

INVESTIGATION AND SUSPENSION DOCKET No. 6802¹
 FARES, NEW YORK, SUSQUEHANNA & WESTERN
 RAILROAD COMPANY

Decided June 29, 1959

Increased passenger fares, effective October 7, 1957, March 22, 1958, and September 1, 1958, between New York, N. Y., and points in New Jersey, found just and reasonable prior to December 13, 1958, but combination rail-bus fares on and after that date found not shown to be just and reasonable. Schedules ordered canceled and proceedings discontinued, without prejudice to the filing of new schedules in conformity with findings made.

Leon Leighton for respondent.

James M. Davis and *Frank E. Tilley* for a commuters association; *David D. Furman* and *F. Michael Caruso* for State of New Jersey; and *Henry B. Freefield* for New Jersey Board of Public Utility Commissioners, protestants.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS HUTCHINSON, MCPHERSON, AND WEBB
 BY DIVISION 2:

Exceptions to the examiner's proposed report were filed by the respondent. Exceptions and requested findings not specifically discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

These proceedings involve three successive increases proposed by the New York, Susquehanna and Western Railroad Company, hereinafter called the respondent, in its one-way, round-trip, and 46 and 10-trip fares from, to, and between New York, N. Y., and Butler, N.J., and intermediate points, which became effective on October 7, 1957,² March 22, 1958,³ and September 1, 1958.⁴ Upon protest of certain commuter interests, the operation of the proposed schedules in the title proceeding, filed to become effective on August 17, 1957, was suspended and an investigation instituted into and concerning their lawfulness. Upon petition of the respondent, the order of

¹This report embraces also No. 32394, Passenger Fares, New York, Susquehanna & Western Railroad Company, and No. 32514, Increased Fares, New York, Susquehanna & Western Railroad Company.

²Tariffs I.C.C. Nos. 84 and 85, and supplement No. 5 to I.C.C. No. 77 (I. and S. No. 6802).

³Tariffs I.C.C. Nos. 90, 91, and 92 (No. 32394).

⁴Tariffs I.C.C. Nos. 93, 94, and 95 (No. 32514).

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suspension was vacated and the schedules permitted to become effective, but the investigation was continued. Subsequent to the hearing therein on October 16, 1957, a proposed report was issued in which the examiner recommended that the schedules be found just and reasonable, and not unjustly discriminatory.

The proposed schedules in No. 32394 were filed on February 19, 1958, and were protested by interested parties. They were permitted to become effective, but by order entered on March 21, 1958, an investigation into and concerning their lawfulness was instituted. A hearing in this proceeding was held with a further hearing in Investigation and Suspension Docket No. 6802 on June 4, 1958. Subsequently, on August 1, 1958, the respondent filed schedules proposing further increases in its fares. By order entered on August 29, 1958, an investigation into their lawfulness was instituted in No. 32514. The latter proceeding was heard on October 31, 1958. These proceedings present related issues and will be disposed of in one report.

The respondent's rail service is performed entirely within the State of New Jersey. The tracks owned by it extend north and west of a point called Susquehanna Transfer, N.J., on the west bank of the Hudson River near North Bergen, N.J., almost directly across that river from midtown Manhattan. However, by virtue of trackage rights, which it holds over the lines of the Erie Railroad Company south of Susquehanna Transfer, its operations extend to and from that carrier's terminal at Jersey City, N.J., about 5.1 miles south of Susquehanna Transfer.

Prior to December 13, 1958, the respondent's schedules provided a route to and from the Chambers Street ferry terminal of the Erie in lower Manhattan via Jersey City and the Erie ferry service across the Hudson River. This route was canceled effective on that date, owing to the discontinuance by the Erie of the above-mentioned ferry service. Prior to September 1, 1958, the published fares included both rail and ferry service, but on that date the fares previously in effect were increased by additional charges for ferry service.

The following table shows the fares under investigation herein over the rail-ferry route made effective on and between October 7, 1957, and September 1, 1958, between New York City and representative stations served by the respondent.

