confronted with a demand for increased wages. They are of the opinion that there is no prospect of recapturing any substantial portion of the traffic, citing in support thereof the fact that in the week following the lifting of gasoline rationing, vehicular traffic continued to decline on the ferry although it increased in the tunnels and on the bridge.

The protestants contend that the ferry has been and can be operated at a profit, basing the prediction on their opinions that revenues from vehicular traffic will increase as soon as more cars and trucks can be produced and the effects of gas rationing and restrictions as to tires and parts have disappeared, that wages for certain types of help will be lowered as the supply of help increases, and that the cost of fuel will be reduced as soon as supply and demand are readjusted. They further contend that the abandonment will adversely affect commuters

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and business interests. They invite attention to the fact that the Twenty-third Street ferry handles about twice as many vehicles as the Christopher Street ferry, and suggest that the reason therefor is that either a greater amount of freight originates or terminates north of Twenty-third Street, and for that reason the motor vehicles make use of the nearest and most convenient route, or it is inconvenient to use the Christopher Street ferry because of the congested conditions on West Street, south of Fourteenth Street, in the vicinity of Gansevoort Street, hereinafter described. The following is a comparison of the traffic on each of the ferries in the years 1941 and 1944:

Period	Vehicles	Local passengers	Railroad passengers
<i>Barclay Street</i>			
Year 1941.....	1, 160, 677	2, 831, 627	4, 770, 551
Year 1944.....	551, 119	2, 151, 751	4, 810, 728
<i>Christopher Street</i>			
Year 1941.....	461, 253	853, 065	747, 363
Year 1944.....	354, 168	574, 707	753, 657
<i>Twenty-third Street</i>			
Year 1941.....	1, 121, 740	1, 232, 510	1, 466, 787
Year 1944.....	712, 462	1, 570, 135	1, 479, 141

From the foregoing it will be noted that the Twenty-third Street ferry also carries about twice as many railroad passengers as the Christopher Street ferry and more than twice as many local passengers, and that Barclay Street vehicular traffic in 1944 was 52.5 percent less than in 1941, on the Christopher Street 23.2 less, as compared with 36.5 percent decrease on the Twenty-third Street ferry.

Considerable testimony was presented by ferry users as to how the abandonment would affect them. The gist thereof is that the ferry is the most convenient route between Hoboken and points within walking distance of the terminal in New York City, and points within walking distance of the Twenty-third Street cross-town bus which operates from the terminal to the East River. Within walking distance of the terminal are, among others, the plant of Francis H. Leggett & Co., at Twenty-seventh and Twenty-eighth Streets and Twelfth and Thirteenth Avenues, the Otis Elevator Company at Twenty-sixth Street and Eleventh Avenue, and the Starrett-Lehigh Building at Twenty-sixth Street and Twelfth Avenue. Of the approximate 1,200 employees of the Leggett company about 103 reside in New Jersey and use the ferry. Of the 1,000 to 1,200 employees of the Otis company about 200 use the ferry. A witness employed by a printing company located in the Starrett-Lehigh building testified that about 50 of his coemployees use the ferry, and that he had talked to about 25 of them. It appears that if the Twenty-third Street ferry were

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abandoned, the New Jersey commuters could use the Christopher Street ferry, walk three-tenths of a mile to Hudson Street, there board a north-bound Eighth Avenue bus and transfer at Twenty-third Street to a west-bound bus, involving an additional expenditure of 7 cents each way, or 14 cents a day. Test runs made by protestants developed that generally it required from 15 to 30 minutes longer to reach their respective places of employment than by way of the Twenty-third Street ferry, apparently depending upon the time they had to wait to board the busses. Another suggested route would be to board the Hudson & Manhattan at Hoboken, ride to Sixth Avenue and Twenty-third Street, and there board the west-bound cross-town bus. This route requires a little less extra time than the Christopher Street ferry and bus route described, but the additional cost to commuters would be 15 cents additional each way, and to local passengers 12 cents additional, assuming that the latter purchased 10 or more trip tickets which cost 3 cents a crossing. The area in which these buildings are situated was variously described as inaccessible, inconvenient, or isolated from the transportation system of New York City, for the reason that it is not located conveniently with respect to the main north and south traffic arteries. Because of this situation it appears that Leggett & Company and the Otis company have experienced some difficulty in obtaining or retaining employees. The Leggett company has found it advisable to operate two busses of its own between Eighth Avenue and Twenty-third Street and its plant from 7 to 9:30 each morning, in order to reduce the tardiness of its employees in getting to work, caused by their inability to board the crowded west-bound busses at Eighth Avenue. The testimony is that the company's busses could not accommodate the 103 employees who reside in New Jersey.

