

FINANCE DOCKET No. 15795¹

**NEW YORK, SUSQUEHANNA & WESTERN RAILROAD
COMPANY ABANDONMENT**

Submitted July 26, 1948. Decided November 8, 1948

1. Upon consideration of application of the trustee of New York, Susquehanna & Western Railroad Company seeking permission for the abandonment of operations over portions of the line of that railroad company at Edgewater, Bergen County, N. J., by the New York Central Railroad Company and its affiliated lines (including operations by the New York, Susquehanna & Western Railroad Company and its trustee, as agent) and of operations by the New York, Susquehanna & Western Railroad Company and its trustee over portion of line of the New Jersey Junction Railroad Company south of Edgewater in Hudson County, N. J., action deferred pending supplementation of the record to afford a basis for determining just compensation to the New York, Susquehanna & Western Railroad Company and its trustee for such operations.
2. Action deferred on request for a finding that such abandonments will be consistent with the reorganization requirements of the New York, Susquehanna & Western Railroad Company.

Ralph E. Lum, R. M. D. Richardson, Lyman M. Tondel, Jr., Ulrich Schweitzer, William B. Shedd, and John M. Harlan for applicant and petitioner.

Jacob Aronson, Thomas P. Healy, S. H. Hellenbrand, Leo Manville, Robert D. Brooks, Robert H. Hann, C. L. Bruno, J. C. Sloss, and J. F. Adams, for protestants.

Raymond A. Coleman, J. Harlan O'Connell, Walter T. Margetts, Jr., and Richard S. Buell, for interested parties.

REPORT OF THE COMMISSION

BY THE COMMISSION

Exceptions to the report proposed by the examiner were filed, and the case was argued orally. Our conclusions differ from those of the examiner.

As authorized by the District Court of the United States for the District of New Jersey, wherein proceedings are pending for the reorganization of the New York, Susquehanna and Western Railroad Com-

¹ This report also embraces Finance Docket No. 11681, New York, Susquehanna & Western Railroad Company Reorganizations.

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pany, hereinafter called the Susquehanna, under section 77 of the Bankruptcy Act, 11 U. S. C. 205, the trustee of the Susquehanna on July 25, 1947, filed an application under paragraphs (18) to (20), inclusive, of section 1 of the Interstate Commerce Act, Finance Docket No. 15795, for a certificate of public convenience and necessity permitting the abandonment (a) by The New York Central Railroad Company, and its owned, leased, and operated lines, including New Jersey Junction Railroad Company, (all herein generally referred to collectively as the Central) of trackage rights over tracks of the Susquehanna at Edgewater, Bergen County, N. J., and (b) by Henry K. Norton, as such trustee, of trackage rights over tracks of New Jersey Junction Railroad Company south of Edgewater, in Hudson County, N. J., and for such other and further relief as we may deem appropriate. On September 10, 1947, the same trustee filed a petition praying that we find and conclude that the abandonments for which authorization was sought by the afore-mentioned application would be consistent with the reorganization requirements of the Susquehanna. The application and the petition were heard together and a joint record made.

The New York Central Railroad Company and the New Jersey Junction Railroad Company appeared in opposition to the application and the petition. The Erie Railroad Company, hereinafter called the Erie, appeared in opposition to the relief sought in the application.

In *In re New York, S. & W. R. Co.*, 160 Fed. (2d) 29, the Circuit Court of Appeals, Third Circuit, held that action of the district court by way of approving or disapproving action of the Susquehanna's trustee in serving notice in the reorganization proceeding of the rejection of contracts establishing the trackage rights referred to in the above-described application was premature in the absence of our certificate under section 1 (18) to (20) of the Interstate Commerce Act authorizing the abandonments which would result if the contracts were rejected. In its opinion that court also stated as its conclusion that our power and duty to determine in the public interest whether trackage rights shall be terminated is paramount to certain equitable considerations therein discussed and that "no element other than public interest may be considered" by us. The Supreme Court denied certiorari, 331 U. S. 844. As a result of this decision the district court authorized the filing of the application as stated above.

Property involved.—The main line of the Susquehanna extends about 88 miles from Jersey City, N. J., through Little Ferry, Hackensack, Passaic Junction, and Beaver Lake to Hainesburg Junction, N. J. Its principal branches are, one from Beaver Lake to Hanford, at the

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New York-New Jersey State line. and one from Little Ferry through a tunnel under the Palisades, 3.05 miles, to its Edgewater terminal at Edgewater, N. J., on the Hudson River. Its lines also include its so-called northern extension running north from its Edgewater terminal about nine-tenths of a mile and its so-called southern extension running south from the terminal about eight-tenths of a mile to the Hudson-Bergen County line, where it connects with the tracks of the Central's subsidiary, the New Jersey Junction Railroad Company. The present controversy involves trackage rights and operations under trackage rights over the said northern and southern extensions, hereinafter sometimes collectively referred to as the Edgewater sections, and over the so-called shore-line section of the Central's subsidiary extending from its junction with the southern end of the Susquehanna's southern extension south about 1 mile to the Central's Weehawken yard. These three segments of lines lie between the Hudson River and the Palisades opposite the area from Seventy-second to One Hundred and Twenty-fifth Streets in New York City, N. Y.

The Susquehanna has always performed the physical movements of the Central's cars over both the Edgewater sections and the shore-line section, with minor exceptions hereinafter noted, as the agent of the Central under operating arrangements. Authority to abandon these operations both by the Central as principal and by the Susquehanna as its agent, in reality, is what the applicant seeks as a preliminary to the rejection of the basic trackage-rights contracts in the reorganization proceeding. Authority for the Susquehanna to abandon operation of its own cars over the shore-line section is also sought. As hereinafter more fully explained, the Susquehanna's trustee does not desire or seek any change in the method of physically handling the Central's cars, even though the abandonments be authorized and the contracts disaffirmed in the bankruptcy proceeding.

BACKGROUND OF THE CONTROVERSY

The New Jersey Shore Line Railroad Company was incorporated by the Central in 1886 to build a railroad about 15 miles in length from a connection with the Central's leased line, the West Shore Railroad at Weehawken, northerly along the Hudson River to the New York State line. The railroad was not then constructed. About 1894 the Susquehanna's Edgewater terminal and the tunnel leading thereto were constructed at a cost of about \$2,000,000.

In 1901 the Edgewater and Fort Lee Railroad Company was incorporated by the Susquehanna to build a railroad about 3½ miles in length from the Hudson-Bergen County line along the Hudson River

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northerly to the old Fort Lee Ferry Landing, with branches connecting with the Susquehanna at the eastern end of its Edgewater tunnel. A portion of this line was constructed about 1902 or 1903 southerly from Edgewater terminal a distance of about a quarter mile or more to the New York Glucose Company plant. This portion is now a part of the southern extension. About this time negotiations were conducted between the Erie, which controlled the Susquehanna through stock ownership, and the Central looking to the construction of one railroad in this area. These negotiations resulted in the contract of April 6, 1904, one of the basic contracts here involved, by which, after the recitals shown in the footnote² the Central interests agreed to build a line from a point at or near Weehawken north to the Hudson-Bergen County line, which line became the segment herein referred to as the shore-line section, and the Erie interests agreed to build from the country line north to the Susquehanna's Edgewater terminal, which segment became the southern extension.

The agreement provided that the railroad was to have a right-of-way of not less than 54 feet and a sufficient number of main tracks (not exceeding four) to handle the business of both parties with suitable and sufficient sidetrack accommodations. Upon the failure of either party to construct its portion, the other party upon completion of its section could enter and construct the portion which the other party had agreed to build. Each party built its described portion of road. Each party granted to the other, without any mention of time limitations, the right of trackage over the other party's section "for the operation thereon of cars and engines for the transportation of freight and passengers." Interest on the first cost of construction and on additions and betterments was to be borne equally by the parties, and the cost of maintenance, including taxes, was to be borne by the parties on

² "Whereas, the Edgewater Company has been organized for the purpose of constructing and operating a railroad, a portion of which will extend from a point at the southerly boundary line of the lands of the New York, Susquehanna and Western Railroad Company to the boundary line between the Counties of Bergen and Hudson; and

"Whereas, The Shore Line Company has been organized for the purpose of constructing and operating a railroad, a portion of which will extend from a connection with the West Shore Railroad at the southern line of the New York, Ontario and Western Railway Company's property to a point at the southerly boundary line of the lands of the New York Glucose Company; and

"Whereas, The above mentioned portions of said railroads, if built, will parallel each other from the boundary line between the counties of Bergen and Hudson to the lands of the New York Glucose Company; and

"Whereas, in the opinion of the parties hereto, the interests of the public and of said parties will be better served by the building of one railroad, to be used jointly by the parties hereto, in place of the parallel portions of said railroads as originally contemplated, said Shore Line Company connecting its railroad with the railroad of the Edgewater Company at the division line between the Counties of Bergen and Hudson, said division line being hereafter referred to as the 'Division line'; and * * *

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a use basis. The agreement further provided that "in case and whenever" the Erie interests or the Central interests should construct any additional portion of railroad north of the Susquehanna's terminal, the respective parties would have the option of having trackage rights thereon similar and under the same terms and conditions as in the case of the two sections south of the Susquehanna's terminal. The Erie interests constructed the described northern extension, and the Central interests notified them of their election to have trackage rights thereon. There was no physical connection between the northern and southern extensions except the Susquehanna's tracks converging northwardly and southwardly from the Edgewater tunnel just west of the Edgewater terminal.³

The original parties to the agreement were the Edgewater and Fort Lee Railroad Company and the New Jersey Shore Line Railroad Company. In 1907 the former company was consolidated with the Erie Terminals Railroad Company, whose stock was owned 600 shares by the Erie and 80 shares by the Susquehanna, and in 1914 the New Jersey Shore Line Railroad company was consolidated with another Central subsidiary to form the present New Jersey Junction Railroad Company, whose railroad is leased to the Central.