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Between New York, N.Y., and stations in New Jersey	Distance	One way			Round trip			10-trip commutation			46-trip commutation		
		Effective Oct. 7, 1957	Effective Mar. 22, 1958	Effective Sept. 1, 1958	Effective Oct. 7, 1957	Effective Mar. 22, 1958	Effective Sept. 1, 1958	Effective Oct. 7, 1957	Effective Mar. 22, 1958	Effective Sept. 1, 1958	Effective Oct. 7, 1957	Effective Mar. 22, 1958	Effective Sept. 1, 1958
Babbitt.....	8.5	\$0.36	\$0.38	\$0.58	\$0.64	\$0.70	\$1.10	\$3.20	\$5.50	\$13.25	\$15.15	\$21.10	
Ridgefield Park.....	11.8	.48	.50	.70	.85	.90	1.30	4.25	6.50	15.95	18.10	24.15	
Bogata.....	13.2	.52	.56	.76	.92	1.00	1.40	4.60	7.00	16.85	19.10	25.15	
Hackensack.....	13.9	.56	.59	.79	.99	1.10	1.50	4.95	7.25	17.75	20.10	26.15	
Paterson.....	21	.68	.71	.91	1.20	1.30	1.70	6.00	8.50	19.35	22.05	28.60	
Hawthorne.....	22.8	.92	.97	1.17	1.62	1.75	2.15	8.10	10.75	22.05	24.75	31.40	
Wyckoff.....	27.9	1.12	1.18	1.38	1.98	2.15	2.65	9.90	12.50	23.95	26.65	33.30	
Butler.....	37.9	1.52	1.60	1.80	2.68	2.90	3.30	13.40	16.50	27.00	29.70	36.40	

On October 7, 1957, the one-way fares over the rail-ferry route were constructed on a mileage basis, taking the Erie railroad fares as a standard. The one-way fares of the Erie between Paterson, N.J., and Chambers Street for a distance of 17 miles over its route is 68 cents, which is 4 cents per mile. The basis of the respondent's one-way fares is slightly more than 4 cents a mile, except to and from Paterson. The corresponding round-trip fares also were computed on the basis observed by the Erie, which is about 30/17ths times the one fare; the 10-trip fares were 5 times the round-trip fares; and the 46-trip fares, except to and from Paterson, were based on the mileage scale approved by the Commission in *Commutation Fares, New York, New Jersey, Pennsylvania*, 297 I.C.C. 55, decided October 17, 1955.

The distance to and from Paterson is 4 miles greater over the respondent's route than over that of the Erie, but the former published the same fares as the Erie for competitive reasons. Corresponding departures from that mileage basis were made from and to East Paterson and Passaic Junction, N.J., to avoid fourth-section violations. The one-way and round-trip fares made effective on March 22, 1958, over the same route, are, with some exceptions, 5 percent higher than prior thereto, the same percentage of increase approved for other railroads engaged in passenger operations between points in New Jersey and New York City.⁵ The 10-trip fares made effective on that date are 5 times the contemporaneously established one-way fares, and the corresponding 46-trip fares reflect the increased mileage scale approved in *Increased Commutation Fares, N.Y., N.J., and Pa.*, 302 I.C.C. 125, decided October 25, 1957.

After the increases made in No. 32394, the respondent's fares were in no instance higher than those of other railroads transporting passengers between points in New Jersey and New York City. The fares made effective September 1, 1958, over the rail-ferry route reflected increases over prior levels of 20 and 40 cents for one-way and round-trip tickets, respectively, \$2 for 10-trip tickets, and by amounts ranging from \$5.95 to \$6.70 for 46-trip tickets. The latter increases, as indicated, were solely for ferry service for which no separate charge was previously collected. Separate charges for ferry service, as additions to preexisting fares for transportation between points in New Jersey and east-bank Hudson River points, also have been authorized for other carriers. See *Central R. Co. of N.J. Increased Commutation Fares*, 304 I.C.C. 761.

In addition to the above-mentioned rail-ferry route, the respondent established, in 1939, an alternate route between points on its rail line

⁵The Pennsylvania Railroad Company, The New York Central Railroad Company, and the Lehigh Valley Railroad Company (see *Increased Fares, Official Territory, 1956*, 300 I.C.C. 239).

and the New York Port Authority Bus Terminal in midtown Manhattan at 41st Street and 8th Avenue via Susquehanna Transfer, thence motorbus service, then and now operated by the Public Service Co-ordinated Transport under contract with the respondent, between the latter point and the aforementioned bus terminal. This enabled passengers traveling to and from points in midtown Manhattan to avoid the necessity of using the longer rail-ferry route and to eliminate the additional expense for transportation between such points and the Chambers Street ferry terminal in lower Manhattan. The fares initially established thereover were combinations of the previously established fares over the rail-ferry route to Chambers Street and a separately published bus fare. That basis was continued in effect until September 1, 1958, when the additional charges aforementioned were imposed for ferry service, and thereafter the rail-bus fares were combinations of those over the rail-ferry route prior to that date plus the busfare. At the time of the hearings in I. and S. Docket No. 6802 and No. 32394, the busfare was 20 cents one way, which fare had been in effect since June 15, 1956, until on September 1, 1958, it was increased to 25 cents.

Prior to the vacation of the suspension order in I. and S. Docket No. 6802 the respondent, in partial justification of its request therefor, proposed a procedure whereby passengers purchasing tickets for transportation from and to New York City over the rail-bus route would be given receipts to preserve their right to a refund in the event the increases in issue in that proceeding were found unlawful. That procedure was established effective October 16, 1957, and it has been continued in effect to afford like protection with respect to the increases subsequently published.