Further east on Twenty-third Street at Madison Avenue, or near Fourth Avenue, is the office of the Metropolitan Life Insurance Company. About 230 of its employees use the ferry, and the Twenty-third Street cross-town bus. If they use the Christopher Street ferry and the Eighth Avenue and Twenty-third Street busses, their additional cost will be 2 cents each way daily, and require a few minutes longer. Another route suggested is the Christopher Street ferry, thence a 3- or 4-block walk to the Hudson & Manhattan Christopher Street station, thence on the Hudson & Manhattan to Sixth Avenue and Twenty-third Street, and a walk of 2 blocks to the office, at no additional cost over that via the Twenty-third Street ferry and bus, and in about the same time. If the Hudson & Manhattan is used from Hoboken to Six Avenue and Twenty-third Street, the additional cost would be 5 cents each way, and the time consumed less than by way of the Twenty-third Street ferry and bus.

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Individual protestants having places of business, or employed or residing, at points readily accessible to the Twenty-third Street bus line testified to the same general effect as witnesses for the groups mentioned. In a few instances commuters who do not reside at points on the Lackawanna railroad in New Jersey, and who will not use the Christopher Street ferry, will consume as much as an additional hour journeying to their places of employment, if they use ferries of other railroads to other points in New York City.

The Twenty-third Street Ferry Association, composed of officers or owners of numerous business concerns in the Twenty-third Street area, and the Lackawanna Commuters Association were formed to oppose the proposed abandonment. Directors of the former, in addition to obtaining signatures of persons opposed to the abandonment, employed at the Metropolitan Life and Otis company buildings, gathered signatures of some 150 or 160 other persons opposed to the abandonment. The Lackawanna association, through solicitation or otherwise, on the ferry boats, secured signatures of 543 persons opposed to the abandonment. Although it appears that the solicitors of signatures seriously attempted to avoid duplications, no check was made to ascertain to what extent they had been successful. They testified that at least 90 percent of the signers were commuters, and admitted that there was a possibility of some duplication, though but few. On cross-examination, it was developed that several of the signers on the Metropolitan list were not employees of that company.

In addition to their objections to the additional time and extra costs involved in the use of the alternate routes, the protestants unaniously complain of the crowded conditions on the bus lines, particularly the Twenty-third Street line, the crowded and malodorous conditions on the Hudson & Manhattan trains, and the crowded conditions of its stations at Hoboken and Sixth Avenue and Twenty-third Street, and the stairs at both stations. A New Jersey resident going to Manhattan by way of the Hudson & Manhattan must descend 31 steps at Hoboken, and at Sixth Avenue and Twenty-third Street descend 17 steps, and then ascend 54 steps to reach the street level. Some emphasis was placed on the contention that on the alternate routes they would be exposed to inclement weather to a greater extent than by way of the Twenty-third Street and bus route. In this connection it is interesting to note that the record contains no explanation of the admitted fact that on rainy or foggy days fewer passengers use the ferry than on clear days, nor do the protestants undertake to reconcile that fact with their allegation of extra inconvenience on rainy days.

It is argued by the applicants that the testimony regarding the lists of signatures of opponents to the abandonment is entirely too indef-

inite to permit of its acceptance in this proceeding, because, as above indicated, the possibilities of duplications of names, and for the further reasons that there is nothing to show whether the signers were regular or casual passengers, or how they would be affected by the abandonment, or whether the Christopher Street ferry would meet their needs. While there may be some merit to the above contention, viewed under a strict interpretation of the rules of evidence, the practical aspects of the case warrant or require a more liberal interpretation. The purpose of the hearing, among others, was to ascertain the effects, if any, of abandonment of a transportation facility used by about 4,500 persons 5 days a week and by 3,500 to 4,000 on Saturdays and Sundays. About 22 commuters, of which several were spokesmen for about 1,200 other persons who had indicated their opposition to the application herein, testified in their own behalf; 7 local passengers also testified. The situations testified to are no doubt representative, and it would not add anything to the record to hear repetitious statements. The points at which the signers lived or worked, or whether they were regular or casual riders, are not matters of importance. The important fact is that they used the ferry.

