

FINANCE DOCKET No. 20707

ERIE RAILROAD COMPANY MERGER, ETC., DELAWARE,
LACKAWANNA & WESTERN RAILROAD COMPANY

Decided September 13, 1960

1. (a) Merger of the properties and franchises, including motor-carrier operating rights, of The Delaware, Lackawanna and Western Railroad Company into the Erie Railroad Company for ownership, management, and operation, (b) acquisition by the latter of sole or joint control, through ownership of stock of railroad carriers subsidiary to or affiliated with the former, and (c) acquisition of trackage rights by the Erie Railroad Company, as successor in interest, over the line of the Pennsylvania Railroad Company now used by The Delaware, Lackawanna and Western Railroad Company, approved and authorized. Conditions prescribed.
2. Authority granted to the Erie Railroad Company to issue shares of Erie-Lackawanna Railroad Company common stock without par value and scrip certificates representing fractional shares in conversion of outstanding capital stock of the Erie Railroad Company and The Delaware, Lackawanna and Western Railroad Company and pursuant to restricted stock options of the latter; and to assume obligations and liabilities of The Delaware, Lackawanna and Western Railroad Company under its outstanding mortgage bonds and its other securities; all in connection with the merger. Conditions prescribed. That portion of the application which seeks authority under section 20a to assume obligation and liability with respect to conditional-sales contracts dismissed for want of jurisdiction.
3. Certificate issued (a) permitting abandonment of portions of the lines of railroad of the Erie Railroad Company and The Delaware, Lackawanna and Western Railroad Company in Erie, Broome, and Steuben Counties, N.Y., and Susquehanna and Lackawanna Counties, Pa.; and (b) authorizing construction of connecting lines of railroad and extensions of lines in Erie and Steuben Counties, N.Y., Susquehanna County, Pa., and Hudson County, N.J. Conditions prescribed.

M. C. Smith, Jr., Edward W. Bourne, Frederick G. Hoffman, Thomas D. Caine, Rowland L. Davis, Jr., Leonard D. Adkins, James F. Mulligan, and Walter J. Cummings, Jr., for applicants.

Andrew P. Martin, R. G. Bleakney, Jr., John D. Morrison, Robert D. Brooks, Eugene M. Smith, Thomas O. Broker, James B. Osborne, John L. Davidson, Jr., Eugene S. Davis, Lawrence Berman, William Q. Keenan, J. Raymond Hoover, and Dickson R. Loos for intervening railroad carriers.

H. R. Begley for the State of Illinois and Robert R. Welborn for the State of Missouri.

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Charles P. Knapp, Robert M. Wightman, Robert J. McDowell, Ernest G. Peltz, Joseph Harrison, and A. P. Kaufmann for communities and civic organizations.

Arnold L. Fein for dissenting stockholders.

William G. Mahoney and Sam Del Grosso for organizations of railway employees.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the report recommended by the hearing examiner were filed by the Railway Labor Executives' Association (the association); the Cohocton Valley Committee, a group of dissenting stockholders of The Delaware, Lackawanna and Western Railroad Company (dissenting stockholders); The New York Central Railroad Company (New York Central); The New York, Chicago and St. Louis Railroad Company (Nickel Plate); and the Grand Trunk Western Railroad Company (Grand Trunk). The applicants replied and the case has been argued orally.

The Erie Railroad Company (Erie) and The Delaware, Lackawanna and Western Railroad Company (Lackawanna), common carriers by railroad subject to part I of the Interstate Commerce Act, by application filed July 6, 1959, as amended, seek authority (1) under section 5(2) of the Interstate Commerce Act (*a*) to merge the properties and franchises of the Lackawanna into the Erie, (*b*) for the Erie, through ownership of stock, to acquire sole or joint control of carriers subsidiary to or affiliated with the Lackawanna, and (*c*) for the Erie (as successor in interest) to acquire trackage rights over lines of the Pennsylvania Railroad Company now used by the Lackawanna; (2) under section 20a, for the Erie to issue capital stock and to assume obligations and liabilities of the Lackawanna under its outstanding mortgage bonds and other securities; and (3) under section 1 (18)-(20), for a certificate of public convenience and necessity permitting abandonment of certain segments of lines of railroad of the Erie and the Lackawanna, and authorizing construction by the surviving company of certain connecting tracks and extensions of the lines of railroad of the applicants. Extensive hearings have been held.

The terms of the proposed transactions, a description of the applicant carriers, the positions of the parties, and pertinent facts in regard to the transactions are set forth in the examiner's report,¹ and will be repeated only to the extent necessary for clarity in our discussion of exceptions. We agree with the examiner's findings of facts and conclusions and, with some supplementation herein, they are adopted as our own.

¹ Reproduced *infra* following this report.

Upon consummation of the merger, the separate corporate existence of Lackawanna will cease and the name of the Erie, the surviving corporation, will be changed to Erie-Lackawanna Railroad Company, hereinafter sometimes referred to as the unified company.

Among the properties and franchises to be merged with Erie is the Lackawanna's authority under certificates issued by us in Nos. MC-103516 and MC-103516, subnumbers 2, 3, 4, 5, and 6, to perform service as a common carrier by motor vehicle auxiliary to, or supplemental of, its rail service, between stations on its line of railroad in New Jersey, New York, and Pennsylvania. An application is also pending in No. MC-103516 (Sub-No. 7), for the Lackawanna to provide substituted motor-carrier service to additional points in New York and Pennsylvania. The Erie holds authority under certificates in Nos. MC-101010, subnumbers 2 and 8, to perform substituted motor-carrier service between certain points on its line of railroad in New York, Pennsylvania, and Ohio. It also has an application pending in No. MC-101010 (Sub-No. 10), for authority to perform substituted service between certain points on its line in Pennsylvania by means of highway trailers moving on through rail bills of lading which have had or will have a prior or subsequent movement in rail piggy-back service. If the merger is consummated, it is assumed that the unified company will seek substitution of itself as applicant in the No. MC-103516 (Sub-No. 7) proceeding.

Exceptions of dissenting stockholders.—In their exceptions, the dissenting stockholders claim procedural errors were committed by the examiner in (a) denying requests for adjournments, (b) limiting cross-examination of applicants' witnesses, (c) denying cross-examination of applicants' witness Lewis G. Harriman, and (d) closing the hearing in the absence of counsel for the dissenting stockholders.

The instant application was filed July 6, and the hearing did not commence until September 29, 1959, almost 3 months later, and hearings were not completed until October 22, 1959. In our opinion, adequate time was afforded the stockholders for the preparation of their case, and adequate justification has not been shown for the adjournments requested. An examination of the record does not support the allegation that counsel was unduly limited in his cross-examination or that the examiner erred in closing the hearing in the absence of counsel, such absence being voluntary on his part and after the receipt of notice to appear. As to the witness Harriman (a member of the Lackawanna's board of managers, its executive committee, and the committee for negotiating the terms of the merger), we have disregarded his testimony. Accordingly, the motion to reconvene the hearing to permit cross-examination of this witness is overruled.

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In addition to objections described above, the dissenting stockholders allege that the stock distribution proposed in connection with the merger will not be just and reasonable to Lackawanna stockholders. They contend that appropriate consideration has not been given to the relative book values of the stocks involved (Lackawanna \$109.01 per share, Erie \$68.90 per share), to the preemptive rights of the Lackawanna's stockholders, their alleged cumulative rights of voting, and to the sale by the Lackawanna of its holding of Nickel Plate stock.

The dissenting stockholders are correct in their contention that all of such matters are properly for consideration in determining the justness and reasonableness of the terms of the proposed merger, and such consideration has been given in arriving at our conclusion that the terms are just, reasonable, and fair to stockholders of each of the carriers involved. A more important element, however, in determining the reasonableness of the terms is the comparative earning power of the two carriers in relation to the shares of stock outstanding. The examiner's report contains a thorough analysis of the comparative earnings of the two carriers and of other pertinent factors properly for consideration in appraising the reasonableness of the proposed stock distribution. The record is convincing that the terms are just and reasonable, and that approval thereof will be consistent with the decision of the United States Supreme Court in *Schwabacher v. United States*, 334 U.S. 182, as well as other pertinent court decisions cited by the dissenting stockholders in support of their position. Not to be overlooked, in connection with this subject, is that the terms were arrived at as a result of arm's length bargaining by representatives of the carriers involved and have received approval of a great majority of the stockholders of each.