On April 1, 1911, the other of the basic agreements here involved was entered into between the New Jersey Shore Line Railroad Company, hereinafter called the Shore Line, the Erie Terminals Railroad Company, hereinafter called the Terminals Company (a nonoperating company then holding title to the northern and southern extensions) and the Susquehanna (which operated on a rental basis over the tracks of the Terminals Company) by which it was agreed, among other things, that the Susquehanna would with reasonable diligence shift the cars of the Central and its affiliated companies across the Edgewater terminal or yard "for a reasonable switching rate or charge," to be determined by arbitration in case of disagreement. By the same agreement the Susquehanna was given trackage rights over the portion of the railroad between Weehawken and the county line (the shoreline section) built by the Central's subsidiary, the Shore Line. This contract modified the contract of April 6, 1904, so as to require a right-of-way of 30 feet instead of 54 feet, subject to later determinations with respect to said width. It also contained the following provision:

It being understood and agreed that the trains, cars and engines of the Susquehanna Company shall be regarded as the trains, cars and engines of the

³ At a comparatively recent date a direct connection has been made between the northern and southern extension by tracks across the Susquehanna's terminal or yard, thus eliminating the movements toward or into the tunnel and backward on the other leg of the wye.

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Edgewater (now Terminals) Company, for all purposes of accounting and liability under said agreement of April 6, 1904, as between the Shore Line Company and the Edgewater (now Terminals) Company, but the Susquehanna Company agrees to indemnify and save harmless the Terminals Company from and against any and all costs and expenses arising out of or connected with the use of said Section by the trains, cars and engines of the Susquehanna Company hereunder.

No time limit was specified in either this or the April 6, 1904, contract.

These nonterminable agreements were followed on April 24, 1911, at about the time the Edgewater sections and the shore-line section were ready for operation, by a memorandum of operating agreement terminable on short notice, between the general superintendents of the Central and the Susquehanna, which was formalized, with slight changes, on May 21, 1912, by a contract, terminable on short notice, between the Terminals Company, the Susquehanna, and the Central's affiliate, the Shore Line. The principal provisions of the agreement were that the Terminals Company⁴ would handle all cars for the Shore Line as well as its own at all points on the Edgewater sections and the shore-line section except that the Shore Line would move its own cars in and out of the plant of the American Cotton Oil Company (now Harbor Tank Storage Company) at the southern end of its section. The Terminals Company was to be paid for moving the Shore Line's cars such share of the cost thereof as resulted from prorating the cost between the two companies on the basis of the actual time consumed in moving the cars for each company.⁵ The Susquehanna was to be paid \$3 by the Shore Line as a "trackage charge" for each loaded car moved across the Susquehanna's Edgewater yard.

Substantially the same arrangement as thus determined in 1912, except for certain changes made in 1921 and 1922, continued until 1928.⁶ In that year some attempt was made by the Erie, acting for its subsidiaries, and the Central to work out a cost study as a basis for payment for the movement of the Central's cars. The study showed a cost to the Susquehanna of \$4.29 per car for handling the

⁴ While this was the contracting party because it held title to the Edgewater sections, the Susquehanna performed the actual operations.

⁵ The preceding memorandum of operating agreement provided that the Edgewater & Fort Lee Railroad (the predecessor of the Terminals Company) would be paid for moving the Shore Line's cars the amounts resulting from prorating the cost of the movements of all cars on the basis of the loaded cars handled for each company.

⁶ Effective January 1, 1921, the Central agreed to pay the Susquehanna \$4 per car as a "trackage charge" for each loaded car moved across the Edgewater terminal; and from about March 31, 1922, it was agreed that the Central would handle the movement of all cars in and out of the American Cotton Oil Company plant and Ellis Siding, both at the southern end of the shore-line section. For so moving the Susquehanna's cars the Central was to be paid \$2 per loaded car.

Central's cars destined to or originating at points on the northern extension and of \$6.68 per car for the Central's cars destined to or originating at points on the southern extension. On the basis of these figures an agreement dated April 29, 1933, terminable on short notice, was made between the Terminals Company, the Susquehanna, and the Central whereby, effective from November 1, 1928, flat charges of \$4.30 and \$6.65 would be made for handling the Central's loaded cars destined to or originating at points on the northern extension and the southern extension, respectively. The agreement also provided that in lieu of the \$4 payment as a "trackage charge" for each Central car moved across the Edgewater terminal, the sum of \$1 would be paid to the Susquehanna as a "trackage charge for the use of its Edgewater Yard * * * for each loaded car handled in or across said yard for account of the Central Company." This was in recognition of the fact that part of the terminal was being used for classifying the Central's southern extension cars. Theretofore the \$3 and \$4 charges had applied only to northern extension cars moved across the yard, even though the yard had been used for classifying southern extension cars. This charge of \$1 was not based upon any cost study. Provisions were also made in the last-named contract for certain minor inspection and clerical charges. The charges specified in this agreement for the movements of the Central's cars have been applied to the present time. They are not published in any tariff. It is the claimed inadequacy of these charges that has given rise to the efforts in the reorganization proceeding to have the basic contracts rejected.

The Susquehanna's acquisition of title to the Edgewater sections.—In *New York S. & W. R. Co. Trustee Purchase*, 249 I. C. C. 777, division 4, on December 30, 1941, authorized the Susquehanna's former trustee to acquire the northern and southern extensions. In that report are described the outstanding facts connected with this acquisition, including the settlement with the Erie, certain corporate relationships, the respective contributions of the Susquehanna and the Erie to the construction of the sections, and the agreement of the Susquehanna's trustee on behalf of himself, his successors, and assigns to assume prior contracts, leases, and licenses and to perform, fulfill, and carry out all the obligations of the predecessor company party to the contracts. The transaction was consummated as therein described on January 31, 1942.

Treatment of the contracts in the reorganization proceeding.—The Susquehanna's reorganization proceeding has been pending since 1937. On August 27, 1942, its former trustee endeavored to reject the contracts, as above stated by giving notice thereof to the Central. The

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district court, on petition of the Central, after hearing, on September 29, 1945, ordered that the notice of rejection be vacated and canceled. In *In re New York, S. & W. R. Co.*, *supra*, the Circuit Court of Appeals, Third Circuit, in addition to deciding that the district court had acted prematurely in approving or disapproving the trustee's notice of rejection of the basic contracts, expressed as its views that the basic contracts of 1904 and 1911 did not vest such an interest in the Central's subsidiary as to prohibit their rejection; that the right given was only a trackage right; that the contracts did not run with the land or impose any lien upon the property or convey either title or easement; that both of said contracts are executory in part; and that the provisions of the contracts run for the benefit of the Susquehanna.⁷ It stated that it could not state that the district court erred in finding (1) that the trustee assumed the 1904 and 1911 contracts and (2) that the 1904 and 1911 contracts were not burdensome. It treated the proceeding in the district court as to the rejection of the contracts as if under section 77 (o) of the Bankruptcy Act, which authorizes the trustee of a debtor to seek authority from the court and from us for the abandonment of property of the debtor in the interests of the estate and ultimate reorganization. It noted that the provisions of subsection (b) of section 77 provides that "The adoption of an executory contract * * * by the trustee * * * shall not preclude a rejection of such contract * * * in a plan of reorganization * * *." The district court upon the receipt of the mandate from the Circuit Court of Appeals modified its conclusions of law so as to accord with the mandate.⁸

⁷ The district court had found that the Central by way of one of its subsidiaries possessed a vested interest under the contracts in the Edgewater sections; that the contract of 1904 was not a contract of the Susquehanna; that the Susquehanna's trustee in 1942 expressly had assumed the contracts as an incident of the recovery by him of the Edgewater sections; that the contracts were not executory in whole or in part and were not burdensome; and that, therefore, the contracts might not be disaffirmed in the bankruptcy proceeding.

⁸ As modified the court's conclusions of law are as follows:

"I. The basic agreement of 1904 is a contract of the Susquehanna Company, the debtor, within the meaning of the statute which was assumed by the trustee of the Susquehanna Company by the agreement of January 31, 1942.

"II. The trustee of the Susquehanna Company, under the agreement of January 31, 1942, acquired all of the right, title and interest 'of the said Terminals Company in and under each and all of the contracts, agreements, leases and licenses relating to the Edgewater Section', including the basic agreements of 1904 and 1911, and assumed 'all liability and obligation' of the said Terminals Company thereunder. This assumption of liability was, to all intents and purposes, an unconditional assumption of the said basic agreements, and did not comprehend a reservation, express or implied, of the right to reject or disaffirm these agreements.

"III. The basic agreement of 1904, and the supplemental agreement of 1911, are executory contracts in part, within the meaning of the statute, and did not vest such an interest in the Shore Line Company, its successor the Junction Company, or the latter's lessee, the Central Company as to prohibit their rejection.

"IV. The basic agreement of 1904, as modified by the supplemental agreement of 1911, is not burdensome; the agreements subsequent to 1911 are burdensome.

"V. It is premature to determine whether the 1904 and 1911 agreements may be rejected and disaffirmed in advance of certification by the Interstate Commerce Commission to this

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In the meantime, while the action of the trustee toward rejection of the contracts was in litigation a hearing was held by us on a plan for the reorganization of the Susquehanna. At that hearing the Central intervened in opposition to any provision of a plan affecting the contracts as to which the trustee had given notice of rejection. The matter of a rejection of the contracts by a plan of reorganization was not in issue at the hearing, but subsequent thereto the insurance group, as proponents of the plan, requested a modification of the plan previously proposed so that the contracts would be rejected by the plan in the event the courts should hold that the trustee did not have authority to do so. Both the Central and the Erie filed briefs against that proposal and the matter was orally argued before division 4. In a report of July 19, 1944, approving a plan, 257 I. C. C. 593, division 4 declined to include such a provision in a plan on the ground that a plan containing it would not be compatible with the public interest. In a report of March 5, 1945, 261 I. C. C. 101, approving a modified plan we also declined to include the requested provision in the plan for the reasons stated therein.

The industrial and tariff situations on the Edgewater sections and the shore-line section.—There is an almost continuous series of industries along the northern and southern extensions. The names and natures of these industries, proceeding from south to north, the dates of the establishment of them or their predecessors, whichever is indicated, as near as could be ascertained, and the present approximate extent to which each now uses rail transportation, is shown below, numbers 1 to 7 being on the southern extension and numbers 8 to 12 on the northern extension :

Name	Nature	Date of establishment of industry	Present approximate extent of use made of rail transportation
			<i>Percent</i>
B. T. U. Coal Company.....	Coal dealer.....	1946.....	100
Lever Brothers.....	Spry and soap.....	1932.....	80
Spencer Kellogg & Sons.....	Vegetable oil and shortening.....	1903.....	70
Barrett Manufacturing Company.....	Tar products.....	About 1877.....	60
General Chemical Company.....	Sulphuric acid and chemicals.....	About 1850 ¹	70
U. S. Navy Medical Depot.....	Medical supplies.....	1901 ¹	50
Ford Motor Company.....	Auto assembly.....	1930.....	80
Hills Brothers Coffee Company, Inc.....	Coffee roaster.....	1940.....	90
Archer Daniels Midland Company.....	Linseed oil.....	1912 ¹	80
Meadville Corporation.....	Lubricating oil and grease.....	1880 ¹	100
Aluminum Company of America.....	Aluminum product.....	1904 ¹	60
War Assets Administration.....	Surplus government material.....	1898 ¹	40

¹ Date of establishment of industry's predecessor.

court in a proceeding inaugurated either by the debtor's trustee or by the New York Central Railroad Company or by New Jersey Junction Railroad Company under subparagraph (o) of Section 77 of the Bankruptcy Act."