The testimony in behalf of concerns whose trucks now use the Twenty-third Street ferry is that it is the shortest and quickest route between points in New Jersey and points in uptown Manhattan and points as far south as Fourteenth Street. They contend that the use of the Christopher Street ferry will increase their expenses for gasoline, oil, tires, and wages, because of the additional 1-mile haul on West Street between that ferry and Twenty-third Street. West Street parallels the east shore of North River. In the center of the street, and paralleling the water front, is an elevated express highway, the supports of which impede the loading and unloading of the Christopher Street ferry, and together with the traffic to and from piers 45 to 52, delay the movement of vehicular traffic between that ferry terminal and Fourteenth Street. The following discloses generally the interests of the witnesses who appeared in opposition to the abandonment. A Hoboken chemical company on occasion has 4 trucks which use the ferry, apparently primarily because they are engaged in the transportation of compressed gasses which may not be hauled through the tunnels. Of about 26 trucks operated by a Jersey City meat firm, 10 to 15 use the ferry every day for deliveries in Manhattan north of Fourteenth Street. Its trucks leave about 3 or 4 a. m., and return at 3 or 4 p. m. Another Jersey City concern, which has 12 to 15 trucks, routes 2 to 5 a day by way of the ferry to uptown New York, and to the piers, and expects that its export business will increase sufficiently to require 10 trucks to the piers. A scrap iron

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company has 23 trucks, of which 5 use the ferry daily. The Leggett company in the latter part of 1944 commenced routing its trucks by way of the Holland Tunnel, instead of the ferry. After tests by it and the applicants, the company resumed use of the ferry, having become convinced that it was the preferable route. About 25 of the trucks a month use the ferry. A lumber company, which has its headquarters and a retail yard in New York a short distance from the Twenty-third Street ferry terminal, and a sawmill and yard at Carteret, N. J., on the Central Railroad of New Jersey, at the time of the hearing was operating, by way of the ferry, 2 trailers and a 4-wheel truck, for the purpose of making deliveries from Carteret to customers north of Twentieth Street and to its New York yard. Whenever shipments received at piers 57 and 58, (north of Fourteenth Street) of the character and volume susceptible of being handled by truck are ready for hauling to Carteret, these trucks pick up loads on their return. About 25 percent of the imported logs and lumber are hauled by truck, these constituting shipments which make up as much as 8 truckloads. The remaining 75 percent are handled by lighters and the Central Railroad of New Jersey. Prior to December 1941, the company operated 5 trailers and 2 trucks in similar service, and used the Twenty-third Street ferry of the Central Railroad Company of New Jersey, which was abandoned November 14, 1941, and the Christopher Street ferry to some extent. Since then it has used only the applicants' Twenty-third Street ferry.

The president of the Motor Carrier Association of New York, which has a membership of about 500 operators in the metropolitan area, of which about 250 are local operators, sent a bulletin to his members requesting those who would be inconvenienced by the abandonment to communicate with him. He received 31 replies opposing the abandonment, but no evidence was submitted as to the use made of the ferry by those who opposed abandonment. The witness owns or has an interest in 2 trucking companies, which operate a total of 39 trucks. He had no record of the use his trucks made of the ferry, although he recalled that within 60 days prior to the hearing they had had 9 loads from the piers. He testified as to the congested traffic conditions along West Street, particularly between Fourteenth Street and Christopher Street, and that the Twenty-third Street ferry would be a facility most convenient for any one who had to serve, either in pick-up or delivery, the piers along the Hoboken waterfront warehouses.

An employee of the New York State Motor Truck Association undertook to count trucks and passenger cars as they were entering and leaving the ferry at Twenty-third Street. With the explanation that he missed a few passenger cars, his counts developed the fol-

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lowing data: 7 a. m. to noon, August 13, 1945, trucks 304, passenger cars 352, total 656 in 5 hours; 12:30 p. m. to 7 p. m., August 14, trucks 340, passenger cars 485, total 825 in 6½ hours; and 7 a. m. to 1 p. m., August 17, trucks 382, passenger cars 443, total 825 in 6 hours. He corroborated testimony of other witnesses that during the "rush hours" or "busy hours," that is from about 8 a. m. to noon and from about 2 to 6 p. m., the boats are operated at full capacity, often leaving vehicles waiting for the next boat.