Exceptions of Cohocton Valley Committee.—This committee took exception to the omission from the examiner's findings, and his recommended certificate and order, of any requirement that the applicants construct and install necessary industrial sidings and spur-track facilities in keeping with their declaration on the record that such would be done. The applicants, in their reply, state that they have no objection to our imposing a condition to our authorizations that necessary industrial sidings and spur-track facilities suitable to specific industries involved will be constructed at or near Coopers, Campbell, Bath, Savona, Avoca, Cohocton, and Wayland, N.Y., as referred to by the examiner. Our order will be so conditioned.

Exceptions of intervening railroad companies.—The examiner recommended the imposition of conditions for the maintenance of existing joint routes, interchange arrangements, switching practices, and solicitation restrictions, as follows:

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1. Upon consummation of the merger, the Erie-Lakawanna Railroad Company shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise authorized by the Commission.

2. The present neutrality of handling traffic inbound and outbound by The Delaware, Lackawanna and Western Railroad Company shall be continued so as to permit equal opportunity for service to and from all lines reaching the rails of that carrier, without discrimination as to routing or movement of traffic and without discrimination in the arrangement of schedules or otherwise.

3. The present traffic and operating relationships existing between The Delaware, Lackawanna and Western Railroad Company, on the one hand, and all lines connecting with its tracks, on the other, shall be continued insofar as such matters are within the control of the Erie-Lackawanna Railroad Company.

4. The Erie-Lackawanna Railroad Company shall accept, handle, and deliver all cars inbound and outbound, loaded and empty, without discrimination in promptness or frequency of service as between cars destined to or received from competing carriers, and irrespective of destination or route of movement.

5. The Erie-Lackawanna Railroad Company shall not do anything to restrain or curtail the right of industries now located on The Delaware, Lackawanna and Western Railroad Company to route traffic over any or all existing routes and gateways.

6. Any party or any person having an interest in the subject matter may at any future time make application for such modification of the above conditions, or any of them, as may be required in the public interest, and jurisdiction will be retained to reopen the proceeding on our own motion for the same purpose.

The exceptions of the New York Central, the Nickel Plate, and the Grand Trunk relate to the foregoing conditions. New York Central agrees with the applicants that greater efficiency and economy in railroad operations are desirable and states that it would appear that the proposed merger would make possible more efficient operation of the applicant's properties. However, it takes the position that there should be no automatic change in the through routes for the Lackawanna's traffic with connecting carriers as a result of this merger and that, under the recommended conditions, the Erie would supposedly be bound to maintain existing routes and channels of trade via existing gateways, but that under its proposed plan of tariff publication the New York Central would not know what traffic was entitled to which routes. The New York Central requests that we specifically find that the recommended conditions require the continued identification of Lackawanna routes and stations in the tariffs of the unified company. It states that it identifies the various segments of its own system in its tariff and that the Norfolk and Western Railway Company, recently merged with The Virginian Railway Company, does likewise. The New York Central has presented a set of conditions (which were considered by the examiner in arriving at his recommendation) that it believes would insure the desired results.

The Nickel Plate has also presented a set of suggested conditions which, in its opinion, would require the unified company to afford to
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the Nickel Plate the same or equal competitive service via Buffalo that it may establish by way of its route bypassing Buffalo. The Nickel Plate represents that, by asking for such conditions, it is not asking for anything more than it now has, and also requests that, at its option, it have the benefit of any more favorable service, interchange arrangements, or use of facilities which the unified company may accord to any other connection at Buffalo, including the right to operate to the unified company's proposed new yard over the tracks of the Lackawanna.

As the basis for its exceptions and its suggested conditions, the Nickel Plate states that it anticipates the diversion of at least \$3,647,000 in revenues from its system annually as a result of the proposed merger.

The Grand Trunk, in its exceptions, requests that the conditions recommended by the examiner for the maintenance of existing joint routes, interchange arrangements, switching practices and solicitation restrictions be amended to include maintenance of both existing service and schedules.

The conditions recommended by the examiner have been imposed in a number of prior decisions under section 5 of the act. See *Detroit, T. & I.R. Co. Control*, 275 I.C.C. 455, *Louisville & N.R. Co. Merger*, 295 I.C.C. 457, and *Norfolk & W. Ry. Co. Merger*, 307 I.C.C. 401. In our opinion, the conditions recommended by the examiner, and hereby adopted by us, provide just and reasonable limitations upon the unified company's ability in the future unjustly to favor certain routes and gateways or to vary the degree of cooperation with certain or any of the interveners in regard to schedules, interchange of freight, and train departure arrangements. To the extent that any such changes in handling the traffic of the applicants would violate one or more of the first five of the conditions the interveners would have a forum for proper relief; to the extent such activities of the unified company might not comply with the procedures governing the determination of rates, routes, and the routings of traffic, the interveners would have recourse to the remedies provided in section 15 of the act; and to the extent the other forms of relief would be inadequate, the interveners may invoke the sixth condition, and apply for our consideration of modification of the conditions as such may be required in the public interest. In *Wheeling & L.E. Ry. Co. Lease*, 271 I.C.C. 713, 746, division 4, disposing of a request for the imposition of conditions similar to those proposed by New York Central which would require the continued identification of Lackawanna's routes and stations and which New York Central asserts it voluntarily imposed upon its own system, stated :

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Furthermore, we see no reason to require that the identity of the Wheeling be preserved for routing or billing purposes after operation has begun under the lease. The primary purpose of the transaction would thereby, at least to some extent, be defeated. The public interest will be served best by permitting a completely unified operation of the properties.

The same conclusion is warranted here with respect to Lackawanna.

In connection with transactions such as this, it is not practicable, nor would it be in the public interest, to impose conditions calculated to freeze the flow of traffic into a preexisting pattern or to protect competing and connecting carriers against all possible adverse effects which might follow from the unification and resulting improvements in service by the surviving corporation. Such action would prevent, to a substantial extent, the effectuation of service improvements to which the shipping public is entitled, and would unduly restrict the unified company in its solicitation and routing of traffic and the development of a strong competitive system. Particularly upon consideration of the financial condition and strength of the participants in the proposed merger, relative to the interveners generally, we find no justification for more restrictive conditions than those recommended by the examiner. Such conditions are designed to maintain and keep open all routes and channels of trade via existing junctions and gateways, to preserve neutrality of handling traffic without discrimination, to protect traffic and operating relationships, to preserve the routing rights of shippers, and to keep open to all parties the right to return to this Commission for such modification or supplementation of the conditions as developments may show to be required in the public interest.

It should be understood by the applicants that our reservation of jurisdiction embraces the power, upon our own motion or upon petition, to impose any or all of the conditions which have been requested by the interveners, if such action hereafter appears required by the public interest; and the exercise by the applicants of the authority herein granted will evidence their consent to our reservation of jurisdiction and an agreement by the unified company to grant such trackage rights to connecting railroads as we may find reasonably should be required because of the merger, upon such terms and conditions as we may find just and reasonable.

Exceptions of Railway Labor Executives' Association.—The association contends that section 5(2)(f) of the act requires the prescription of labor protective conditions adequate to assure the employment of all adversely affected employees for a minimum of 4 years after the effective date of the merger, rather than the providing of compensation in lieu of employment. The association states, on oral argument, that it has raised this issue for the first time in this proceeding because of the numerous merger cases pending, which, according to the associa-

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tion, if approved, would reduce railroad employment by more than 25 percent. It contends that since the only employees who will be affected by the merger are those, estimated by the applicants to be 863 in number, who would refuse to transfer their place of employment and who would have to transfer in order to obtain protection, if their employment were protected instead of their compensation, it would be to the advantage of the applicants if section 5(2) (f) of the act were interpreted as requested by the association. The applicants state that they have no knowledge of the specific cost of the conditions requested by the association and contend that, since the association's theory was advanced subsequent to the closing of the record herein, there is no necessity for their computing such cost.

Section 5(2) (f) requires us to condition our approval of mergers and other transactions between carriers so that these transactions "will not result in employees * * * being in a worse position with respect to their employment." An earlier sentence of the section provides that we "shall require a fair and equitable arrangement to protect the interests of the railroad employees affected." The section does not speak of employees in a worse position "in" their present employment, but in a worse position "with respect to" or in comparison with their present employment. It appears that compensation is intended by the very terms of the section to make certain that the employee's position as it relates to his livelihood is unharmed by the transaction between carriers.

Since 1941 we have uniformly interpreted section 5(2) (f) to permit either employment or compensation of employees displaced in consolidations of carriers. The first case was *Cleveland & P. R. Co. Purchase*, 244 I.C.C. 793 (1941), wherein we permitted the carriers the foregoing alternatives to the requirements of section 5(2) (f) (at 796). Later that year, we held in *Texas & P. Ry. Co. Operations*, 247 I.C.C. 285, 294-95 (1941) that our duty under section 5(2) (f) to provide "a fair and equitable arrangement" for the protection of employees is fulfilled if the essential arrangement is limited to displaced and dismissed employees. We also held that "compensation earned in any other employment by dismissed employees must be considered in determining whether they are in a 'worse position with respect to their employment.'"