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Each such industry is immediately adjacent to the main tracks of the Edgewater sections, but in a number of cases extensive tracks lie within the plant properties. A number of such industries own piers which are available for the ship-to-rail or rail-to-ship interchange of freight traffic between the railroad and oceangoing ships.

On the shore-line section the following industries require railroad service:

Name	Nature	Date of establishment of industry	Present approximate extent of use made of rail transportation
Harbor Tank Storage Company.....	Oils—Storage.....	Prior to 1904 ¹	<i>Percent</i> 60
United Africa Company.....	Oils—Storage.....	1925 ¹	70
Ellis Siding (Over the years numerous different small industries have used this siding.) The present users are: Pennsylvania Refrigerating Company.	Packing of lubricating oils—Cooperage.	The siding was in existence in 1921.	50
T. Fink Company.....	10

¹ Date of establishment of industry's predecessor.

No passenger traffic moves over the Edgewater sections or the shore-line section, but the Susquehanna operates passenger service for certain distances on its main line. The local freight traffic over these segments moves only in switching movements and is practically inconsequential. In 1945, 1946, and the first 6 months of 1947 only 84, 192, and 23 carloads, respectively, were handled in such movements. There are practically no overhead movements of freight. The Susquehanna states that the detailed commodity and tonnage figures for the Central's freight cars moved over the three segments were wholly unavailable and that those for the Susquehanna not practically available. It submitted the following data of carload movements over the three segments:

Period	Carloads originated or terminated on—					
	Southern extension		Northern extension		Shore-line section	
	NYS & W cars	NYC cars	NYS & W cars	NYC cars	NYS & W cars	NYC cars
Year 1941.....	21,483	8,985	7,724	3,024	827	1,321
Year 1942.....	16,639	7,023	9,299	3,293	400	871
Year 1943.....	23,303	10,096	15,018	3,601	880	1,157
Year 1944.....	20,528	8,564	23,849	2,468	808	1,509
Year 1945.....	16,239	7,238	12,778	1,992	615	976
Year 1946.....	16,185	6,936	6,258	2,130	876	1,284
Year 1947 ¹	10,180	3,405	2,026	1,002	539	1,007

¹ January to June, inclusive.

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During the last 10 years about 70 percent of the traffic to and from industries on the Edgewater sections has been Susquehanna's, and about 30 percent Central's.

No less-than-carload traffic of either company for account of the other moves over the three segments. There is shown below a list of the principal commodities handled at the present time over the three segments, with percentages of the total traffic on each segment which each commodity comprises:

Commodity	Northern extension	Southern extension	Shore-line section
Aluminum products.....	22		
Autos and parts.....		46	
Chemicals.....		6	
Coal and coke.....	13	2	
Coffee.....	16		
Containers, empty.....	23	5	1
Fertilizer (chemical).....		3	
Lumber.....	1	3	
Oil meal (animal feed).....	2	3	
Petroleum products.....	4	1	8
Vegetable oils.....	15	15	88
Shortening.....		3	
Soap.....		2	
Sirup.....			3
Tar products.....		8	
Miscellaneous.....	4	3	
	100	100	100

The Central in its own tariffs or in tariffs to which it is a party publishes rates to and from the industries located on the northern and southern extensions, and the Susquehanna likewise publishes rates to and from the industries on the shore-line section.

SUSQUEHANNA'S GROUNDS FOR THE ABANDONMENT

Dual operations.—As stated above, operations over the Edgewater section have always been carried on by the Susquehanna alone. The Susquehanna trustee contends that the right of the Central to operate over the northern and southern extensions cannot be exercised by the Central with its own motive power in any manner compatible with good transportation service, with the best use of existing facilities, or economical operations. He further contends that, as long as the Central has such right, the Susquehanna will be unable to obtain adequate compensation for the services it performs for the Central.

On the northern extension there is one main track, with sidetracks which are generally spur tracks not having the effect of a second main track. Likewise, there is one main track on the southern extension, but there are also sidetracks which extend nearly the entire length of the main track. Many of the sidings run down into the plants served

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and are completely out of the sight from the running line. The entire section is a highly congested, busy, industrial territory. Under present operating arrangements the Susquehanna receives and delivers the Central's cars at interchange tracks at the southern end of the shoreline section. Those received at that point are moved to the Edgewater yard for classification before being delivered to the industries.

The Central has no right under any of the agreements to run its own motive power across the Susquehanna's Edgewater terminal to reach the northern extension. If the Central undertook to operate under its own motive power, it would be necessary for the Central to draw its cars destined to the northern extension to a point near the southern boundary of the terminal; for the Susquehanna to draw them across the terminal; and for the Central to pick them up at that point for delivery. For loaded cars from the northern extension the movements would be repeated in the opposite direction and empty cars would have to be similarly handled. This would necessitate the stationing of a Central locomotive on the northern extension permanently for the movement of the Central's cars (about six a day) coming in to it. With the number of industries on that section, operations by two engines would be extremely cumbersome, if not impracticable. As to dual operation at or near the terminal, the Susquehanna assistant general manager stated:

you have three or four shifters there at Edgewater yard practically all the time, and sometimes you have five or six. It is just about all the yardmaster can do to keep them going. If you had many more switchers come up in there the result would be stepping on each other's heels, and some of them would be on the spot while others were working, and there would be a lot of dead time and loss. In my judgment, it is not practicable, there is not enough room around there for a double operation.

As to dual operation on the southern extension, the record shows that it could be performed, but only with a great deal of interference and delay. Cars to be placed in the industries are temporarily placed on one track while cars are being pulled from the industries and placed on the other track, thus keeping both tracks blocked while the cars are being pulled and those for the industry are being spotted. Practically every industry except one in the Edgewater area requires spot shifting.⁹

⁹ As illustrative of the difficulties of carrying on dual operations on the southern extension, the Susquehanna's assistant general superintendent testified as follows: "Well, the particular plant that may be most vitally affected would be the Ford plant. Some 42 percent of Susquehanna's business goes into the Ford plant. The way that Ford plant is set up—take one track in there, there are 27 spots on that track. Certain frames go to one spot, the engines to another, and that track has to be set up in one, two, three order. Ford works on very close inventories, and while we can start getting some of those cars placed in the yard in order early in the evening, we never have the evening before all of the Ford

The Central admits that dual operations would not be as efficient as the present arrangement, and disavows any intention to operate its own engines on the Edgewater section as long as the Susquehanna is willing and able to perform the service fairly and efficiently. It contends however, that dual operation could be carried on without unduly impeding operations. A witness for the Central (superintendent of the river division and New York terminal district) so testified. The assistant general manager of the lines of the Erie Railroad Company between Buffalo, N. Y., and Jersey City, corroborated the testimony of the Central's witness. Both of these witnesses described situations at other points where multiple operations were carried on in congested territories.

While the record shows that dual operations might be carried on in the Edgewater section, it is obvious and we find that it would result in excessive delay and inefficient and uneconomical operations. Should the Susquehanna and the Central alternately perform the necessary movements, it would result in the Susquehanna's having certain of its equipment stand idle, and might precipitate labor troubles. However, we do not believe that those facts are of controlling importance in this proceeding.

The Susquehanna's cost study.—The Susquehanna asserts that the public interest requires that it be relieved of the 1904 trackage contract because, with this contract in existence, it is compelled to handle Central cars at a grossly inadequate compensation.

As above stated the Central pays the Susquehanna \$4.30 and \$6.65, respectively, for each Central loaded car moved to or from the northern and southern extensions, plus \$1 per car switched on the Edgewater yard or terminal.¹⁰ If to these amounts are added interest, taxes, and share of maintenance payable by the Central to the Susquehanna (fixed by the 1904 contract), and minor car inspection and clerical expense charges (fixed by the operating agreements) the amounts paid to the

cars there that are needed for the next morning's starting, so that we have to get those cars during the night and cut them in their specific spots, and then shift them into the plant. We have a deadline for shifting into the plant. That is, we have to get them shifted in there and cut and out of there far enough ahead of the hour of 7 o'clock so that they can drop the cross bridges and be ready to start work on the dot. Lots of times we have to go to Passaic Junction and bring cars down by special move so as to prevent delay in Ford production. Now then, if two railroads served the Ford plant, I just don't see how they could do it the way Ford operates. We would set in—specifically, we would set in, and there would be three or four spots to which there would be New York Central cars, say spot 3, 6, 9, or something like that. Well, the New York Central would just have to go in there and tear down everything we had set up and cut their cars in, and to me it is just an unthinkable, uneconomic move and I am positive the shipper wouldn't stand for it."

¹⁰ As all northern extension cars must move across the yard and as all southern extension cars are switched on to the yard for classification, the \$1 charge is added to each of the amounts stated.

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Susquehanna for the 6½-year period ended June 30, 1947, averaged \$6.50 and \$8.86 per car respectively for moving the Central's cars to and from the northern and southern extensions. As showing the inadequacy of the present charges, as contended by the Susquehanna, these amounts are compared with \$18.09 and \$17, respectively,¹¹ for the northern and southern extensions resulting from a recent cost study made for the Susquehanna by a firm of consulting engineers and introduced in evidence at the hearing as hereinafter discussed.

The cost study was based primarily on a 2-week test period, June 10 to June 23, 1947, inclusive, and covers two classes of traffic: Central cars moving from the interchange tracks at the southern end of the southern extension, hereinafter for convenience called Guttenberg, to the northern extension and the reverse move, and Central cars moving from Guttenberg to the southern extension and the reverse move, including in each instance the handling in the Edgewater yard.