The manager of the New Jersey Motor Truck Association, which has about 600 members, 400 of whom are located in northeastern New Jersey, notified all of the members of the proposed abandonment and received about 20 replies opposing it. He or his office also telephoned about 150 of the members who they thought would be particularly affected, and about 120 of those expressed desires that operation be continued. He stated that he did not know whether the members were acquainted with the applicants' proposal to install improved service on the Christopher Street ferry.

The protestants submitted an exhibit showing New Jersey motor-vehicle registrations for the years 1935-44, inclusive, and as of July 31, 1945. It appears therefrom that passenger car registrations increased from 754,808, in 1935 to 1,014,570 in 1941, decreased to 843,168 in 1944, and as of July 31, 1945, were 794,211. The corresponding figures for commercial trucks or cars are 109,845, 124,611, 117,077, and 115,079, and for farmer trucks, 15,021, 15,581, 17,864, and 17,077.

A representative of the Hoboken Chamber of Commerce named certain Hoboken business and manufacturing firms and several truck operators who had requested his organization to oppose the application herein, because of the inconvenience the abandonment would cause. He had no information concerning the use made of the ferry by any of the concerns, except that a paper company had advised him that it used the ferry to the extent of 200 to 250 trips a month, and that abandonment would tend to increase delivery costs to midtown New York City. The applicants presented testimony that some of the concerns named did not use the ferry, but conceded it was used by the paper company and the truck operators.

No opposition to the proposed abandonment was expressed by persons who use it for the transportation of passenger cars across the river.

An officer of a retail concern, employing about 150 persons in the operation of its store in West Twenty-third Street, between Tenth and Eleventh Avenues, testified that about 30 percent of the transactions at that store are with residents of New Jersey, and that the Twenty-third Street ferry is the most convenient route for those customers.

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The West Side Association of Commerce, having a membership of about 1,000 in the area referred to as the "west side of Manhattan," passed a resolution opposing the abandonment. The Twenty-third Street Association, with a membership of about 300 businessmen and property owners in the area bounded by Eighteenth and Twenty-eighth Streets and the North and East Rivers, likewise objects. A real-estate operator expressed the opinion that removal of the only ferry now serving the Twenty-third Street area would retard further development of the unrestricted area west of Tenth Avenue from Fourteenth Street as far north as Forty-second Street and adversely affect property values. Depreciation of property values is not a matter of controlling importance in abandonment cases. See *Pere Marquette Ry. Co. Abandonment*, 249 I. C. C. 634, 637; *Chicago, B. & Q. R. Co. Abandonment*, 252 I. C. C. 21, 24; and *Atchison, T. & S. F. Ry. Co. Abandonment*, 254 I. C. C. 767, 776, citing *New York Central R. Co. Abandonment*, 254 I. C. C. 745.

The applicants place emphasis on the fact that the only passengers who appeared at the hearing in opposition to the application were those employed or residing near Twenty-third Street, that no one appeared in protest whose place of employment is farther uptown in Manhattan, such as at Times Square or the Rockefeller Center area, which fact the applicants consider significant because test runs made by one of their employees show that use of the Christopher Street ferry provides a faster¹ and no costlier means of reaching such uptown areas than does the Twenty-third Street ferry; that the same is true as to routes to such other uptown points as the Pennsylvania railroad station, the Empire State Building, and the Grand Central Terminal. Details of the various alternate routes to the uptown points named need not be discussed, except to say that the applicants' exhibits indicate that travel by way of the Christopher Street ferry and Manhattan busses to the Pennsylvania station and the Grand Central Terminal requires 4 to 6 minutes more than via the Twenty-third Street ferry and busses.

They suggest, in view of what they consider the relatively few protestants as compared with the 1½ million railroad passengers, that it would be ridiculous to assume that there are no passengers using the Twenty-third Street ferry who are employed in areas other than the limited Twenty-third Street area. On the other hand, the protestants contend that, while the uptown points selected by the applicants for test runs may be representative points in New York City, they are not points to which commuters would travel by way of the Twenty-

¹ One or 2 minutes if busses are used, and 11 to 13 minutes if subways are used.