In the next several years we approved other purchases and abandonments subject to compensation plans for displaced or dismissed employees. And, just as in the 1941 proceedings, the association acquiesced in this interpretation of the Commission's powers under section 5(2) (f). *Chicago, M., St. P. & P. R. Co. Trustees Construction*, 252 I.C.C. 49 and 287 (1942), and 257 I.C.C. 292 (1944); *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C. 177, 198 *et seq.* (1944); 312 I.C.C.

Chicago, B. & Q. R. Co. Abandonment, 257 I.C.C. 700, 704 *et seq.* (1944).

The legislative history of section 5(2)(f) supports the interpretation that Congress did not intend to require us to maintain employees in their jobs. An amendment to accomplish this very objective was rejected by the Congress. The amendment ("Harrington Amendment") would have provided:

Provided however, That no such transaction shall be approved by the Commission if such transaction will result in unemployment or displacement of employees of the carrier or carriers or in the impairment of existing employment rights of said employees.²

The present language of the section was approved after two conferences between the House and Senate. The second conference report, which contained the present language of the section, stated:

In other words, the Harrington amendment made all employees of the affected carriers equal beneficiaries of its provisions regardless of the length of time they may have been employed prior to a consolidation. It also required the carrier to maintain the benefits of its provisions indefinitely and without any specified limitation by time or otherwise. Under the terms of the conference agreement the benefits to employees will be required to be paid for not longer than 4 years after the consolidation, and in no case for longer than the service of the employee for the affected carriers prior to the effective date of the order authorizing the consolidation.³

The conferees clearly intended to require compensation, since in their words "benefits to employees will be required to be paid" for a certain period.

The subsequent discussion on the floor of the House confirms the interpretation put upon the language of the section by the second conference report. Representative Lea, one of the House managers, began the pertinent discussion:⁴

The substitute that we bring in here provides two additional things. First, there is a limitation on the operation of the Harrington amendment for 4 years from the effective date of the order of the Commission approving the consolidation. In other words, the employees have the protection against unemployment for 4 years, but the Commission is not required to give them benefits for any longer period. If the employees themselves make an agreement with the railroad company for a better or a longer period, that is a matter between the railroad men and the railroads, but this 4-year limitation is established by the pending conference agreement.

² 84 Congressional Record, Part 9, 76th Cong., 1st sess., pages 9881-82.

³ 86 Congressional Record, Part 9, 76th Cong., 3d sess., page 10167.

⁴ *Id.* at 10178. The association dismisses the colloquy between Representatives O'Connor and Lea following Representative Lea's introductory remarks since it was "made informally on the floor of the House," it "referred only to compensation," and was inconsistent with Representative Lea's subsequent reiteration of the section's "full intent." Further remarks of the Congressman hereinafter reproduced indicate that the association's interpretation of this colloquy is strained.

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There is another limitation on the protective benefits afforded by the amendment. The benefit period shall not be required for a longer period than the prior employment of the employee before the consolidation occurred. In other words, under the original Harrington amendment, if a man was employed for 6 months, he would indefinitely be subject to the benefits of the amendment from the railroad company. We have changed that so the railroad company will not be required to maintain him in no worse condition as to his employment for any longer period than he worked before the consolidation occurred.

We believe that is a very fair and a very liberal provision for labor. We believe that railway labor substantially agrees in that viewpoint. We take nothing from labor by this agreement. We simply write specific provisions that shall be in the order of approval of the Commission, but otherwise we do not tie its hands.

Mr. VORYS of Ohio. Mr. Speaker, will the gentleman yield?

Mr. LEA. I yield to the gentleman from Ohio.

Mr. VORYS of Ohio. Would this 4-year rule have the effect of delaying a consolidation for 4 years, or would it mean that if a consolidation were made there would still be a 4-year period during which the man would be paid?

Mr. LEA. No; this rule does not delay consolidation. It means from the effective date of the order of the Commission the benefits are available for 4 years. The order determines the date, and the protective benefits run 4 years from that date.

Mr. VORYS of Ohio. That would be whether or not they were still employed?

Mr. LEA. Yes.

Mr. O'CONNOR. Mr. Speaker, will the gentleman yield?

Mr. LEA. I yield to the gentleman from Montana.

Mr. O'CONNOR. As I want to see those who might lose their jobs as a result of consolidation protected, I should like to have the gentleman's interpretation of the phrase that the employee will not be placed in a worse position with respect to this employment. Does "worse position" as used mean that his compensation will be just the same for a period of 4 years, assuming that he were employed for 4 years, as it would if no consolidation were effected?

Mr. LEA. I take that to be the correct interpretation of those words. Our conference agreement followed the instructions of the House in that respect. It gives railway labor generous protection against sudden and long unemployment.

Representative Halleck, another of the House managers, later added:

As to the Harrington amendment, I do not know what the author of that amendment is going to do about this bill, but I do know and understand that the people whose cause he so valiantly championed are not objecting to this provision as it is now written. It follows the principle of the so-called Washington agreement that was a contract entered into by the carriers with their employees to fix the rights of employees whose employment terminated upon consolidation. This language gives to the employees greater protection and more far-reaching protection and recognizes the principle to which we all subscribe, that rights of employees should be protected, and, beyond that, writes it into law.

Finally, Representative Wolverton, also a House manager, stated that he thought the Harrington amendment had intended no more than compensation to employees facing dismissal, but that in any event compensation was now clearly intended:

It was recognized that the real intent of the (Harrington Amendment) sponsors was to save railroad employees from being suddenly thrust out of employment as the result of any consolidation or merger entered into. The Committee on Interstate and Foreign Commerce of this House in presenting its original bill used language which it thought accomplished that purpose. We thought we were giving legislative assurance of at least a continuance of the Washington agreement which had been previously entered into by the railroads and the 21 railroad brotherhoods. This agreement had furthermore been recognized and accepted by the Interstate Commerce Commission as a condition precedent for its approval in the Rock Island case, *United States v. Lowden*, (308 U.S. 225), and this action of the Commission has been affirmed by the Supreme Court of the United States in a suit attacking its validity. *We thought that the language we had used not only established this agreement for all succeeding cases of consolidation or merger but that the language used would not preclude the Commission from improving upon the terms of that agreement if necessary to provide equitable and fair treatment of employees affected by any consolidation or merger in the future. Thus, it will be seen that there has been no difference in thought and desire between the committee and the sponsors of the Harrington amendment.* In fact the provision contained in the original bill had the approval of 20 out of the 21 railroad brotherhoods. And, it is significant in this connection that the one brotherhood which did not agree to our language had never asked for anything other than that the entire consolidation provision be left out of the bill and the matter be left at this time as a matter for collective bargaining. [Emphasis added.]

* * * * *

Nor should anyone overlook the fact that the adoption of this amendment as agreed to by the conferees gives railroad workers protection against sudden dismissal and *financial assistance* that is not enjoyed by workers in any other industry. And, this is true without any exception or qualification whatsoever. [Emphasis added].

Although there is no clear holding on the point, the courts, too, generally have favored the interpretation that section 5(2) (f) refers to compensation and not to a job-freeze. In *United States v. Lowden*, 308 U.S. 225 (1939), the Court read the House and Senate bills only recently passed relating to section 5(2) (f) as a congressional declaration that "fair and equitable provision for the compensation of (employee) losses * * * promotes the national transportation policy" (at 238). It thought that the effect of the congressional action was merely to make compensation schedules mandatory rather than permissive as they had been under section 5(4) (b) (at 239).

The *Lowden* opinion was explained in *Railway Labor Executives' Association v. United States*, 38 F. Supp. 818, 824 (D.C. 1941) as recognizing the right of "displaced personnel" to "share a part of the gain" resulting from consolidations. The district court opinion was affirmed by the Supreme Court, 315 U.S. 373 (1942). In *Railway Labor Executives' Assn. v. United States*, 339 U.S. 142, 155 (1950), the Court characterized our practice as affording employees "compensatory protection" and apparently thought it was consistent with the statute.

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In our opinion, the association's newly asserted position that the act requires us to maintain railway employees in their jobs is incorrect and untenable. Assuming that we have the power to impose conditions like those requested by the association, in our opinion, such action would not be consistent with the public interest. Conditions calculated to preserve unneeded jobs would unduly restrict the applicants in the establishment of most economical operations, would be wasteful, and would be in conflict with the objectives of the national transportation policy, under which we are enjoined to promote economical and efficient service and to foster sound economic conditions in transportation and among the several carriers. In our opinion, the conditions which we are imposing here, and have imposed in prior cases under section 5, afford reasonable protection to employees against financial losses which may result from transactions authorized under that section. Accordingly, we affirm the finding of the examiner in this respect, and our authorizations herein will be made subject, by reference, to the employee protective conditions imposed in *New Orleans Union Passenger Terminal Case*, 282, I.C.C. 271.