It was based fundamentally, according to the Susquehanna, upon the Formula for Use in Determining Rail Terminal Freight Service Costs (Form F, 5-42), hereinafter called the formula, issued by our Bureau of Transport Economics and Statistics. The general instructions accompanying that formula provide for the selection of a representative test period based on an analysis of yard performances by months for several years and the selection of the period of the year in which the total cars handled per locomotive-hour and the total number of locomotive-hours operated are nearest the annual average for the preceding 3 years. The test period is to be 7 days, or a multiple thereof. The formula is designed for the computation of switching-service costs, the distribution of the expenses, and the return on value, based upon the relative use which the traffic makes of the carrier's transportation facilities. In an introductory note the formula is explained as having sufficient flexibility to permit of its application with varying degrees of refinement.

The complexity of the steps in the application of the formula preclude any detailed explanation here of its application in connection with the study. The Central was given copies of the sheets showing the method and results of the study in advance of the hearing. Its witnesses and counsel were thus enabled to make criticisms of it on the record, which criticisms will be later herein discussed. Sufficient of the study will be set forth as will enable an understanding of the Central's criticisms as to which the Susquehanna does not give recognition in its final computations. Generally speaking, the variations from the formula and the reasons for them were pointed out.

¹¹ After taking into account certain adjustments made by the Susquehanna on brief.

Fourteen principal zones numbered II to XV (with one zone having three subsections) were set up covering the Edgewater sections and the yard. However, six of the zones (IX to XIV) are nonstudy zones, as they were found not to involve movements of study traffic. The zones were set up to accord with the normal movement of cars, with the general purpose of determining with somewhat more refinement the maintenance costs and the cost of taxes and return applicable to traffic moving in different sections. Zone II, for example, with its subsections A, B, and C, is the entire southern extension and zones III, VI (a single track between zones X and XV), VII, and VIII are in the center portion of the yard. Zone V is the northern extension.

In connection with the costs of crews and all locomotive costs so-called "elements" were used in the study, the purpose being to divide the switching up into various classes, such as drag service (pulling cars from Guttenberg to the yard, for example), initial classification (the first work done upon completion of a drag), secondary classification (movement from one zone to another before final classification), switching storage yards, industrial switching, and certain minor classifications. To illustrate the use of the elements, the following is an excerpt taken from a sample distribution of a yard crew's moves at Edgewater to elements on June 23, 1947:

Description	Time	Element	Elapsed time
Went to Barrett's for out-bound cars.....	11 p. m.....		
Returned at.....	11:35 p. m.....	II B 3 (b).....	35 minutes.
Switched out-bounds until.....	11:45 p. m.....	II B 4 (b).....	10 minutes.
And Spencer-Kellogg drill off D-5.....	12:50 a. m.....	II B 2 (b).....	1 hour 5 minutes.
Went to Spencer-Kellogg—returning.....	2:50 a. m.....	II B 3 (b).....	2 hours.
Switched out-bounds until.....	2:55 a. m.....	II B 4 (b).....	5 minutes.
Lunch.....	3:15 a. m.....	L.....	20 minutes.
Made up General Chemical drill.....	4:45 a. m.....	II B 2 (b).....	1 hour 30 minutes.
Went to General Chemical—returning.....	6:35 a. m.....	II B 3 (b).....	1 hour 50 minutes.
Got empty boxcars from 12 and 4-C, put on D-6.....	6:50 a. m.....	II B 2 (b).....	15 minutes.
Engine inspected.....	7 a. m.....	Insp.....	10 minutes.
			Total, 8 hours.

In appendix A hereto is shown a summary of all costs per loaded car for each class of service—the figures resulting from the study, including the adjustments made by the Susquehanna on brief. There are consolidated in the first line of this exhibit the expenses developed on a zone basis and those distributed on a locomotive-minute basis. The rate of return in the computation is $5\frac{3}{4}$ percent.

Certain items of expenses,¹² which the Susquehanna states might

¹² (1) Return on valuation of the Susquehanna Terminal and the track leading to it; (2) return on valuation of the portion of the Little Ferry yard used for holding Edgewater cars, and the track leading to Little Ferry; (3) the cost of the changes made in the Edgewater lay-out in 1946; (4) adjustment for deferred maintenance expense; (5) the cost of 271 I. C. C.

properly have been included in the total cost per car of handling Central traffic, were omitted either because the necessary information regarding them was not available or because they would have necessitated a much wider or more complicated and more expensive study.

The Central contends that the Susquehanna's cost study is basically defective in that it gives no recognition whatever to the existence of the basic contracts of 1904 and 1911, but instead treats the Central as a complete stranger to the property. In this connection, an outstanding point of difference is as to whether, in the study, the formula should have been applied to the track and right-of-way costs of the Edgewater sections. The Central contends that the study should have been confined to the operating costs on the Shore Line section, the Edgewater sections and in the Susquehanna's yard and to the investment of the Susquehanna in the portions of its yard used in the handling of the Central traffic; that the 5¾ percent rate of return should properly be computed upon the investment in these sections of the yard and upon the investment in the property properly attributable to the engine service performed; and that the cost applicable to track and right-of-way of the Edgewater sections should be computed on the basis of the 1904 and 1911 contracts. Another instance pointed out by the Central in connection with its contention that the study treats the Central as a complete stranger to the Edgewater section concerns the inclusion of \$5.17 and \$5.02 (corrected on brief to \$4.08 and \$3.87, respectively) in the cost of handling Central cars on the northern and southern extensions, respectively, representing proportionate parts of the Susquehanna's passenger losses (the inclusion of these amounts will also be discussed hereinafter in connection with the Central's other criticisms of the study).

The Susquehanna asserts in answer to this criticism of the Central that the purpose of the study was to afford a basis of comparison of the compensation it receives with what it should receive on the basis of actual operations. Apparently, the purpose of the Susquehanna in making the study was to compare what it receives with what it believes it could establish as being entitled to receive on a cost basis (using 5¾ percent on investment) if the contracts are disaffirmed. This theory of the Susquehanna, however, ignores the fact that the basic contracts have not been disaffirmed. The record does not disclose what ultimate costs would have been developed by the formula if it had not been applied to the track and right-of-way costs of the Edge-

bringing empty cars into Edgewater for Central loading; (6) maintenance-of-way overhead and pay-roll taxes not included in connection with the maintenance of shops and engine-houses and power transmission system; and (7) expenses of locomotives running light to and from general shops.

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water section, but, to the extent that it increases the costs, it is not justified.

The Central further contends that the study departs from the formula in so many important respects, and contains so many inaccuracies in the distribution of expense attributable to the switching operations, that it cannot be accepted as even an approximation of the actual costs of the Susquehanna in the handling of Central cars on the Edgewater section and in and across the Susquehanna yard.

One of the Central's criticisms was that the Susquehanna's car count did not develop basic car-count data required by the formula, and that empty cars were not counted.

In lieu of the actual car count of cars using each zone, the Susquehanna, in the interests of economy, took the total loaded cars of the Central and the Susquehanna handled during the test period and allocated such cars to the respective zones on the basis of their analysis of the zones such cars would use in the normal uses of the zones in the handling of the cars to or from their destinations. The yardmaster's logs were also used in this connection. The Susquehanna's expert witness in charge of the study conceded that the study was "weak" with respect to the accounting for cars in zone VII, which contains team tracks for traffic of Seatrain (which operates to and from the Edgewater terminal) and is generally also used as a storage yard for southern extension cars. He later made a check of that zone for the test period by references to the yardmaster's logs. While the check was not complete because in some instances the number of cars there were not shown, in a considerable number of instances the cars were shown. Sufficient was developed in this way to establish that had the allocation been based on the yardmaster's logs, a greater percentage of the fixed expenses of zone VII would be chargeable to the Central's traffic than was made in the study, viz, 37½ percent instead of 27 percent.

The Susquehanna's explanation as to the zone counts is that the method used was justified inasmuch as the study dealt with comparatively simple operations, and was confined to only two classes of traffic, the normal movement of which through predetermined zones was known as a result of the special studies.

As to the noncounting of empty cars, the underlying idea was that if the empty cars were shown to be in proper proportion to the loaded cars, the proportions of the divisions would follow the proportion set by the loaded cars. On the Central's traffic for the test period the empties constituted 33.7 percent of the total Central's cars, and the Susquehanna's empties were 33.65 percent of that company's total cars.

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Some support for not counting the empties in this connection is found in the following provision of the formula: "For carrier terminal switching, connection terminal switching, interterminal and intra-terminal switching, the count should be based on the loaded cars handled."

We conclude that the percentages as shown above are sufficiently close to warrant dispensing with an empty car count and that the method used in determining the cars using particular zones produced substantially accurate results and does not constitute a material departure from the formula.

The Central urges that the 14-day test period June 10 to 23, 1947, was not representative of past, present, and future traffic conditions and that there was departure from the formula method which requires that an analysis of traffic moving over the facilities be made by months for several years and that a period be selected for study which would constitute representative traffic conditions. It points out that the coal dumper, leased to the Pittston Company, was not in operation during the test period; also that Seatrain service had been curtailed during that period by reason of one of its ships having been put out of service by the Texas City, Tex., disaster in April 1947, resulting in three instead of four Seatrain boats being docked at Edgewater during the 2-week test period in June. These conditions, it contends, materially affected the number of cars using the facilities and contributed to inaccurate and nonrepresentative results, to the disadvantage of the Central.

The Seatrain service started only in March 1947. That service during the test period was representative of the average of the Seatrain service to the time of the test period in June. However, a special test was made of the Seatrain service during 2 weeks in November 1947. During that period it had increased 83 percent over that of the test period in June. Seatrain traffic is handled primarily in nonstudy zones and cars so handled would not affect the study costs at all. Some of it is handled on study zones VII and VIII and insofar as the volume so handled during the test period was less than normal the cost of fixed expenses, such as maintenance of way, taxes, and return on value, would be somewhat greater. The Susquehanna's witness in charge of the study points out that the number of Seatrain cars on zone VII during the test period in June was three per day compared with four per day during the special test period in November, and also that only northern extension cars of the Central use zone VIII and that such cars are only 6 percent of the total using that zone. He also stated that increased Seatrain traffic coming through the southern part of the wye

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at the end of the tunnel in zone VIII would in his opinion slow up switching operations at times in the throat of the yard so that you could expect that operating costs distributable on the basis of locomotive minutes would be somewhat higher. In his judgment the over-all result of the increased Seatrain traffic would have little, if any, effect upon the cost of handling the Central's traffic. On the whole, it would seem that the curtailment of the Seatrain traffic during the June test period would have some effect, possibly slight, upon the zone costs. It is not possible from the record to determine the extent of that effect.