third Street ferry, and furthermore that there was no showing that commuters did use that route to and from those points. So far as this case is concerned, it is reasonable to conclude that the Twenty-third Street ferry passengers, whether railroad or local, use that ferry because it is the most convenient route for them. No doubt the original purpose of having more than one ferry route out of Hoboken was to reach particular areas in New York City. The test runs of route required from 6 to 17 minutes longer than the Twenty-third area, with few exceptions, were not made during the rush hours. The few which were made in those hours to Twenty-third Street and Eighth and Eleventh Avenues developed that the Christopher Street ferry route required from 6 to 17 minutes longer than the Twenty-third Street ferry route. In this connection it should be pointed out that the results of the applicants' test runs cannot be considered as wholly comparable with tests made by the protestants who now walk to their places of employment from the Twenty-third Street ferry terminal. The applicants concede the Twenty-third Street ferry route is the most convenient one to points as far east as Eleventh Avenue, and perhaps as far as Ninth Avenue if one does not object to an 8- or 9-minute walk. The route by the Christopher Street ferry and the Hudson & Manhattan tubes from Christopher Street to Sixth Avenue and Twenty-third Street is about 6 minutes faster than the Twenty-third Street ferry and busses, and the cost is the same, but, if busses are used from the Christopher Street ferry terminal, several minutes more are required than via the Twenty-third Street route.

As to the protestants' testimony with respect to trucks, the applicants construe it as evidence of "only slight opposition," and express the view that inasmuch as the Christopher Street ferry will be available to truckers and the only reason advanced by them, apart from a reference to street congestion, is the additional cost for gasoline and oil (and loss of time) in the drive between Christopher and Twenty-third Streets, it is obvious why only 7 witnesses expressed opposition, as compared with the daily average of almost 500 trucks a day which the ferry handled in 1944. In arriving at this conclusion, the applicants, as they did with respect to the protestants' testimony relating to passenger service, disregard the number of truckers represented by the associations named. As heretofore indicated, repetition of the evidence as to the effect of abandonment upon truck operators merely would be cumulative. The estimate of 500 trucks a day apparently is on the assumption that about one-half of the vehicular traffic is trucks, and the other half, passenger automobiles.

The operations of the Lackawanna's three ferries produced profits of \$40,833 in 1940 and \$76,674 in 1941, but resulted in losses in the
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years 1942-44 and the first 6 months of 1945, as follows: \$241,140, \$311,496, \$300,739, and \$202,220. In the years 1943 and 1944 the out-of-pocket losses on the Christopher Street ferry were \$55,431 and \$83,040, respectively, and on the Barclay Street ferry \$90,025 and \$67,122, respectively. These results are based on revenues and out-of-pocket expenses determined in the same manner as shown for the Twenty-third Street ferry.

The net income of the Lackawanna, after fixed charges, in the years 1940-44 and the first 3 months of 1945 are shown as follows: \$205,277, \$3,671,698, \$5,149,485, \$4,688,759, \$87,181 and deficit of \$288,196. The Twenty-third Street ferry accounted for about one-half of the out-of-pocket losses from all ferry operations in 1944. The Lackawanna asserts that it can neither absorb such ferry loss out of its system revenue nor meet competition of the postwar period with such a drain on its earnings, and anticipates that its earnings in the postwar period will be even more discouraging. It argues that, in determining whether abandonment should be permitted, we must consider the question from a much broader viewpoint than the immediate locality and population served by the ferry, *Interstate Commerce Commission v. Railway L. E. Assn.*, 315 U. S. 373, but must give consideration to the burden which continued operation would impose upon it and upon other commerce and localities; that, with the prospect of a yearly deficit of \$200,000 from the operation of the Twenty-third Street ferry and with no prospects of that deficit being lessened through increased revenues or decreased expenses, it should not be burdened with the continued operation thereof merely for the convenience of the comparatively small number of passengers employed or having places of business in a small area in New York City, or for the convenience of truck operators who will have to drive their vehicles a mile farther on the New York side of the river; and that the balancing of these conflicting interests demonstrates that the proposed abandonment is consistent with public convenience and necessity, citing *Colorado v. United States*, 271 U. S. 154, 168.

Abandonment of the Twenty-third Street ferry, and increased service on the Christopher Street ferry, will result in the abolishment of the positions of 36 Lackawanna employees. Those employees have seniority rights. In the last analysis employees with the least seniority will be relieved. However, the Lackawanna anticipates that many of such employees can be retained in its service, particularly in the marine and transportation service. Our authorization herein will be subject to the same conditions for the protection of employees as those prescribed in *Chicago, B. & Q. R. Co. Abandonment, supra*.