It is alleged that the fare increases in issue over both routes were unjust and unreasonable, and that the combination basis of fares over the rail-bus route was and is unjust, unreasonable, and unjustly discriminatory. The allegation of unjust discrimination is predicated, in part, upon practices of the respondent different in some respects from those of the Erie during the period when that carrier's ferry service was in operation. A discussion of the specific differences relied upon would serve no useful purpose. The unjust discrimination condemned by section 2 of the Interstate Commerce Act results from the charging of different fares for performing like and contemporaneous transportation services under substantially similar circumstances and conditions of carriage by the same railroad between the same points. There is no evidence of unjust discrimination by the respondent, and that allegation will not be further considered.

The State of New Jersey and the Board of Public Utility Commissioners of that State stress the percentages of increase in the

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respondent's 10- and 46-trip tickets since 1939 to and including March 22, 1958, shown of record as ranging from 122 to 151 percent for the former, and from 118 to 157 percent for the latter; also the decrease in the number of passengers transported each year during that period. They point also to the provisions of section 15a of the act requiring this Commission to give "due consideration * * * to the effect of rates on the movement of traffic." In view of the findings of division 2 in *Commutation Fares, New York, S. & W. R. Co.*, 280 I.C.C. 31, decided January 3, 1951, hereinafter discussed, it is unnecessary to consider either the trend in the fares or in the passenger traffic prior to that date. Section 15a also requires us to consider—

the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers under honest, economical, and efficient management to provide such service.

The Susquehanna Transit Commuters Association, a protestant herein, urges that a determination of the issues should be deferred until after additional further hearing to receive evidence concerning changes in the respondent's passenger operations, and other related matters alleged to have occurred subsequent to the hearing in No. 32514. Apparently, the only important change directly related to the fares in issue was the cancellation of the fares over the rail-ferry route, of which we may take official notice. Thus, no further hearing appears necessary.

As stated, the only means of transportation over the respondent's lines from and to New York City since December 12, 1958, has been that afforded over its rail-bus route, owing to the cancellation of all fares over the rail-ferry route. The issues concerning the fares over the latter route thus are moot, except to the extent that such fares have been and are now used in constructing the rail-bus combinations. The protestants contend, in substance, that since rail transportation of passengers over the rail-bus route terminates or begins at Susquehanna Transfer, charges therefor should not be based upon factors reflecting unused transportation south thereof.

In *McCarthy v. Erie R. Co.*, 269 I.C.C. 303, decided November 24, 1947, a 39-cent rail fare of the Erie from Tenafly, N.J., to that carrier's ferry terminal in lower Manhattan (Chambers Street), plus a 10-cent fare then in effect for bus service from Susquehanna Transfer to the midtown Manhattan bus terminal, was found not shown to be unreasonable or unjustly discriminatory. The Erie then maintained a route by way of its Jersey City terminal and two ferry services across the Hudson River; also an alternate route from and to the midtown Manhattan bus terminal by way of Susquehanna Transfer and the respondent's motorbus service, the use of which

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was covered by a contract between the Erie and the respondent. The foregoing finding was based on the greater value of the rail-bus route to passengers requiring transportation from and to the Times Square area of New York City because of the saving in transit time and expense incident to travel within New York City from and to the Erie's ferry terminals (see pages 305-6 of the report).

In *Commutation Fares, New York, S. & W. R. Co., supra*, division 2 found just and reasonable increased commutation fares over the rail-bus routes of the Erie and the respondent herein, resulting in part from an increase in the busfare from 10 cents each way to 15 cents one way and 25 cents round trip. At that time, the proposed busfares, as in *McCarthy v. Erie R. Co., supra*, were to be added to the rail-ferry fares of those carriers from and to Chambers Street. Certain increases in connection with the rail-ferry fares also were approved. The carriers' justification for the increased fares then in issue was predicated upon increases in passenger operating deficits and the need for additional revenue. Like justification is offered for the increased fares under consideration here.

The respondent's passenger trains have been operated at out-of-pocket losses for many years. It emerged from bankruptcy in May 1953, but its out-of-pocket passenger losses, which have had to be borne from freight revenue, have nevertheless continued. Such losses during each year 1953 to 1957, inclusive, and in 1958, estimated, were \$257,741, \$247,299, \$221,015, \$243,976, \$336,017, and \$200,270. Its deficit from all operations after payment of fixed charges was \$29,583^e in 1956, \$146,877 in 1957, and \$316,713 during the first 7 months of 1958; and its balance sheets show net working capital deficits aggregating \$296,400 in 1956, \$364,000 in 1957, and \$517,528 in the 7-month period of 1958.