No coal traffic was handled during the June test period, and the situation is therefore similar to that caused by the slackening of the Seatrain traffic during that period. The Susquehanna explains, however, that the coal moves primarily over nonstudy zones but that it does use zone VIII and to some extent zone III. It is stated also that the movement of coal through the yard is an uncertain factor. The Pittston Company has only a year-to-year lease on the coal dumper. The record is inadequate for a determination of the extent to which the zone costs would have been changed had the present movement of coal occurred during the test period.

The Central points out that the Susquehanna in its study charged depreciation on equipment and depreciable structures as an operating expense, but did not reduce by the amount of such depreciation the capital value upon which the return on investment was predicated, citing *Increased Freight Rates*, 1947, 269 I. C. C. 33 to the point that we there deducted accrued depreciation and amortization from original cost in reaching an amount as to which a percentage relationship of current earnings could be ascertained. The Central's point is well taken and should be recognized in any future study.

In its study the Susquehanna, in computing return on investment, other than land (as to which present values were used) used original cost figures supplied by our Bureau of Valuation, plus additions and betterments less retirements, to December 31, 1946. Its witness stated that reproduction cost less depreciation would have been appropriate, if not preferable, basis, but figures on that basis, broken down between the two valuation sections involved, were not available in current form.¹³ However, the witness took the reproduction cost less depreciation for the Susquehanna as a whole as of January 1, 1946, furnished by our Bureau of Valuation, based on the level of prices existing between 1936 and 1940, and restated those figures on an approximate basis to prices prevailing in 1945, the latest price index figures fur-

¹³ The formula calls for recommended values furnished by the Bureau of Valuation, but those figures were not available.

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nished by the Bureau. On that basis the value of the road items for the Susquehanna as a whole would be increased from \$11,075,657 (original cost plus net additions and betterments) to \$14,060,938, and the equipment items would be reduced from \$2,009,084 to \$1,637,204. The application of these percentage increases and decreases would increase the cost per car of the Central's northern extension traffic by 67 cents and the southern extension traffic by 76 cents per car.

As hereinbefore stated, the Central contends that it should be charged with interest on investment only on the portions of the Edgewater terminal which are used in the handling of the Central's traffic. In the allocation of land values to various zones, the Susquehanna's method was to take the acreage of the zones where the switching operations were performed and allocate the value of all the "carrier land" in the actual acreage in each zone to the value of all carrier land in the terminal. Lands in the terminal not classified by us as carrier land, as well as pier A (admittedly not carrier land), were excluded from the total. There are 27 acres in the terminal, classified as carrier land, which are not occupied by tracks, of which about 22 acres are under water. The effect of the method used was to charge the Central a proportionate share of return on land in zones used by the Central's cars and also, as part of zone expenses, a proportion of return on land in the terminal outside the study and nonstudy zones but classified by us as carrier land.¹⁴

The Susquehanna concedes that a portion of the land under water should be charged to the Seatrain and coal wharves. The return on investment on approximately 9 of the 22 acres under water was charged to nonstudy zones. This the Susquehanna thinks is more than ample to take care of the berthing of vessels at the Seatrain and coal-dumper docks. Substantial portions of the land under water are adjacent to zones used for the Central's cars, and the Susquehanna points out that such zones could be extended to the land under water at some future time.

The Susquehanna's answer to the objections to the charging of return on value of the 27 acres to the study and nonstudy zones is that the entire terminal is interdependent and that the terminal obviously could not have been located at Edgewater without acquisition also of some land not used for tracks or land under water, and that the Central should bear a share of the entire investment of carrier land in the terminal as long as it is enjoying a substantial part of the

¹⁴ If the 27 acres were excluded from the total, the net effect would be a reduction of the total cost per car shown in appendix A hereto of 28 cents per car for the northern extension and 68 cents per car for the southern extension.

terminal. This reasoning is not persuasive. No precedent is cited for such a charge. Costs determined in a study of this nature must necessarily vary from year to year dependent upon changes in the costs and factors used in computing results. Clearly the contingency of filling in land now under water contiguous to study zones at an indefinite future date, and the placing of tracks thereon as extensions of present study zones is such a factor as should not be considered in the computations of present costs. The use of the remaining acreage outside the study and nonstudy zones not under water, amounting to approximately 5 acres, has not been explained. There was no suggestion that it might presently be utilized in connection with the movements of the Central's cars. The proposal to charge the study zones with a return on value of the 27 acres described has not been justified, and charges representative thereof should be eliminated from the computations.

With respect to the inclusion in the cost of handling Central cars of amounts representing proportional parts of the Susquehanna's system passenger losses, the Central not only contends that such treatment gives no effect to the basic contracts, but it also contends that, even if its described trackage rights were nonexistent, it would be difficult to justify the inclusion of the passenger deficits incurred by the Susquehanna in operations on other parts of its system. It asserts that, when the "nature of the case"¹⁶ is the testing of the consistency of trackage rights with the statutory rule of "public interest," there can be no justification for including costs other than those inherent in the operation of the trackage rights.

The Susquehanna asserts that there is nothing in the formula to indicate that passenger deficiency is a proper item only when passenger and freight operations use the same tracks; and that Edgewater being the only profitable part of the Susquehanna's railroad, freight traffic handled there should bear the passenger losses. In support of its contention that the absence of passenger traffic at Edgewater itself does not preclude the allocation of a part of the passenger deficiency against the Central, it cites our report in *Passenger Fares of Hudson & M. R. Co.*, 227 I. C. C. 741, affirmed 33 Fed. Supp. 495 and 313 U. S. 98. In that case we held that one branch (the downtown line) of the

¹⁶ The formula states that the amount of the passenger deficit apportioned to any given freight traffic is based upon the relative use which such freight traffic itself makes of the carrier's transportation facilities, and that the formula may be used with or without consideration of the passenger deficit, depending upon the nature of the case. It further states that the provisions thereof for the computations and allocations of passenger deficiencies applies only to line-haul carriers and not to switching or terminal companies "for the reason that passenger service rendered by such companies is for the account of line-haul carriers and deficiencies incurred should be charged against such line-haul carriers."

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Hudson & Manhattan Railroad could be properly made to share the deficiency of another branch (the uptown line), and we granted an increase in the downtown line's fares.

The *Hudson & Manhattan* case, however, involved the determination of *maximum* fares and did not involve any question of the abandonment of trackage rights. We are not attempting here to determine maximum fares. The question is the determination of the costs inherent in the operation of certain trackage rights, and whether we should authorize the abandonment of those trackage rights. The other cases¹⁶ relied upon by the Susquehanna, in which the principle was established that an inevitable deficiency concerning a particular service may be properly charged against another form of service, also, in our opinion, are not determinative of the question under consideration. Those cases involved the revenues of carriers as a whole, and not costs inherent in the operation of particular trackage rights. No passenger operations are being conducted over the trackage rights in question. We conclude that the "nature of the case" is not such as to justify the inclusion of items representing passenger deficits as costs inherent in the operation of these trackage rights.

Susquehanna's costs on the shore-line section.—The Susquehanna urges that it is in the public interest for it to be freed from paying what it terms disproportionately heavy charges for the use of the shore-line section.

From January 1, 1928, to June 30, 1947, the Susquehanna paid the Central, under the basic contracts, \$332,516 as its share (50 percent of 4 percent) of the investment of the Central in the shore-line section, which amounts to \$24.70 interest per car for its 13,463 cars handled thereon during the period, whereas the Central paid the Susquehanna during the same period \$191,545.85 as its share (50 percent of 4 percent) of the Susquehanna's investment in the Edgewater sections, which amounts to \$1.19 interest per car for its 160,617 cars handled thereon. In addition, the taxes and maintenance of the shore-line section are apportioned between the two companies on a use basis, also governed by the basic contracts, and as above stated, the Susquehanna pays the Central \$2 per loaded car for switching its cars into and from the industries located thereon. The territory along the shore-line section has not been conducive to the establishment of new industries and the only industries thereon are those previously described at the extreme southern end of the section.

¹⁶ *Class Rate Investigation, 1939*, 262 I. C. C. 447; *New Orleans Public Belt R. Switching and Absorption*, 225 I. C. C. 613; *Revenues in Western District*, 113 I. C. C. 3; *Fifteen Percent Case, 1931*, 178 I. C. C. 539.

The Susquehanna argues that this state of affairs is not consonant with "sound economic conditions in transportation and among the several carriers" and "the establishment and maintenance of reasonable charges for transportation services" within the purview of the national transportation policy as contained in the Interstate Commerce Act.

The Susquehanna endeavored to show, by a somewhat complicated method or combination of methods, that its cost per car for the handling of its cars destined to or originating on the shore-line section in 1945 and 1946 exceeded its revenue per car by \$19.96 and \$9.44 per car, respectively, although by the same method the results for the first 6 months in 1947 showed an income of \$10.57 per car. However, the average revenue per car during that 6-month period was \$63.32, compared with \$44.82 and \$47.09 in 1945 and 1946, respectively.

Taking only the 1946 computations, for illustrative purposes, the combined sums paid by the Susquehanna to the Central under the basic contracts and the \$2 per car switching charge (fixed by an operating agreement) amounted to \$19,377 or \$22.12 per car for the 876 Susquehanna cars moved on that section. So far, there is no dispute as to the computations. To the \$22.12 it added estimated costs of \$10.04 for handling the cars at Edgewater (including haul to or from the Central's interchange tracks) and \$24.37 as the road-haul estimated cost, including other terminal handlings, making its total estimated costs \$56.53 per car, as against its revenue of \$47.09 per car. The \$10.04 per car item for handling at Edgewater is the result of further analysis of the Susquehanna's main cost study at the Edgewater terminal. It determined the locomotive-minutes per car for the movements of its shore-line traffic to be 15. It related that to the 26 locomotive-minutes per car as developed by its study for the southern extension movements of the Central's cars and applied the resulting percentage of 57.7 to the \$17.40 shown in column 4, line 15 of the appendix hereto (the cost of handling the Central's traffic on the southern extension) which resulted in its estimated \$10.04, above, for handling at Edgewater and movements to and from the Central's interchange tracks.