Summarized, the major facts are as follows:

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1. Beginning with the year 1942, the Twenty-third Street ferry has been operated at substantial losses, \$150,577 in 1944, and \$94,034 in the first 6 months of 1945.

2. Beginning with the same year the Lackawanna's operations of its three ferries have been conducted at out-of-pocket losses, \$300,739 in 1944, and \$202,220 in the first 6 months of 1945. The \$300,739 loss in 1944 is the total of losses of \$150,577 on the Twenty-third Street ferry, or 50 percent, \$83,040 on the Christopher Street ferry, or 28 percent, and \$67,122 on the Barclay Street ferry, the remaining 22 percent.

3. The Twenty-third Street ferry in 1944 accounted for 38 percent of the total revenues from the three ferries, 41 percent of the out-of-pocket operating costs, and as above stated, 50 percent of the total losses.

4. Vehicular traffic is the principal source of ferry revenues. In 1941 it produced about 70 percent of the total revenue on the three ferries, and in 1944 about 61 percent. On the Twenty-third Street ferry in 1941 it produced 80 percent of its revenues, and in 1944 about 71 percent.

5. Prospects of recapturing any substantial volume of the lost vehicular traffic are poor and speculative, depending upon unpredictable conditions, such as whether the possible greater use of passenger automobiles and trucks as the result of removal of gasoline restrictions and the manufacture of additional vehicles will increase ferry traffic to any appreciable extent. In the first business week following removal of gasoline restrictions vehicular traffic as compared with the same week of 1944 increased about 1.5 percent on the Christopher Street ferry, declined about 0.78 percent on the Twenty-third Street ferry, but increased about 40 percent on the Barclay Street ferry, largely because of an increase in passenger cars.

6. Even if the traffic on the Twenty-third Street ferry returned to the 1941 level, operation thereof would be at an out-of-pocket loss, assuming expenses at the 1944 level.

7. Operating expenses in the future will be greater than in 1944.

8. The Twenty-third Street ferry cannot be operated at a profit, even if used to 100 percent of its vehicular capacity.

9. The Lackawanna will save from \$150,000 to \$200,000 annually if the Twenty-third Street ferry is abandoned, and if enough of the present Twenty-third Street vehicular and passenger traffic to produce \$224,000 revenues is transferred to the Christopher Street ferry. The applicants expect this to occur, but the testimony of the protestants indicates the applicants may be somewhat optimistic. Of course if none of the Twenty-third traffic transferred to Christopher Street,

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and service on the latter were not expanded, the applicants would save the same amount.

10. The Twenty-third Street terminal is occupied under a month-to-month arrangement with the owner thereof, New York City. While there has been no change in the directions of January 29, 1944, to move to adjoining piers, it appears that the enforcement thereof has been, or is being, held in abeyance.

11. If the Lackawanna is required to continue operation of the Twenty-third Street ferry and the New York City authorities required it to move the Twenty-third Street terminal to the adjoining piers, an expenditure by the applicant of about \$232,000 will be necessary to place those piers in condition for safe operation.

12. If the application herein is granted the positions of 36 employees will be abolished.

13. Abandonment will remove the only remaining ferry service between New Jersey and the West Twenty-third Street area in New York City.

14. Abandonment will make it necessary for about 4,500 persons to use other routes of transportation to and from and in New York City, consuming, generally, from 15 to 30 minutes additional time in each direction, at increased daily costs ranging from 0 to 30 cents, depending, of course, upon whether they are commuters or local passengers, and upon the alternate routes they elect to use.

15. About 1,000 vehicles a day used the ferry in 1944. Upon abandonment they will have to be driven an additional mile on the New York side of the river if they are routed from the Christopher Street terminal past the present Twenty-third Street terminal.

As shown above, the Lackawanna is operating each one of its ferries at an out-of-pocket loss. It proposes to abandon the one which is being operated at the greatest loss, and to increase or improve its service on the Christopher Street ferry.

The case narrows down to the question whether the Lackawanna should be required to continue operation of the Twenty-third Street ferry, in the face of past and prospective substantial out-of-pocket losses incurred in the operation thereof, for the convenience of the passengers and vehicle operators who will be forced to use alternate available routes at the expense of additional travel time and money as heretofore outlined. With the other routes available, it cannot be said that the Twenty-third Street ferry is a necessity to the present users thereof. "Necessity does not exist unless the inconvenience would be so great as to amount to an unreasonable burden on the community." *Hunter v. Mayor*, 5 R. I. 325. Continued operation of the ferry, under these circumstances, would impose an unnecessary and undue burden upon the applicants and upon interstate commerce.