Conclusions.—Contentions of the parties herein as to either law or fact not specifically discussed have been given consideration and have been found to be without material significance or not justified.

The applicants request that, because of their critical financial condition, our certificate and order herein be made effective within 5 or 10 days of its service. We are of the opinion that this would not afford the interveners adequate time within which to take such steps as they deem warranted to protect their interests. Accordingly, our order will provide that it shall become effective 30 days after the date it is served.

We find that, subject to the specified conditions for the protection of adversely affected railway employees of the applicants, and the maintenance of existing joint routes, interchange arrangements, switching practices, and solicitation restrictions referred to hereinabove, (a) the merger of the properties and franchises of The Delaware, Lackawanna and Western Railroad Company into the Erie Railroad Company for ownership, management, and operation, (b) acquisition by the latter of sole or joint control, through ownership of stock of railroad carriers subsidiary to or affiliated with the former, and (c) acquisition of trackage rights by the Erie Railroad Company, as successor in interest, over the line of the Pennsylvania Railroad Company now jointly used by The Delaware, Lackawanna and Western Railroad Company, upon the terms and conditions set forth above, which terms and conditions are found to be just and reasonable, are transactions within the scope of section 5(2) of the

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Interstate Commerce Act, as amended, and will be consistent with the public interest, will enable the Erie Railroad Company to use service by motor vehicle to public advantage in its rail operations and will not unduly restrain competition; and that, if the transactions are consummated, the Erie Railroad Company will be entitled to operate under the operating rights granted in Nos. MC-103516 and MC-103516, subnumbers 2, 3, 4, 5, and 6, which rights are herein authorized to be unified with rights otherwise confirmed in it and to be embraced in a certificate to be issued in its name, with duplications eliminated.

We further find, subject to the condition that, before issuing any of the stock herein authorized, the Erie Railroad Company shall file with this Commission a copy of the amendment to its certificate of incorporation duly certified by the appropriate public officer, providing for the changes in its stock, that (a) the proposed issue by the Erie Railroad Company of not exceeding 4,701,384 $\frac{1}{3}$ $\frac{5}{2}$ shares of common stock, without par value, and scrip certificates representing fractional interests therein, of the Erie-Lackawanna Railroad Company, not exceeding 49,200 shares of common stock, without par value, of the Erie-Lackawanna Railroad, to be sold at \$21.3125 a share to satisfy existing stock options granted under The Delaware, Lackawanna and Western Railroad Company's restricted stock option plan, and the issue to holders of Erie Railroad Company preferred stock, series A and B, of new certificates of Erie-Lackawanna Railroad Company on a share-for-share basis; (b) the proposed assumption by it of obligation and liability with respect to the outstanding securities of The Delaware, Lackawanna and Western Railroad Company, including obligation and liability with respect to the payment of principal and interest on \$121,368,950 of mortgage and other funded obligations and \$19,163,000 of equipment-trust obligations of The Delaware, Lackawanna and Western Railroad Company, all in connection with the proposed merger, as aforesaid, are for lawful objects within its corporate purposes and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and are reasonably necessary and appropriate for such purposes.

We further find that so much of the application herein which seeks authority under section 20a to assume obligation and liability under the joint agreement of merger, with respect to conditional-sales contracts, should be dismissed for want of jurisdiction. *Lehigh Valley R. Co. Conditional Sale Contract*, 233 I.C.C. 359.

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We find further that, subject to the conditions for the protection of railway employees and for the construction of industrial sidetracks and facilities referred to, the present and future public convenience and necessity (a) permit abandonment of portions of the lines of railroad of the Erie Railroad Company and The Delaware, Lackawanna and Western Railroad Company in Erie, Broome, and Steuben Counties, N.Y., and Susquehanna and Lackawanna Counties, Pa., and (b) require construction of connecting lines of railroad and extensions of the applicants' respective lines in Erie and Steuben Counties, N.Y., Susquehanna County, Pa., and Hudson County, N.J., as described herein.

An appropriate order and certificate will be entered.

COMMISSIONER McPHERSON did not participate.

EXAMINER'S REPORT

The Erie Railroad Company (Erie)¹ and The Delaware, Lackawanna and Western Railroad Company (Lackawanna), common carriers by railroad subject to part I of the Interstate Commerce Act, together referred to hereinafter as the applicants, on July 6, 1959, jointly filed an application, as amended, (1) for authority under section 5(2), (a) to merge the properties and franchises of the Lackawanna into the Erie, (b) for Erie, through ownership of stock, to acquire sole or joint control of carriers subsidiary to or affiliated with the Lackawanna, and (c) for Erie, (as successor in interest) to acquire trackage rights over lines of the Pennsylvania Railroad Company now used by the Lackawanna; (2) under section 20a, for the Erie to issue capital stock and to assume obligations and liabilities of the Lackawanna under its outstanding mortgage bonds and certain other securities; and (3) under section 1 (18)-(20), for a certificate of public convenience and necessity permitting abandonment of certain segments of lines of railroad of the Erie and the Lackawanna, and (4) for a certificate of public convenience and necessity authorizing construction by the merged company of certain connecting track and extensions of the lines of railroad of the applicants.

Protests were received from various sources, and a hearing was held on September 29 through October 1, 1959, at Buffalo, N.Y., and on October 5-8, 15-16, and 19-22, 1959, inclusive, at Washington, D.C. Unless otherwise specified, all points named herein are in New York. The company which would survive the proposed corporate merger will be referred to herein as the unified company.

Pursuant to interventions permitted prior to and at the hearing, nine railroads intervened, of which the Wabash Railroad Company, and the Lehigh Valley Railroad Company (Lehigh) intervened in opposition, and the New York, Chicago and St. Louis Railroad Company (Nickel Plate), and the New York Central Railroad Company with the Pittsburgh and Lake Erie Railroad Company (Central) intervened as their interests may appear. The Lehigh and Hudson River Railway Company (Lehigh & Hudson), the Boston and Maine Railroad, the New York, New Haven and Hartford Railroad Company (New Haven), the Akron, Canton and Youngstown Railroad Company, and the Grand Trunk Western Railroad Company, also intervened, but withdrew their participation on the basis

¹ For purposes of abbreviation, the railroads and other parties herein will be referred to in this report by the distinguishing portions of their corporate names or by the designations shown in parentheses following their respective formal names or description.

of stipulations entered into with the applicants and made part of the record, or upon understanding that their interests otherwise would be safeguarded as hereinafter indicated. Several villages and towns, and organizations of persons interested in preserving existing passenger train service intervened. The Railway Labor Executives' Association (labor association) and the Railroad Marine Union intervened in opposition. Counsel for a group of holders of common stock of the Lackawanna (dissenters) intervened in opposition to the merger upon the terms proposed. Representatives of the offices of the attorneys general of Missouri and Illinois intervened on behalf of their States in support of the position of the Wabash. Briefs were filed. The proceeding has been referred to the examiner who presided at the hearing for the recommendation of an appropriate order and an accompanying report containing the reasons therefor.

Numerous letters and formally enacted resolutions were received before and during the hearing from shippers and other users of the applicants' lines, and from cities, towns, villages, boroughs, and community officials and from civic organizations, each in support of the proposed merger. Generally, the writers assert the belief that the benefits which the applicants anticipate would be advantageous to the interests of the areas and the public served by the applicants.

Motion to reconvene hearing.—Included in a pleading entitled "Appeal from Examiner's Rulings," filed November 5, 1959, and replied to by the applicants on November 16, 1959,² counsel for dissenters requests the Commission to reconvene the hearing to permit cross-examination of Mr. Lewis G. Harriman, member of the Lackawanna's board of managers, its executive committee, and the committee which negotiated the terms of the merger agreement. Harriman, a financial specialist of wide experience within railroad and banking industries was presented as the Lackawanna's third witness on the opening day of the hearing. He concurred in the previously detailed views of the board of managers and the merger committee regarding the terms of the plan to exchange existing capital stock for that of the unified company, and the allocation of future available net income applicable for contingent interest and sinking-fund obligations. For clarification only, replies to questions by opposing counsel disclosed that Harriman's statements were based primarily upon facts and financial data prepared by the Lackawanna's comptroller and other personnel, and upon findings and recommendations of the consultant firm which the applicants employed to survey the operating and economic aspects of the merger. The Lackawanna's president and vice president-comptroller, and their counterparts on the Erie, testified regarding the topics covered by Harriman and were cross-examined extensively by counsel for dissenters.