The development of the \$24.37 item as representing road-haul and terminal (other than Edgewater) costs is still more complex and is much criticised by the Central. The Susquehanna computed its average haul as 10 miles (the approximate distance from Edgewater to Passaic Junction or Croxton). It applied to that distance the \$0.2729 costs per mile of road haul as developed in 1940 in application of the formula recommended by division 4 by report of Decem-

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ber 14, 1939, 236 I. C. C. 425, for the segregation and allocation of the revenues and expenses of the Susquehanna between divisions or parts of the railroad which are separately subject to the liens of the various mortgages, hereinafter referred to as the segregation formula. That application resulted in \$2.73 as the average road-haul costs per car. To this amount it added two terminal expenses of \$4.02 each (one for interchange or origin and one for Little Ferry), that amount having been ascertained to be the cost of terminal operations other than at Edgewater in the 1940 application of the segregation formula. These sums total \$10.77 per car. This amount was increased by further calculations¹⁷ to the \$24.37 shown above.

The Susquehanna explains that with the relatively small amount of its traffic on the shore-line section, it did not deem that it should apply the road-haul terminal formula issued by the Bureau of Transport Economics and Statistics. The Central challenges the assumptions made in the development of the \$24.37 item for road-haul and terminal other than Edgewater costs as having no bases of record. It also contends that the terminal costs used in the makeup of that item were so unlike and were computed under formulas so incomparable as to make the item a hypothetical and unrealistic figure.

There are certain errors in the use of the segregation formulas in the foregoing computations making up the item of \$24.37 representing road-haul and terminal costs other than at Edgewater, particularly in including \$4.02 as representing a terminal cost at Little Ferry yard and in the inclusion of the 3 miles of line from Little Ferry to Edgewater (for which costs are included in the \$8.19 item for terminal costs at Edgewater) in the 10-mile average haul based on the distances from Edgewater to Passaic Junction and Croxton, respectively. If these errors were eliminated, the \$24.37 item would be reduced to about \$13.41. That item is for movements over the Susquehanna's own rails and is not of particular importance here. The important item is that

¹⁷ The sum of \$17.49 was taken as the weighted average cost per car of terminal handling at Edgewater, including taxes, return and passenger deficiency, of the Central's cars (appendix hereto, columns 2 and 4, line 15) and there was added thereto \$1.04 per car representing traffic and general expenses omitted from the cost study (determined by adding the omitted items of \$47,195 and \$70,785 and dividing the total by 113,082, that being the total Susquehanna carloads of freight moved in 1946), making a total of \$18.53. This amount is 226.25 percent of \$8.19 (which was ascertained in the application in 1940 of the segregation formula to be the cost per car of operations at the Edgewater terminal, exclusive of the coal-dock operations). This percentage was then applied to the \$10.77 per car for road-haul and other terminal costs, producing the \$24.37 per car as the Susquehanna's estimated costs of road-haul and terminal (other than at Edgewater) operations on its traffic using the shore-line section. The 226.25-percent increase, while developed with reference to the Edgewater terminal costs, the Susquehanna believes, can appropriately be applied as representative of costs over 1940 of road-haul and the various terminal operations, but it is admitted by it to be only approximate.

representing the Susquehanna's payment of interest under the basic contracts on the Central's investment in the shore-line section. In 1945 and 1946 those payments were equal to \$27.78 and \$19.50, respectively, for each Susquehanna car destined to or originating on the shore-line section. For the period January 1, 1928, to June 30, 1947, such payments for interest were equal to \$24.70 per car. For the first 6 months of 1947, the average interest charge amounted to \$15.85 per car.

The Central refers to the fact that even under the criticized method used in ascertaining the costs, the Susquehanna shows, as above indicated, an average income per car of \$10.57 (revenues of \$63.32 less costs of \$52.75) for the first 6 months of 1947, and that if the average increase granted by the Commission in Ex Parte No. 166 had been taken into consideration the revenues per car would have been increased to \$75.98 and the income to \$23.23 per car on the Susquehanna's shore-line traffic during that period. The number of cars handled there during these 6 months was 539, compared with 615 and 876 in 1945 and 1946, respectively.

CENTRAL'S COST ESTIMATE

The Central introduced in evidence an estimate of the cost to the Susquehanna of handling the Central's cars, predicated upon a revision of the 1928 study hereinbefore referred to. The conclusion of this estimate is that such cost is \$6.47 per loaded car on both the northern and southern extensions. This estimate includes interest on investment, taxes and maintenance applicable to the northern and southern extensions under the basic contracts of 1904 and 1911, and certain miscellaneous expenses, but excludes the investment in the yard facilities and any return thereon. If to the estimated \$6.47 there be added the \$1 per loaded car charged since 1928 "as a trackage charge for the use of the Edgewater Yard"¹⁸ for each loaded car handled in or across said yard for the account of the Central, the resulting sum of \$7.47 could be compared with \$8.57 representing the average amount per loaded car the Central paid the Susquehanna in 1945 and 1946 under

¹⁸ Although the parties have made no special comment upon the matter, it should be noted for clarification, as shown in the description of the contracts, above, that in the basic contract of 1911 the Susquehanna agreed that it would "with reasonable diligence shift the cars" of the Central and its affiliates across the Edgewater yard; that in the short-term operating agreements, except the last, there was fixed a "rate" per car "as a trackage charge" for each loaded car moved across the Edgewater yard; and that in the last formal operating agreement which is being presently applied, the sum of \$1 payable to the Susquehanna was fixed as a "trackage charge for the use of its Edgewater Yard"—for each loaded car handled in or across said yard for account of the Central Company." Thus, there appears to be separately stated a rate for the use of the yard in the movement of the Central's cars, but no separate rate for the making of the physical movement in or across the yard.

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the basic contracts and the operating agreements. As hereinbefore indicated, the so-called \$1 per car trackage charge was not determined on the basis of any cost study.

The witness making the estimate for the Central recognizes that the motive power of the Susquehanna is now almost entirely Diesel engines. He assumes that the Diesels are in service 24 hours a day for 365 days a year, reduced by 10 percent, which produces a total of 7,884 hours a year. Computing interest on investment at 5.75 percent, depreciation at 3.80 percent, and taxes at 2.67 percent on \$79,608 (the average cost of Susquehanna's Diesels) he produced \$1.234 per hour as the cost of interest, depreciation, and taxes for motive power operation. Using the schedule of equipment rental and other rental rates adopted by the General Managers' Association of New York, he computed the repairs and supplies at \$2.12 per locomotive-hour. The cost of wages of crews, including supervision, he computes at \$7.92 per hour, which is 71 percent over the \$4.626 in the 1928 study. Yardmasters and police protection he computes at \$0.64 an engine-hour which is 75 percent above the 1928 figure. The total of the above-estimated elements of \$1.234, \$2.12, \$7.92, and \$0.64 is \$11.91 as the total cost per switching-locomotive-hour.

Using the average cars per locomotive-hour, 1.89 developed in the 1928 study and adding thereto 0.189 per hour (a judgment percentage of 10 percent representing added efficiency of motive power) the witness obtained 2.079 as his estimated cars switched per locomotive-hour. Treating this as a round figure of two loaded cars per locomotive-hour and dividing it into the above estimated \$11.91 of costs per locomotive-hour, the witness deduced the sum of \$5.96 as the average cost per car switched on the northern and southern extensions. The witness adjusted this amount by: (1) Deducting therefrom \$0.418 (representing amounts accruing to the Susquehanna for movements in intermill and interplant and for weighing allowed in the 1928 study, increased by an estimated 10 percent) and (2) by adding thereto \$0.93 per car for other items;¹⁹ making the total estimated cost, thus constructed, of \$6.47 per car, exclusive of the so-called yard-trackage charge of \$1 per car.

The Susquehanna criticizes the estimate as being based upon antiquated summary figures used in 1928 made by the Erie and the Central without independent Susquehanna representation. It criticizes the

¹⁹ Interest at 4 percent on the Susquehanna's investment in the Edgewater sections, divided by the total number of cars handled on those sections in 1945 and 1946; \$0.57; the Central's proportion of taxes and maintenance of those sections for 1944 and 1945 under the basic contracts based on the number of cars handled, \$0.22; the Central's proportion of clerical and car inspection costs under an operating agreement, \$0.14.

use of theoretical maximum number of locomotive-hours for each Susquehanna engine instead of using actual Susquehanna performances, and points out that the cost per locomotive-hour as developed by the Susquehanna's study was approximately \$16 as compared with the \$11.91 developed by the Central's witness. As an example of the inaccuracy of elements contained in the estimate, the Susquehanna's witness states that the Central's item of \$0.64 per engine-hour for yardmasters and police protection is currently \$1.60.

Admittedly the Central's estimate is not the result of a current cost study, and admittedly the \$6.47 estimate does not reflect the Susquehanna's investment in yard facilities or any return thereon. By reason of these and other factors based upon judgment assumptions, the estimate is of little value upon the issues here presented.

The Susquehanna's miscellaneous contentions.—It asserts that the present method by which it receives notice of and identification of the Central's cars and the movements to be performed relative to the Central's cars interchanged at Guttenburg is unsatisfactory and in some instances produces confusion, the double handling of cars, and resulting delays. As previously stated, the Susquehanna handles the Central's cars as agent, and it is not a party to the tariffs. It does not receive the waybills for cars. The Central's instructions as to cars are given largely by phone to the yardmaster at Edgewater. The Central gives the yardmaster the car numbers and directs when and where the cars are to be placed for service. In this connection its trustee envisages the situation if the Susquehanna were free of the basic contracts and operating arrangements so that it would be able to become a party to through rates; how it then would get the waybills in connection with the interchange of cars, with the result that errors due to inaccurate verbal telephonic instructions as to car numbers and car movements would be avoided, more economic transportation services performed, and better services rendered to shippers.

The present method of communicating instructions as to Central cars and the performances in respect thereto are of long standing, and it does not appear that there has been any marked degree of inefficiency in regard thereto. The trustee refers to instances where the Susquehanna was a line-haul carrier on certain shipments as to which waybills were not delivered to it by the Central and that it only discovered by accident that it was so designated and entitled to its share of the through rate. Such instances were not shown to have been numerous, and the Central made adjustments with reference thereto. The transfer of waybills, as in the case of usual interchanges between railroads, of course, would tend toward more efficient and more reliable

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service. These matters are to be considered on the issues, but they do not appear to be of crucial importance.

The Susquehanna's trustee states that the bulk of its traffic for Edgewater is interchanged with the Erie at Passaic Junction or Croxton; that without the traffic the Susquehanna could not live; that there is nothing in the situation to prevent the Erie and the Central from agreeing to handle that traffic by the Erie's bringing down to Croxton the traffic now interchanged with the Susquehanna at Passaic Junction, taking it through its tunnel to Weekhawken, giving it to the Central there, and letting the Central take it to Guttenburg and turn it over to the Susquehanna at the exchange tracks for delivery to Edgewater, as the Central's traffic is now handled. Inasmuch as the Erie has supported the Central in its opposition to the disaffirmance of the contracts, the trustee expresses the belief that he is justified in the fear that, after the completion of the reorganization of the Susquehanna, if the basic contracts are allowed to stand in perpetuity, the described practice may be adopted if the Central and the Erie deem it to their advantage, to the great detriment of the Susquehanna.