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We have not overlooked the suggestion of the protestants that the losses incurred might be reduced, or eliminated, by increases in rates, particularly as to vehicular traffic. Whether the Lackawanna should increase the rates, thereby bringing into question rates on all North River ferries, is a matter which we need not discuss. The evidence shows that with the existing rates, which are considerably lower than those via the tunnels, the Twenty-third Street ferry has not been operating to its full vehicular capacity. Abandonment no doubt will inconvenience the present users of the ferry to varying extents. We have given consideration to these inconveniences, described in detail in this report, and to the past and prospective losses from this operation. Our conclusion is in harmony with the decision of the United States Supreme Court in *Colorado v. United States*, 271 U. S. 153, wherein the Court at page 162 said :

The certificate issues, not primarily to protect the railroad, but to protect interstate commerce from undue burdens and discriminations,

and at pages 168 and 169 said :

In many cases, it is clear that the extent of the whole traffic, the degree of dependence of the communities directly affected upon the particular means of transportation, and other attendant conditions, are such that the carrier may not justly be required to continue to bear the financial loss necessarily entailed by operation. In some cases, although the volume of the whole traffic is small, the question is whether abandonment may justly be permitted, in view of the fact that it would subject the communities directly affected to serious injury while continued operation would impose a relatively light burden upon a prosperous carrier. The problem and the process are substantially the same in these cases as where the conflict is between the needs of intrastate and of interstate commerce. Whatever the precise nature of these conflicting needs, the determination is made upon a balancing of the prospective interests—the effort being to decide what fairness to all concerned demands.

Subject to the conditions for the protection of employees prescribed in *Chicago, B. & Q. R. Co. Abandonment, supra*, we find that the present and future public convenience and necessity permit abandonment by The Hoboken Ferry Company, and abandonment of operation by The Delaware, Lackawanna and Western Railroad Company of the ferry line extending from Hoboken, N. J., to West Twenty-third Street, New York City, N. Y., herein described.

An appropriate certificate will be issued, effective from and after 40 days from its date, in which suitable provisions will be made for the cancelation of tariffs.

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FINANCE DOCKET No. 12950
CENTRAL OF GEORGIA RAILWAY COMPANY
REORGANIZATION ¹

Submitted October 22, 1946. Decided November 14, 1946

Upon further consideration, orders of the Commission approving plan of reorganization of the Central of Georgia Railway Company, pursuant to section 77 of the Bankruptcy Act, as amended, reaffirmed.²

Appearances as shown in prior reports.

REPORT OF THE COMMISSION ON FURTHER CONSIDERATION

BY THE COMMISSION :

By report and order of November 6, 1945, we modified and as thus modified approved, under the provisions of section 77 of the Bankruptcy Act, as amended, a plan of reorganization for the Central of Georgia Railway Company, debtor, previously approved by division 4 on July 13, 1945. A petition for further modification was denied on January 2, 1946. Thereafter the plan thus approved by us was, on June 24, 1946, approved by the District Court of the United States for the Southern District of Georgia, Savannah Division. The plan provides for the acquisition, if they can be acquired on the terms therein set forth, of the properties of lessors, including The Augusta & Savannah Railroad. The latter on August 29, 1946, subsequent to the approval of the plan by the Commission and the court, filed with the court a petition, based on newly discovered evidence, for modification of the court's order approving the plan. An answer to the petition was filed by the trustee in bankruptcy; hearing was held by the court; and the record thereof, by order dated September 14, 1946, was referred to us for our action. By stipulation of the parties, briefs have been filed and the matter has been submitted without additional hearing or oral argument before us. We have considered the record including the additional record as thus made.

¹ This docket and report, as an incident to proceedings for the reorganization of the Central of Georgia Railway Company, deal with suggestions for the reorganization and acquisition of the lessors, South Western Railroad Company, Augusta & Savannah Railroad, and Chatthoochee & Gulf Railroad Company. No petitions for the reorganization of the lessors have been filed.

² Prior reports: 249 I. C. C. 797; 252 I. C. C. 587; 261 I. C. C. 263, 501 and 627; and mimeographed report dated September 12, 1946.

267 I. C. C.