The appeal reviews the foregoing circumstances without specific citations of the transcript of record and misstates several of the details, including an unsupported assertion that the examiner had excused counsel from attending the hearing on October 22, 1959; that repeated requests during the hearing for cross-examination of Harriman had been denied; and that counsel had not waived the right to cross-examine that witness. Counsel further asserts that the denial deprived dissenters of a fair hearing; that the examiner's telegram advising of denial of counsel's request stated that Harriman's cross-examination was denied as being "opinion evidence only," and not that counsel had waived the right; that Harriman's views are necessary (a) to determine if the proposed merger terms are just and reasonable, and (b) if appropriate financial factors had been considered, (c) and the reliability of the testimony of other Lackawanna witnesses. In view thereof, counsel alleges that the denial of cross-

² Discussion of the merits of the additional rulings appealed from is embraced hereinafter under appropriate headings.

examination and premature closing of the hearing was unfair, discriminatory, arbitrary, and without basis, and should be corrected by the Commission.

The motion to reconvene the hearing must be viewed in light of the following developments of record: (1) Counsel's letter dated September 21, 1959, requesting adjournment of the hearing for 1 month to provide counsel, then recently retained by the dissenters, an opportunity to prepare his case, and the denial thereof by the Director of the Commission's Bureau of Finance dated September 25, 1959, with advice that after completion of the applicants' case, the examiner would consider requests for adjournment upon showing of justification; (2) counsel's oral request for postponement at the opening of the hearing and again on September 30 and October 7, and the denial of each request pending completion of the applicants' case; (3) procedures suggested and adopted by the parties whereby those portions of the hearing pertaining to operating and economic aspects of the merger would be heard separately from matters relating solely to the value of the stock, the dissenters only area of interest; (4) the excusal of counsel for dissenters from attendance at the hearing after October 1 to October 7, from midmorning October 8 to October 15, and from October 16 until the examiner notified counsel to resume his participation, but not sooner than October 21 (Wednesday); (5) counsel's agreement on October 15 (Thursday) to advise Lackawanna's counsel on or before October 19 (Monday) whether Harriman would be desired for purposes of cross-examination and his failure to do so, whereupon counsel excused Harriman from further participation in the hearing, and so advised the examiner on the record; (6) that after the day's hearing on October 20 (Tuesday), the examiner notified counsel for dissenters by telephone to appear at the hearing on October 22 (Thursday) to proceed to completion of cross-examination and direct-case presentation, at which time counsel stated that other commitments made such appearance impossible until October 23 (Friday), and the examiner cautioned counsel that ex parte representations could not be entertained and suggested the filing of a formal request by telegram as early as possible; (7) that a night-letter telegram, filed in a New York City office of Western Union October 21 and dispatched at 3:38 a.m. (e.s.t.) October 22, was received by the examiner after 9 a.m., in which counsel repeated the request for postponement until October 23, for purposes of cross-examining Harriman; (8) that the applicants and other parties, on October 22, objected to any delay in the closing of the hearing inasmuch as the presentations by all counsel in attendance was completed, at which point posthearing procedures were discussed, and the hearing duly closed.

The circumstances herein provide no basis for sustaining the motion of counsel for dissenters, and it should be overruled. Aside from the counsel's failure to notify Lackawanna that Harriman should be recalled for cross-examination, which fairly constitutes an effective waiver of the right, the record shows that Harriman on direct examination presented no factual evidence not otherwise made part of the record. In view of the nature of the testimony involved and the allegation that denial of cross-examination was unfair and prejudiced the case of the dissenters, the examiner now rules that Harriman's testimony was merely cumulative as defined in the Commission's General Rules of Practice,³ and should be excluded from the record. Thus, the testimony would not be considered by the Commission and the record does not require any cross-examination of the witness.

³ "Section 1.76 *Evidence cumulative restrictions.* It shall be the duty of the officer before whom any proceeding is being heard to limit the number of witnesses whose testimony may be merely cumulative. And in order to enforce this section, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness proffered."

The record shows that courtesies were extended by the parties and the examiner, upon the request of counsel for the dissenters and upon the examiner's initiative, in arranging for the absence of counsel for the dissenters during 6 of the 13 actual days of hearing, to permit him additional time to prepare his presentation. The rulings pertaining to delays to the proceeding were made in consideration of the position of each party, including that of the dissenters, and reflects careful appraisal of the total effect upon the record. The examiner's rulings denying further continuances should be sustained as being fair and reasonable.

THE APPLICANTS

Corporate status and properties.—The Erie is a New York corporation, chartered in 1895, and is authorized to do business and operate lines of railroad in New York, New Jersey, Pennsylvania, Ohio, Indiana, and Illinois. Its operations were conducted by a trustee or trustees from January 18, 1938, to December 22, 1941, during reorganization proceedings under section 77 of the Bankruptcy Act, as amended. The principal main line extends from Jersey City, N.J., westerly through Port Jervis, N.Y., Susquehanna, Pa., Elmira and Salamanca, N.Y., Youngstown, Akron, and Marion, Ohio, and Huntington and Hammond, Ind., to the Indiana-Illinois State line (980 miles); thence by trackage rights over the line of the Chicago and Western Indiana Railroad to Chicago, Ill. (approximately 20 miles). Connecting main lines and branch lines extend to Scranton, Pa.; Buffalo, Rochester, and Dunkirk, N.Y.; Cleveland and Dayton, Ohio; and other points. Between the rail terminal at Jersey City and terminals and other points of delivery in the New York Harbor area, including New York City, the Erie provides floating and other marine transportation service.

The Lackawanna is a Pennsylvania corporation chartered in 1849, and is authorized to do business and operate in Pennsylvania, New York, and New Jersey. Its main line extends from Hoboken, N.J., in a northwesterly direction through Stroudsburg and Scranton, Pa., and Binghamton and Elmira to Buffalo (395.15 miles). An additional segment of main line extends between West End (Jersey City) and Denville, N.J., (34.44 miles). Its principal branch lines extend between Binghamton and Oswego (115.95 miles); between Chenango Forks, Utica, and Richfield Springs (105.49 miles); and between Scranton and Northumberland, Pa. (78.41 miles). Other branch lines include nine segments between points in New Jersey, three segments between points in Pennsylvania, and two segments between points in New York. Between the rail terminal at Hoboken and terminals and other points of delivery in the New York Harbor area including New York City, the Lackawanna provides service by floating and other equipment.

The Erie and the Lackawanna are not members of any railroad system or group of carriers although each owns varying amounts of the capital stock of other carrier corporations which are subject to the Interstate Commerce Act. Neither the Erie and its affiliates nor the Lackawanna and its affiliates have officers or directors in common with each other.

Essentially, the Erie and the Lackawanna have competitive main lines between the New York City area and Buffalo, and between those terminals serve 55 common stations, the principal ones being Newark, Jersey City, Harrison, and Kearney, N.J., Scranton, and New York City, Binghamton, Elmira, Corning, and Buffalo. For a distance of about 125 miles, between Wayland and a point east of Binghamton, the lines are practically adjacent to each other, and between Gibson, and Binghamton, approximately 75 miles, both applicants use the same trackage. The Erie's lines extends westwardly beyond Buffalo, to points in Ohio, Indiana, 312 I.C.C.

and Illinois. It also operates a main line via Hornell and Salamanca, which permits avoiding the Buffalo gateway in the handling of traffic between points east of the Buffalo area including the so-called trunkline and New England territories, on the one hand, and points in territories west of Buffalo, on the other. Such traffic presently originating or terminating at points served by the Lackawanna are interchanged at Buffalo with the Erie and with other connecting railroads, each of which has major terminals at Buffalo and has lines physically competitive with the Erie's lines in the area not directly served by the Lackawanna. Thus, to a considerable extent, the Erie and the Lackawanna compete directly for traffic to and from points west of Buffalo, as well as within the area where both are situated physically.