As to the measure of the effect upon the Susquehanna of any considerable diversion in the manner indicated of traffic now coming to it from the Erie at Passaic Junction, the trustee stated:

The figures indicate that there are about 15,000 cars in a year which move by competitive routes, that is, competitive—Erie, New York Central, and that if approximately one-third of those were diverted, it would have barely sufficient to pay its interest on the bonds provided in the new Plan. Anything in excess of that would reduce it below the interest rate. That would not allow us anything for additions or betterments or other purposes.

The Central discounts the possibility and the probability of the Erie's and the Central's handling, in the manner indicated by the trustee, traffic now coming to the Susquehanna from the Erie at Passaic Junction, stating that the trustee overlooks the fact that the shippers at Edgewater testified that they always route their traffic, and that the Central and the Erie are competing lines and that it could not be expected that the Central would break down its routes so as to interchange with the Erie at short-haul junctions.

The Susquehanna gave some testimony in support of its contention that it would be more advantageous for both railroads and shippers if the interchange of traffic between the Central and it were made at Little Ferry instead of at Guttenburg. The Central pointed out operating difficulties that it would encounter in making such an interchange, and otherwise characterized this contention as outside the purview of these proceedings. Its position in this regard is sustained.

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The Susquehanna excepts to rulings of the presiding examiner sustaining objections to certain questions asked of its trustee and excluding an exhibit offered by another of its witnesses. Considering the questions asked and the exhibit offered, the objections were properly sustained, and the exhibit was properly excluded.

INTERESTS OF SHIPPERS USING THE EDGEWATER AND SHORE LINE SECTIONS

The effect of the basic contracts has been to include the Edgewater sections in the Central's railroad system and to include the shore-line section in the Susquehanna's system. As hereinbefore stated, the Central has published through rates to and from industries on the Edgewater sections, and the Susquehanna has likewise published through rates to and from the shore-line section industries.

Generally speaking, the shippers on the Edgewater sections in effect express the view that the Susquehanna should be justly paid by the Central for the movement of the latter's cars. Some indicate the belief that the Susquehanna is being underpaid. These shippers as a whole do express a desire that the services of both railroads be accorded to them. They raise two principal points: (1) Joint through rates are not available to and from all of their present or potential shipping points over both railroads, with equal services from the point of view of time and other elements, and they express this fear that if they were suddenly limited to one railroad it would take some time and possibly expense to them before such rates and routes would be established with the Susquehanna only as an originating or delivering line, with interim uncertainty as to the ultimate rate and services; and (2) it may not be possible to continue transit rates and arrangements which they have long enjoyed in connection with the Central if their plants were to be located on the Susquehanna only. Certain of the industries stated that their plants had been located on the Edgewater sections because of the presence there of two railroads.

Spencer Kellogg and Sons, Incorporated, for example, whose inbound movements are approximately 100 carloads a month, and outbound approximately 30 to 40 a month, expresses fear that it might lose transit arrangements now accorded it by the Central should the Susquehanna's application be granted. It is elementary that the provision of transit arrangements is local to a particular carrier, and that even a carrier participating in a through rate cannot establish transit arrangements on another carrier's line. This company ships linseed and soybean oil from its mills in Minnesota, Iowa, Illinois, and Ohio to its plant at Edgewater under refining-in-transit arrangements. After refinement, its oils are reshipped largely to New Eng-

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land territory at the balance of the through rate from the origins in the Midwest to final destination. It complains that even though the Susquehanna would establish the same transit on shipments it now received from the Central, its routes to new England on movements of the finished products out of Edgewater over the Susquehanna would be greatly restricted and its destination territory curtailed by existing tariff restrictions which the Susquehanna might be powerless to remove. It also refines oils derived from imported beans for shipment to New England, trunk-line, and other territories. On such movements, with the Susquehanna as the only carrier out of Edgewater, it fears that its routes would be restricted, its customary traffic slowed, with the possibility of having to pay higher rates should the Central and the Susquehanna fail to agree on division of rates and switching charges. It states that it is general practice of an industry which would operate under transit arrangements to establish its mills at points served by as many carriers as possible in order that the arrangements could be used with full flexibility. It states that a substantial investment is tied up in its Edgewater mill and that inconvenience and a definite financial loss would be experienced by it if the Central were deprived of its trackage rights at Edgewater.

The Aluminum Company of America, which fabricates aluminum at its Edgewater plant, receives a very important proportion of its in-bound metal from its plant at Massena, N. Y., in what amounts to a local movement over the Central. A local rate has applied since 1916. There are no joint rates applying between those points in connection with the Susquehanna and any other line. This company expresses fear that, should the Central lose its trackage rights to Edgewater and be obliged to cancel its local rate from Massena, there would be at least a temporary period during which a higher combination of local rates would apply. Its witness points out that if the Central were forced to cancel its local rate in the manner the granting of the relief here sought would indicate, his company would not have the usual avenue of protection by protesting to us the cancellation and asking that it be suspended. Accordingly, the company requests that, should we permit a change in the present arrangements and operations as between the two companies, the order should be on condition that the interested carriers shall agree upon a basis of divisions or switching absorptions that will preserve the present rates and in case of their failure to agree that the matter be submitted to us for decision.

The Ford Motor Company's witness stated that his company "is sympathetic with the avowed statements by the trustee of the New York, Susquehanna & Western Railroad that the present arrangement

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for payment by the New York Central Railroad is inadequate;" that "if the present arrangement for compensation is adjudged inadequate, we believe our best interest will be served by compensation which will provide service at the present level;" and that "regarding rates, we fear present rates and arrangements will not be maintained if abandonment is approved. Hence, our best interest will be served if present trackage rights are maintained."²⁰ The Mayor of Edgewater commented upon the removal of the locomotive smoke nuisance since the Diesel locomotives have been used and said, "I won't attempt to * * * say whether the contract should be kept in effect or not. The only thing I would like to see is that the railroad will be properly compensated to maintain it as it is being maintained now. That is our

²⁰The position taken by certain other shippers may be summarized as follows:

Hills Bros., Coffee, Incorporated.—Edgewater was selected as a location for its plant, through the efforts of the Central, because of the routes and facilities of more than one carrier. While its witness could not point out any specific example of advantage because of two carriers being there, he stated "We feel it is in the interests of the Edgewater industries generally, and our plant, that the competitive situation we now have be maintained, not only on our inbound, which of course we happen to be quite interested in, but also our outbound movements." As to the Susquehanna trustee's offer to continue any service now rendered to the industries at Edgewater by either or both railroads the witness stated: "* * * but it isn't an accomplished fact as far as we are concerned. * * * If we could be assured that that could be put into effect and would be put into effect, it would meet at least part of our objection. * * * I think it would still leave out the competitive factor, which we think is important."

Lever Bros. Company, dealers in s pry and soap.—It's witness stated: "We, as an industry, located in Edgewater on the premise that it would be jointly operated and served by two railroads. * * * we do feel that the Susquehanna Railroad should be justly compensated for their services to the New York Central, and, of course, we are not interested in whether it is on a division of rate basis or whether it is on a per car basis. The elimination of the New York Central Railroad would, we feel definitely, be detrimental to the business of Lever Bros. at Edgewater. * * * I think once we eliminate competition at Edgewater, although we have been definitely assured that the service would not be impaired, it is difficult to conceive that with competition out of the way you would have the same freedom and flexibility."

Archer-Daniels-Midland Company, handling linseed oil stated: "* * * it is our considered opinion that the proposed abandonment of New York Central trackage rights * * * would not be either to the public's best interest nor would it be to our best interest, and we therefore petition that the status quo be maintained. At the same time we do feel that the New York, Susquehanna & Western Railroad should receive adequate and proper compensation for the work they perform, * * *."

Barrett Division, Allied Chemical & Dye Corporation, shipping about 200,000 tons a year, stated "physically we would not have room enough for two separate tracks into the plant." It would not like to expose the Susquehanna to such a loss of revenue that this railroad would lose its independence. It endeavors to divide the traffic 50 percent to each company. A witness for the General Chemical Division of the same corporation (shipping 80,000 tons a year by rail) argued for maintaining the same competitive situation at Edgewater as at present, citing instances where it is feared the Susquehanna would be unable to join in through rates now available in connection with the Central. This division would not want the Susquehanna deprived of sufficient revenue to enable it to operate as at present.

Falk & Company, processors and distributors of oil and oil products, with its mill at Carnegie, Pa., and its distributing plant at Edgewater, states that its only route to Edgewater on which its transit arrangements apply is over the Pennsylvania Railroad Company's line to Buffalo and the Central beyond. It is desirous of protecting this transit arrangement and also of having the benefit of two railroads at Edgewater.

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interest." A member of the Board of Freeholders stated, in part, "I am firmly convinced from the result of my contacts with many, many people that the general impression in that area is that it would be against the interests of Bergen County to have the independent operation of the Susquehanna jeopardized."

Some testimony was given in opposition to the abandonment of the Susquehanna's trackage rights over the shore-line section. The Harbor Tank Storage Company located at the southern end of that section stated that some of its 150 to 200 carloads a month are handled between its plant and plants located on the Edgewater sections under Susquehanna switching rates. It expresses the fear that these switching rates would be jeopardized if the Susquehanna trackage rights on the section were extinguished and that it might have to route its Edgewater shipments through Little Ferry at a great increase in costs and time consumed.²¹

All of the shippers stated that they route their shipments.

FURTHER DISCUSSION AND FINAL CONCLUSIONS

The history of the origin and development of the joint railroad at Edgewater shows that the purpose was to provide two-railroad services to the industries by means of one right-of-way and set of tracks, not only to avoid the duplication of facilities but also to accommodate industrial development within the available area along the waterfront at Edgewater. This purpose was consistent with economical and convenient railroad service in an industrial area and in furtherance of better utilization of the area for industrial sites. It was such a project as in later years might well have been required by us in accordance with the provisions of section 3 (5) or authorized by us under the provisions of section 5 (2) of the Interstate Commerce Act. This industrial area was not created by the joint road. However, one large industry, Hills Bros. Coffee Company, located its plant at Edgewater because of the routes and facilities of more than one carrier.