The following table reveals the total number of passengers transported by the respondent during 1953 to 1957, inclusive; and, to the extent shown of record, the number of passengers using the rail-bus route.

Period	Commuta- tion	All others	Total	Rail-bus route
Year 1953.....	1, 278, 992	329, 083	1, 608, 075	(1)
Year 1954.....	1, 230, 570	342, 114	1, 572, 684	789, 868
Year 1955.....	1, 164, 696	349, 081	1, 513, 777	764, 002
Year 1956.....	1, 105, 086	362, 209	1, 467, 295	731, 453
Year 1957.....	953, 858	342, 913	1, 296, 771	663, 196
Year 1958.....	(1)	(1)	(1)	* 224, 942

¹ Data not shown.

² January-September 1958. The comparable number using the rail-bus route in 9 months of 1957 was 510,709.

^eAlthough a net income for 1956 of \$53,417 was reported, that result was achieved largely by a nonrecurring Federal income tax refund of \$83,000.

The respondent shows the revenues, expenses, and losses from the operation of buses between Susquehanna Transfer and the midtown Manhattan bus terminal as follows:

Period	Revenues	Expenses	Loss
Year 1954.....	\$107,893.32	\$157,635.72	\$49,742.40
Year 1955.....	114,832.37	152,013.10	37,180.73
Year 1956.....	128,672.95	148,542.03	19,869.08
Year 1957.....	132,806.50	145,648.68	12,842.18
Year 1958 ¹	45,924.99	62,009.24	16,084.25

¹ January-September 1958.

At the time of the fare increases in I. and S. Docket No. 6802 (October 7, 1957) the respondent operated two types of passenger trains: (1) self-propelled diesel cars between Susquehanna Transfer and Paterson, and (2) regular coach trains, using diesel locomotives, between Jersey City and Butler. The use of the diesel cars, however, was discontinued on January 12, 1958, and those cars were subsequently sold. Since that date all points have been served by regular coach trains. Pursuant to authority granted by the New Jersey Board of Public Utility Commissioners, the number of trains operated also has been greatly reduced. Prior to January 12, 1958, the respondent operated 60 trains, Monday through Friday, 34 on Saturday, and 32 on Sunday, but since that date the service has been curtailed to 24, 12, and 8 trains, respectively. Notwithstanding a probable improvement in the respondent's financial condition resulting from this curtailment, there is every indication that the out-of-pocket loss for the entire year 1958 was greater than that shown during the 7-month period. There should, however, be a substantial reduction in the 1959 railway operating expenses owing to the cancellation of the rail-ferry route.

In view of the 1957 and 1958 out-of-pocket losses from both railway and bus operations, the fare increases made during those years appear to us to have been necessary and fully justified. As to the alleged unlawfulness with respect to the combination rail-bus fares, as constructed on and before December 12, 1958, the protestants have shown no reasons in support thereof other than those previously considered and rejected in *McCarthy v. Erie R. Co.*, *supra*, and *Commutation Fares, New York, S. & W. R. Co.*, *supra*. A like finding with respect to the assailed combination rail-bus fares in effect prior to December 13, 1958, is warranted in these proceedings. However, inasmuch as all fares over the rail-ferry route were canceled effective on the last-mentioned date, the continued use thereafter of those combinations as a basis to construct fares over the rail-bus route was, is, and for the future will be, unjust and unreasonable.

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In its exceptions to the examiner's proposed report, the respondent concedes that ordinarily it would be unreasonable for it to continue to construct its rail-bus fares on the basis of its rail-ferry fares after discontinuance of its rail-ferry route. It points out, however, that while it no longer offers a service to New York by way of Jersey City, it is required to continue operations into Jersey City. Its application to this Commission for permission to discontinue service beyond Susquehanna Transfer is pending. The respondent urges that it would be unfair to require it to exclude from consideration during the pendency of this latter proceeding the cost of its rail service beyond Susquehanna Transfer, which it cannot voluntarily discontinue, as a factor in the construction of its rail-bus fares. The respondent's service to Jersey City, since the discontinuance of its rail-ferry route, does not constitute an interstate operation, and the burden of its maintenance may not be imposed upon users of its rail-bus operation herein considered.

We find that (1) the assailed increased interstate fares made effective on October 7, 1957, March 22, 1958, and September 1, 1958, over the respondents rail-ferry and rail-bus routes, prior to December 13, 1958, were just and reasonable; and (2) that the maintenance of combination rail-bus fares on and after December 13, 1958, on the basis maintained prior thereto is not shown to be just and reasonable. Cancellation of these fares will be required, without prejudice to the establishment by the respondent over its rail-bus route of just and reasonable one-factor fares based on the total distance between points on its rail line and the midtown Manhattan Bus Terminal, or reasonable combinations reflecting the rail distances from and to Susquehanna Transfer and the presently established busfares.

An appropriate order will be entered.

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