The extent, in miles, of the lines operated and owned by the Erie and the Lackawanna as of December 31, 1958; and separately, the recorded valuation of their respective properties as determined by the Commission for ratemaking purposes as of June 30, 1918, combined to reflect the properties of each company as presently constituted after adjustments to eliminate duplicative mileages; and the computed net cost of additions and betterments, less retirements during the period from June 30, 1918, to December 31, 1958; all shown in related columns, are as follows:

	Erie	Lackawanna
Lines operated:	<i>Miles</i>	<i>Miles</i>
Main lines.....	1,078.37	429.59
Branch lines.....	1,235.16	488.24
Total lines.....	2,313.53	917.83
Total trackage operated:		
Main lines.....	3,001.95	1,390.30
Branch lines.....	2,335.28	783.40
Total trackage.....	5,337.23	2,173.70
Lines owned:		
Main lines.....	1,058.54	429.59
Branch lines.....	953.43	477.08
Total lines owned.....	2,011.97	906.67
Property valuations as of June 30, 1918:		
Owned and used.....	<i>Note A</i> \$302,743,864	<i>Note B</i> \$234,661,000
Used and not owned.....	6,089,461	7,896,337
Owned and not used.....	343,089	2,231,743
Additions and betterments June 30, 1918, through 1958:		
Owned and used.....	\$185,992,188	\$125,698,822
Used and not owned.....	1,013,820	785,823 Cr.
Owned and not used.....	1,774	1,820,325 Cr.

Note A—Valuation Dockets Nos. 1069 and 876, *Erie R. Co.*, and *Chicago & E. R. Co.*, respectively, 33 Val. Rep. 41 and 637.

Note B—Valuation Dockets Nos. 900, 891, 899, and 890, *Delaware, L. & W. R. Co.*, *Lackawanna & Montrose R. Co.*, *Sussex R. Co.*, and *Harlem Transfer Co.*, * respectively, 39 Val. Rep. 1—346.

* Property valuations—Harlem Transfer Co., as of June 30, 1918 (adjusted)—\$972,000; and net cost of additions and betterments less retirements to December 31, 1958—\$288,713.

Capital stock.—The outstanding capital stock of the Erie at the close of business March 5, 1959, consisted of 125,120 shares of 5-percent preferred stock, series A and 60 shares of 5-percent preferred stock, series B, of \$100 per share par value, and 2,450,090 shares of common stock without par value (\$40 per share stated value). In addition, pursuant to provisions in the plan of reorganization of the Erie, it has a continuing liability for the issuance of 118% shares of its common stock to holders of unsecured claims on the basis of 1 share of common stock for each \$40 of recorded value of the claims. The perfection of such claims would result in an increase in the number of outstanding shares of common stock to 2,450,208%. The merger would not affect any change in the series A and B stocks. Each share of Erie's stock, preferred and common, is entitled to one vote. The company's 15 directors are divided into 3 classes

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which serve terms of 3 years each. The directors' terms of office expire by class in successive years. Of the five directors in each class, the holders of common stock elect four, and the preferred stockholders elect the fifth director. On March 5, 1959, there were 18,029 holders of the Erie's common stock and 2,478 holders of its preferred stock (disregarding duplication of accounts under the same name).

The Lackawanna's capital stock is of a single class of \$50 per share par value, each entitled to one vote. As of April 3, 1959, there were 1,638,624 shares outstanding held by 4,672 holders of record. Stockholders have preemptive rights to subscribe to additional shares of capital stock issued by the Lackawanna. There are 14 members of its board of managers which corresponds with the board of directors of other corporations. The managers serve terms of 3 years each which expires in classes of about one-third each year. Under authority of this Commission of November 6, 1956, in Finance Docket No. 19355, *Delaware, L. & W.R. Co. Stock*, 295 I.C.C. 818 (not printed in full), the Lackawanna granted to certain officers and key employees, restricted options for 10 years to purchase its capital stock at the then fair market price of \$21.3125 per share. Subject to various terms and conditions, 49,200 shares of stock are now held in the Lackawanna's treasury to cover the outstanding options.

Long-term debts.—Outstanding securities which constitute encumbrances upon the properties of the applicants include various mortgage debentures, indentures, and equipment obligations executed by the Erie and the Lackawanna and their predecessor companies. The total long-term debts of each as of July 31, 1959, are as follows :

	Erie	Lackawanna
Due within 1 year.....	\$5, 109, 630	\$3, 309, 614
Due after 1 year (funded debt).....	181, 319, 950	92, 473, 250
Equipment obligations.....	22, 112, 464	21, 168, 085
Total due after 1 year.....	¹ 203, 432, 414	² 113, 641, 335

¹ Excludes \$6,151,400 of various issues held by the Erie treasury.

² Excludes \$28,875,700 of various bonds held by the Lackawanna treasury.

Financial statements.—Attached hereto as appendix A pertaining to the Erie, and appendix B pertaining to the Lackawanna, are reproduced (1) income statements for 1956, 1957, 1958, and the period of 1959 ending May 31; (2) statements of retained income—unappropriated for each of the same years and period of 1959; and (3) general balance sheet statements of December 31, 1958, and May 31, 1959. Attached as appendix C is a pro forma general balance sheet for the same dates, giving effect to the proposed merger. The accounting shown in the pro forma balance sheet is not approved at this time, but will be reserved for consideration upon submission of the statement showing all expenditures and the accounting proposed to record the transaction, as required by our order herein. The foregoing statements reflect data included in the applicants' annual reports to the Commission for the full years ended December 31.

The income statement items of "railway operating revenues" for 1958 includes mail pay increases awarded for the period July 3, 1956, to December 31, 1957; "railway operating expenses" include allowed depreciation for maintenance of ways and structures and maintenance of equipment for the years and portion of 1959 shown, in order, amounting to \$8,866,772, \$9,246,768, \$9,386,985, and \$3,916,829 for the Erie, and \$5,592,555, \$5,875,315, \$5,977,439, and \$2,476,509 for the Lackawanna; and "railway tax accruals" include appropriate accounting for Federal income tax deferments resulting from accelerated amortization, and ac-

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celerated depreciation, in excess of normal depreciation, and the refunds and adjustments for prior years' taxes. At the end of 1958 the estimated accumulated tax reduction realized by the Erie because of the accelerated amortization since 1950 was \$14,361,000, and reductions due to accelerated depreciation totaled \$425,500; and for the Lackawanna, the estimated accumulated tax reduction because of accelerated amortization since 1950 was \$5,497,064. Both applicants discontinued the claiming of accelerated amortization for Federal income tax purposes in 1958, in view of operating losses being experienced. In their respective retained-income statements, the Erie's item "appropriations released" for 1956, reflects the entire amounts applicable for the period prior to that year. The Lackawanna's item "profit from sale of investment securities" during the period of 1959, reflects the results of the sale of the Lackawanna's holdings of stock of the New York, Chicago and St. Louis Railroad Company.

In their respective balance sheets, the items "investment in affiliated companies" include ownership of stock and investment advances to wholly owned subsidiaries including carriers and noncarriers; "long-term debt-funded debt unmatured" excludes obligations held by each company's treasury for future sinking-fund requirements or otherwise; and "casualty and other reserves" includes portions of estimated liabilities for loss, damage, personal injury, and overcharge claims not payable within 1 year, in addition to which, Erie includes amounts for estimated vacation allowances payable in the year following the year of accrual. For 1958 and the portion of 1959, in order, the Erie's item "retained income—appropriated" includes \$1,736,211 and \$2,136,729 appropriated for capital expenditures fund reserve, and \$245,000 and \$790,540 for sinking funds, respectively. The pro forma balance sheet reflects an adjustment of \$29,495,232, representing the difference between the book values of the Erie common stock and the Lackawanna capital stock prior to merger and the book value of the new common stock which would be issued.

The "retained income-unappropriated" statements and the sums thereof annually carried to the balance sheet constitute the account through which flows the total accumulated earnings since the company's inception which have not been appropriated or reserved for any particular purpose. It represents income not assigned but does not reflect "cash" or "money" or "fund" accounts. It is drawn upon for appropriations from "cash" accounts for purposes of the payment of (a) dividends in the form of cash, securities owned by the company, or its own stock, (b) sinking funds, capital funds, additions and betterments, or other expenditures, or, (c) reserve funds for pensions or similar purposes. Responsive to inquiries by counsel for dissenters, the account was explained generally as being a balancing account which defines part of the surplus equal to the difference between the amounts of total assets and total liabilities.

AUTHORIZATIONS REQUESTED

Joint agreement of merger.—The request for approval and authorization under section 5(2) is premised upon and conforms with the provisions of a formal instrument entitled "Joint Agreement of Merger," hereinafter referred to as the agreement, executed June 24, 1959, by the presidents and the directors and managers of the Erie and the Lackawanna. The agreements, summarized hereinafter, describes the terms and conditions pursuant to which the Lackawanna is to be merged into the Erie, subject to (1) approvals of the transaction by this Commission and other appropriate public authorities, (2) authorizations of the bondholders of the applicants and the execution of supplemental indentures, (3) adoption by the respective stockholders of the Erie and the Lackawanna, and (4) implementation by the Erie's stockholders of necessary modifications of the certifi-

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icate of incorporation to comply with changes provided in the agreement. Upon completion of the prerequisites and certification thereof by opinions of applicants counsel, copies of the agreement together with copy of the Commission's order of approval are to be filed with the appropriate departments of the States of incorporation of the Erie and the Lackawanna, and the date of such filing would determine the effective date of the merger. Notice of the effective date would be filed with this Commission.