Representatives of all of the industries served by these joint facilities unanimously testified that they were in favor of being served by two independent carriers at Edgewater, and many of them stated

²¹ Similar testimony was given on behalf of the United Africa Company, also located near the southern end of the shore-line section. That company in 1945 shipped 474 carloads over the Central and 330 carloads over the Susquehanna. It estimated that 10 percent of the movements over the Susquehanna were to destinations on the Edgewater sections. It states that under existing tariffs such movements to Edgewater via Little Ferry would cost \$85.80 per car. Both companies argued for the continuance of the competitive situation as to rates and routes as now exist.

they desired a continuation of this service even though the Susquehanna could alone furnish all of the services now available, and at present rates, by agreement between it and the Central.

The Susquehanna's trustee states that he does not seek to bring about any change in the method of performing the actual operations over the northern and southern extensions. He asserts that the abandonment of the trackage rights would not have any adverse effect on the shipping and receiving public, and that with the cooperation of other railroads all present routes and services can be preserved. He offers to continue through joint arrangements, all rates, routes, and services now made available to the industries at Edgewater, whether those services are performed by the Central alone or the Central and Susquehanna. He further states that if the Susquehanna and the Central cannot agree on the compensation to be paid to the Susquehanna in connection with any such service the parties, or either of them, can, by appropriate proceedings, present the matter to us for our determination of the Susquehanna's compensation.

However, continuation of present rates, routes, and services would require concurrence not only of the Central, but of many other railroads not parties hereto. Many of the proposed adjustments would require radical changes in rates, routes, and divisions, and such changes even if legally and economically possible, could only be accomplished after a long period of negotiation. For example, the transit arrangements which now exist at Edgewater, and which the Susquehanna offered to continue if the Central would cooperate, could not lawfully be preserved. Abandonment would result in the Edgewater section being no longer local to the Central. The Central in such an event could not establish transit arrangements on the Susquehanna. The arrangements would have to be established by the Susquehanna, and arrangements made with the Central for absorption of the accompanying charges, together with other arrangements with the Central for the Susquehanna's services.²² Although the Susquehanna's traffic witness thought the interest of the Central would dictate "that the Central join in opening routes involving transit arrangements," the record does not contain any study of earnings and costs to show whether there would be sufficient revenue accruing to the Central to warrant its entering into such arrangements.

²² The Susquehanna's traffic witness suggested that the Central might extend its Weehawken switching district to include Edgewater in order to provide transit arrangements. The Central contends, however, that even if this could be accomplished without creating the undue prejudice and preference prohibited by the Interstate Commerce Act, the Central could not economically afford to open its Weehawken terminal to its competitors without receiving considerably more in the nature of a quid pro quo than the Edgewater traffic here involved.

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As indicated hereinbefore, the Susquehanna asserts that the public interest not only permits, but requires the abandonment of the trackage rights over the Edgewater section because they cannot be physically exercised by the Central in any manner compatible with good transportation service, with the best use of existing transportation facilities, or with efficient or economical operation. While the record does not show that dual operations could not be conducted over the area in question, we have found hereinbefore that operations over the northern and southern extensions by the Central with its own motive power would result in excessive delay and inefficient and uneconomical operations. The Central points out, however, that the present method of operation has continued for upward of 35 years, and that it has no desire to have the operation changed as long as the Susquehanna performs satisfactory service on the basis of reasonable charges. In our opinion the threat that the Central may assert its right under the trackage-rights contracts to operate with its own motive power over the Edgewater section without justifiable cause is not in itself sufficient ground for authorizing the abandonment of the trackage rights in question.

The parties were heard fully on the issues with respect to abandonment under section 1 (18) and the request of the Susquehanna for a finding that the abandonments sought would be consistent with requirements in the reorganization proceeding now pending in the court. The welfare of individual carriers, financial soundness and continued independence, the payment to them of reasonable compensation, bearing as they do on the ability of the carrier to perform its duties to the public, are among the factors to be considered in determining the problem here as it relates to "the public interest." Upon consideration of these factors and other relevant evidence of record, we conclude that the instant record does not warrant a finding that the present or future public convenience and necessity permit the abandonments sought.

The Susquehanna also asserts that, unless it is relieved of the 1904 trackage contract, it will be required to handle Central cars at a grossly inadequate compensation. In our report of March 5, 1945, *supra*, in the Susquehanna's reorganization proceeding, we did not approve a provision in the plan for the rejection of the basic contracts, but stated that we saw no reason why the Susquehanna should not be paid, to the extent it is not so paid, reasonable rates for the service performed. We further stated that we saw no reason why the situation could not be adequately remedied without the disaffirmance

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of the basic contracts, by termination of the existing switching agreements and the publication by the Susquehanna of just and reasonable rates which could cover all the movements of the Central cars. The Susquehanna's position in this respect, is that it cannot afford to terminate the operating agreements with the basic trackage rights still in effect, because the Central might begin operations with its own motive power without obtaining from us a certificate under section 1 (18) of the Interstate Commerce Act. The Susquehanna further states that the Central's reliance on the decision in *United States v. Union Pacific Railroad Company*, unreported (D. C. Nebraska 1939) for the proposition that operations at Edgewater have been lawfully conducted in the past and may be lawfully continued, suggests that it is the Central's position that we are without power over the present agency arrangement at Edgewater and the compensation paid the Susquehanna for its agency services. The decision, in our opinion, is not determinative of the situation at Edgewater.

The cost studies hereinbefore discussed, despite their infirmities, tend to show that the compensation received by the Susquehanna is inadequate for the services performed. While the Central denies that the compensation is inadequate, it states that, with due recognition of the basic contracts, it is and always has been willing to adjust the compensation to the Susquehanna so as to reflect whatever a proper cost study may show to be necessary to give the Susquehanna its costs including a fair return on investment.

The Susquehanna's trustee frankly concedes that he does not care to join in any such study. His position admittedly is that the bringing of the pending application is a preliminary to the rejection of the basic trackage-rights contracts in the reorganization proceeding, so as to enable the Susquehanna to obtain a division of the line-haul rates or a switching charge. In support of this position, he asserts that although the Edgewater section represents investments solely by the Susquehanna the latter is forced by the existence of the basic 1904 and 1911 contracts to handle approximately 30 percent of the traffic of the only profitable part of its road at less than even a reasonable switching charge, without any other adequate consideration, contrary to the rule that carriers in New York Harbor area get a division of line-haul rates or a very high switching charge.

The record here does not contain evidence sufficient for determining what would be proper compensation for the services rendered. Our duty to make such determination in a proceeding of this kind is stated

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in *Thompson v. Texas Mexican Ry. Co.*, 328 U. S. 134,²³ and in *Smith v. Hoboken R. Warehouse and S. S. Connecting Co.*, 328 U. S. 123, 130. The proceeding immediately will be assigned for further hearing to determine the question of what would be the amount of just compensation for the services rendered by the Susquehanna.

Although as stated above there is no warrant upon this record to support a finding that the present or future convenience and necessity permit the abandonment sought, this issue, except as to the basis of compensation, is so fully covered that the reorganization proceeding should not further be delayed to await the outcome of this proceeding. Presumably the court having jurisdiction of the reorganization proceeding, in its discretion may proceed with the confirmation and consummation of the plan, reserving in any orders entered, jurisdiction to pass upon and determine whether the basic contracts of 1904 and 1911 should be disaffirmed in the reorganization proceeding. When the record before us is supplemented to afford a basis for determining just compensation to the Susquehanna for the services rendered, we will determine such compensation and consider the question whether abandonment should then be permitted, and if permitted, whether it would be consistent with the reorganization requirements of the Susquehanna. At that time an appropriate order will be entered.

Exceptions and requested findings not specifically discussed in this report have been given consideration and found not justified.

COMMISSIONERS ROGERS and MITCHELL did not participate in the disposition of these proceedings.

²³ At pages 149 and 150 the Court said, “* * * The Commission has the power under section 1 (18), to refuse to allow abandonment of the operations. If it so refuses, trackage rights continue to be enjoyed by Brownsville. The question of what would be the amount of a fair rental to be paid by Brownsville would be highly relevant to a decision by the Commission on the issue of abandonment. We conclude that at least in that situation the Commission has the power under section 5 (2) to fix a reasonable rental for the use of the facility by Brownsville regardless of the consent of Tex-Mex. Denial of that power to the Commission is not required by the language of section 5 (2) (a). And this construction of Section 5 (2) (a) is in harmony with the power of the Commission under section 1 (18) to refuse to authorize the abandonment of operations. If operations must continue, it is more consistent with this scheme of regulation for the Commission rather than courts or juries to determine the amount of the rental. * * * If, on the other hand, the Commission authorizes the operations to be abandoned, it may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. Section 1 (20). The Commission could permit abandonment unless Brownsville paid such reasonable compensation for the use of Tex-Mex's property as the Commission should fix. * * *”

APPENDIX

Summary of all costs per loaded car for each class of service

COSTS PER LOADED CAR HANDLED

	Class of service: N. Y. C. northern extension num- ber of loaded cars 52		Class of service: N. Y. C. southern extension num- ber of loaded cars 333	
	Operating expenses, rents and taxes	Operating expenses, rents, taxes, and return	Operating expenses, rents and taxes	Operating expenses, rents, taxes, and return
	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
1. Switching and drag service.....	\$8.65	\$11.08	\$8.18	\$10.74
2. Station service—clerical.....	.40	.41	.40	.41
3. Freight-train car expenses.....	.16	.17	.16	.17
6. Cost per car, revenue traffic.....	9.21	11.66	8.74	11.33
7. Adjustment for abnormal expenses (increase or decrease).....	1.18	1.18	1.12	1.12
8. Special services (credit for intraplant switch- ing).....			Cr. .13	Cr. .13
12. Cost of nonrevenue traffic.....	.06	.07	.05	.07
13. Total cost per car including nonrevenue traffic.....	10.45	12.91	9.78	12.38
14. Passenger deficiency.....	3.12	¹ 5.17	2.96	¹ 5.02
15. Cost per car including passenger deficiency. Cost per car, including passenger deficiency (final figures for columns 2 and 4, as con- tained in brief to correct errors and to give recognition to certain of Central's criticisms).....	13.57	18.08	12.74	17.40
		18.09		17.00

¹ Reduced to \$4.08 on brief in correction of error.

² Reduced to \$3.87 on brief in correction of error.

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