Upon consummation of the merger, the separate corporate existence of the Lackawanna would cease and thereafter the Erie and the Lackawanna would become a single corporation with the Erie's name changed to the Erie-Lackawanna Railroad Company, which would survive the merger and continue to exist as a New York corporation. The unified company would possess the rights and related privileges and would be vested with the properties, debts, and other choses in action and every interest belonging to or due to each of the applicants, and thenceforth would be responsible for all the liabilities and obligations of each applicant, and the existing claims or actions and rights of creditors or lien holders would remain unchanged. The net surplus of the applicants available for the payment of dividends immediately prior to the merger date, to the extent it is not transferred to a "stated capital" account by the unified company upon the issuance of shares or otherwise, would continue to be available for the payment of dividends.

The board of directors of the unified company would consist of not less than 15 nor more than 22 members. The initial board would be comprised of 22 members, of which 14 presently are directors of the Erie and 8 are members of the Lackawanna's board of managers. The names of the members to serve initially are designated in the agreement and their terms are fixed to expire by class in 1960, 1961, and 1962. The sequence of expiration would be observed according to the classes in office on the merger date. The directors would serve terms of 3 years, and the membership would be divided into three classes as equal in number as possible. Each class would include one director elected by holders of the preferred stock, and the remaining members would be elected by the common stockholders. Initially the officers of the unified company at the time of the merger would be the officers of the Erie. Subsequently, the management would be integrated, and, in so doing, the board of directors would accord full consideration to the then incumbent officers of the Erie and the Lackawanna. The unified company would be enabled to issue a total of 140,238 shares of series A preferred stock and 545,000 shares of series B preferred stock, each of \$100 par value per share, and 5 million shares of common stock without par value. Its capital would be at least equal to the sum of the aggregate par value of all shares having par value, plus \$32 per share with respect to shares issued without par value, plus such amounts as the board of directors may transfer thereto from time to time, and would be not less than \$102,223,800, which is the minimum capital now stated in the Erie's corporate charter.

The shares of capital stock of the existing companies outstanding immediately prior to the merger would be converted into shares of the capital stock of the unified company to be outstanding after the merger, as follows:

- (1) Each share of Erie preferred stock, series A and series B, into 1 share of preferred stock of the same class and series.
- (2) Each share of Erie common stock into 1.25 shares of the new common stock.
- (3) Each share of Lackawanna capital stock into 1 share of the new common stock.

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In effecting the exchange, the existing certificates of Erie common stock would continue valid, and additional certificates would be issued for the additional shares to which the holder is entitled. The existing certificates of Erie preferred stock would be exchangeable for new certificates of like amounts of the unified company upon surrender to a designated agent, but would remain fully valid if not surrendered. The existing certificates of Lackawanna capital stock would be surrendered for cancellation, and certificates for the same number of shares of common stock of the unified company would be issued. In each circumstance, where the exchange of certificates is required or permitted, certificates for the new stock would be issued in definitive or temporary form in regard to the full shares represented, and scrip certificates in bearer form would be issued as to any fractional shares. Provisions are made for the manner of exchange of temporary certificates into definitive certificates without cost to the holders, and for the exchange of scrip certificates within a period of 2 years, into the number of full shares represented. After expiration of 2 years the unified company would sell the aggregate number of shares of stock represented by the outstanding scrip certificates, and, with the proceeds thereof, plus any accrued dividends on the said stock, establish a fund for the purchase of the scrip certificates within a period to expire 6 years after the merger date.

General provisions of the agreement adopt Erie's existing bylaws (amended to change the number of directors and their terms of office) as the bylaws of the unified company; restrict the declaration or payment of any form of dividends on common stock by either applicant between the date of the agreement and the date of merger, without the consent of the board of directors of the other; restrict the issuance of any class of capital stock prior to the merger date; entitle the holders of the Lackawanna's restrictive option rights to purchase stock of the unified company on a share-for-share basis; and defines conditions under which either applicant may voluntarily act to terminate the agreement prior to the merger date. The agreement further specifies that if any order of this Commission imposes terms or conditions upon the approval or authorization of the proposed merger, such would be binding upon the applicants, if accepted by the board of directors of the Erie and the Lackawanna, without vote or approval of the stockholders, except in the event the conditions prescribed are in conflict with any express provision of the agreement.

Stockholders voting in favor⁴ of the proposal represent 95.23 percent of the Erie's outstanding preferred series B, and 72.54 percent and 72.88 percent of its preferred series A shares and its common shares, respectively. The Lackawanna's stockholders voted 76.93 percent in favor of the merger. The numerical results of the stockholders' voting follows:

	Capital stock—Shares		
	Outstanding	Favored	Opposed
Erie preferred, series A.....	125, 120	90, 766	961
Erie preferred, series B.....	210	200	0
Erie common.....	2, 450, 090	1, 785, 601	7, 611
Lackawanna capital.....	1, 638, 624	1, 260, 650	26, 619

⁴ Section 141, subsection 2 of Railroad Laws of New York requires favorable votes of stockholders representing at least two-thirds of all the outstanding stocks of each class. Section 600 of Title 67 of Pennsylvania Statutes requires favorable votes representing at least two-thirds of the voting power of the stock entitled to vote thereon.

As provided in the agreement, consents of the bondholders of the Erie and the Lackawanna were obtained. With practically no adverse vote, the execution of necessary supplemental indentures was approved for the purpose of modifying the provisions of the mortgages and the rights of the holders of securities issued under two existing Erie mortgages and nine existing Lackawanna mortgages.

Upon the merger being authorized, the Erie would acquire sole or joint control through stock ownership of other carriers over which the Lackawanna now exercises control or ownership, as follows :

Name of carrier	Shares owned	Total par value	Extent of control
			<i>Percent</i>
Hoboken Ferry Company.....	1,000	\$100,000	100.00
Harlem Transfer Company.....	2,000	200,000	100.00
Railway Express, Agency, Inc.....	14	No par	1.40
Pullman Company.....	3,905	39,050	0.53
Lehigh & Hudson.....	9,541	964,100	20.48

The Erie also would acquire the trackage rights now held by the Lackawanna to operate over 0.86 mile of branch line of the Pennsylvania Railroad Company in Northumberland, Pa., authorized November 23, 1948, in Finance Docket No. 16216, *Delaware, L. & W.R. Co., Abandonment, Etc.* (not printed in full).

Issuance of stock and assumption of obligations.—Subject to consummation of the proposed merger, the Erie seeks authority under section 20a, and proposes (a) to issue not exceeding 4,701,384¹⁵/₃₂ shares of Erie-Lackawanna Railroad Company common stock, without par value, and scrip certificates representing fractional interests in such stock, in conversion of 2,450,090 outstanding and 118³/₈ reserved for issuance shares of common stock, without par value, of the Erie on a 1¹/₄ for 1 basis, and 1,638,624 shares of common stock, without par value of the Lackawanna, on a share-for-share basis, (b) to issue not exceeding 49,200 shares of common stock, without par value, of the unified company, to be sold at \$21.3125 a share to satisfy existing options granted under the Lackawanna's restricted stock option plan, (c) to issue to holders of its preferred stock, series A and series B, at the option of the holder, a new certificate or certificates, on a share-for-share basis, bearing on their reverse side the voting powers of the shares of each class of stock which the unified company would be authorized to issue, and (d) to assume obligation and liability, under the joint agreement of merger, with respect to the principal of, and interest or dividends on, (as of March 31, 1959) \$121,368,950 of mortgage and other funded obligations and \$19,163,000 of equipment-trust obligations of the Lackawanna; all in connection with the proposed merger.

Of the obligations and liabilities to be assumed together totaling \$140,531,950, the equivalent of \$2,564,700 is held in the Lackawanna's treasury, leaving \$137,967,250 of net obligations to be assumed. The request also embraces obligations under 12 separate conditional-sale, or deferred-payment contracts in the aggregate amount of \$6,364,365. Conditional-sale contracts are not securities within the meaning of section 20a, and their assumption is not within the purview of the Commission's consideration. See *Lehigh Valley R. Co. Conditional Sale Contract*, 233 I.C.C. 359. That part of the application in which the Erie seeks authority with respect to the conditional-sale and deferred-payment contracts should be dismissed.

Attached hereto as appendix D is a list of each mortgage and equipment trust included in the obligations which would be assumed, which describes by title, 312 I.C.C.

date of issuance and maturity, rate of interest, and the amounts which would be assumed as of March 31, 1959.

The Erie estimates that the expenses which would be incurred in connection with the issuance of capital stock would be as follows: Federal issue tax \$28,000, Federal transfer tax \$11,000, engraving costs \$10,000, transfer agent's fees \$49,000, registrars' fees \$10,000, stock exchange listing fee \$10,000, and miscellaneous \$5,000; total \$123,000.

Abandonment of lines.—Subject to consummation of the merger, the Erie and the Lackawanna seek permission under section 1 (18)–(20) to abandon various segments of trackage together equivalent to about 73 miles, described as portions of existing lines, as follows:

Lackawanna's Black Rock branch at Buffalo, extending from milepost 392.4 at Kensington Ave., to milepost 396.4 at Black Rock in Erie County, N.Y., a distance of 4.0 miles.

Erie's Susquehanna division extending from milepost 199.7 at Great Bend to milepost 213.2 at Binghamton in Susquehanna County, Pa., and Broome County, N.Y., a distance of 13.5 miles.

Erie's Wyoming division, as amended ⁵ extending from milepost 35.4 at Gravity to milepost 48.2 at Hawley in Wayne County, Pa., a distance of 12.8 miles.

Lackawanna's Cranton-Buffalo division extending from milepost 264.6 at Gibson to milepost 269.0 at Erwins in Steuben County, N.Y., a distance of 4.4 miles.

Erie's Rochester division extending from milepost 293.3 at Erwins to milepost 309.5 at Bath (16.2 miles); plus the portion extending from milepost 314.2 at Kanona to milepost 336.3 at Wayland (22.1 miles), all in Steuben County, N.Y., an aggregate distance of 38.3 miles (shown in the record as 38 miles).

Each of the segments which would be abandoned is substantially parallel to and near similar single or double-track lines of the other applicant. Consequently, the proposed removals merely would eliminate facilities which are duplicative. Between Great Bend, Pa., and Binghamton, the Erie's line is on the easterly side of the Susquehanna River and the Lackawanna's line is on the westerly side. Where necessary, as discussed hereinafter, connecting trackage including a bridge across the river at Great Bend, would be constructed to permit physical connection with, and operation over, the present lines of the Erie and the Lackawanna which would be retained. As now constituted the Kensington-Black Rock segment is used almost entirely for yard transfer movements of freight cars. The Great Bend-Binghamton segment is used for through passenger trains, through freight trains, and one daily local freight train in each direction. On the Gibson-Erwins segment, the Lackawanna's passenger and freight station at the intermediate point of Corning would be retired, and the present station facilities of Erie would continue to be used. Wherever required because of the removal of the Erie's Rochester division trackage, industrial spur tracks or

⁵ At the hearing, the application was amended to delete the Erie's request to abandon an additional portion of the Wyoming division extending from milepost 8.6 at Hillside Junction to milepost 35.4 at Gravity, a distance of 26.8 miles; plus the portion of the Jessup branch from its beginning at Rock Junction to the junction of the Jessup branch and the Lincoln branch at Gypsy Grove, 1.8 miles; the portion of the Lincoln branch from its junction with the Jessup branch to its terminal, 0.8 mile; and the portion of the Scranton branch extending from Haines Junction to Dunmore, 1.6 miles, all in Lackawanna and Hawley Counties, Pa., equal to 4.2 miles of branch lines. The combined mileage of requested abandonment withdrawn is approximately 31 miles.

sidetracks connecting with the Lackawanna's trackage to be retained would be installed to afford continued rail service to affected shippers and communities. Likewise, where consideration of the distance to the retained line and the volume of traffic involved warrant construction of industrial trackage at other affected points, such would be provided. The proposed abandonments would result in no material changes in the movement of the traffic interchanged with applicants' connecting railroads.

Physically, each of the segments of line are maintained in condition sufficient to handle the traffic thereover. The tracks are laid on treated ties with stone or cinder ballast, and except that the Erwins-Bath and Kanona-Wayland segments are of 90-pound weight rail, the rail is of weights ranging from 100 to 132 pounds per yard. The names of stations intermediate on the segments which would be abandoned, the closest milepost number, the approximate population of each, and, in cases where no other railroad service presently exists, the distances by highway to other railroad stations, are as follows:

Abandonment segment	Station name	Milepost number	Approximate population	Nearest railroad
Black Rock.....	None.....			
Great Bend-Binghamton.....	Kirkwood.....	Erie 205.....	Unavallable	5.6
Gravity-Hawley.....	None.....			
Gibson-Erwins.....	Corning ¹	Lackawanna 267.....	17,684	(3)
	Painted Post.....	Lackawanna 268.....	2,405	(3)
Erwins-Bath.....	Coopers.....	Erie 296.....	650	(4)
	Campbell ¹	Erie 300.....	600	(4)
	Savona.....	Erie 304.....	869	(4)
	Avoca.....	Erie 318.....	952	(4)
	Wallace.....	Erie 321.....	150	(4)
Kanona-Wayland.....	Cohocton ¹	Erie 326.....	943	(4)
	Atlanta.....	Erie 330.....	250	(4)
	Wayland ¹	Erie 336.....	1,834	(4)

¹ Denotes agency station.
² Erie and New York Central service also available.
³ Erie service also available.
⁴ Lackawanna service also available.

The only points where present railroad service or comparable substitute service would not be available after the proposed abandonments are effectuated would involve users of teamtracks at Kirkwood on the Great Bend-Binghamton segment, who in 1957, and 1958, received 12 and 16 carloads, respectively, and in the first 5 months of 1959 received 28 carloads of which 24 were consigned to a highway contractor for use in the area. Freight service over the retained parallel trackage and construction of new facilities to reach affected shippers on the other segments would result in no significant changes in the existing service at the affected points. Other than changes in the routing of through trains, passenger service over the segments would not be affected inasmuch as Lackawanna's through trains between Gibson and Erwins which make station stops at Corning and the Erie's through passenger trains between Great Bend and Binghamton would be continued over the retained parallel lines. Present regular passenger service over the affected segments would remain available without material change.

The net salvage values of recoverable materials in the segments which would be abandoned, including tracks, bridges, buildings and structures, and crossing protection devices, and the estimated costs of removal, based on market values at 1956 levels, are as follows:

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Abandonment segments:	<i>Net salvage values</i>
Black Rock-----	\$118, 566
Great Bend-Binghamton-----	410, 980
Gravity-Hawley-----	¹ 197, 000
Gibson-Erwins-----	203, 273
Erwins-Bath and Kanona-Wayland-----	284, 129
	<hr/>
Total net salvage value-----	1, 213, 948

¹ Adjusted as to amended mileage proposed to be abandoned.

Estimates based upon studies underlying the merger proposal (taking into consideration the reduction in mileage that would be abandoned) indicate that annual savings directly attributable to the proposed abandonments would approximate \$518,282, based upon 1956 levels of wages and prices. The studies also indicate that adjustment of the 1956 estimates to 1959 levels result in increases of about 7.22 percent, making anticipated annual savings of about \$555,702, based solely upon the proposed abandonments.

Counsel for towns and villages and an organization representing the Cohocton Valley, comprising a majority of the municipalities in Steuben County, opposed abandonment of the segments between Gibson and Wayland. Their position is that the application does not encompass requests for the discontinuance of passenger trains and such should not be considered, except as to the lines that would be removed. The contention is tenable. Any discontinuance of train service which requires authorization from State agencies or from this Commission, should be determined upon appropriate proceedings instituted by either applicant, or by the unified company after the merger becomes effective. The protestants also request that shippers now receiving service at points on the abandonment segments be assured that necessary industrial sidings and spur-track facilities would be installed to permit freight service over the parallel lines. In the event such arrangements are agreed to, the communities and the organization would not continue their opposition. The applicants declared on the record that facilities suitable to specific industries involved would be constructed at or near Coopers, Campbell, Bath, Savona, Avoca, Cohocton, and Wayland.

Construction of trackage.—Upon the merger becoming effective, and, upon the abandonment of the segments proposed, the applicants jointly request authority to construct extensions of their lines in the form of connecting tracks aggregating 3.361 miles in length, of which approximately 1.6 miles would be main line trackage and 1.7 miles would be branch line. The projects are located at or near each of 5 points in New York, and 1 each in Pennsylvania and New Jersey, as follows:

Extending (a) from milepost 392.4 on the Lackawanna's Black Rock branch line to milepost 5.8 on the Erie's Niagara Falls branch line, approximately 900 feet; and (b) from milepost 1.6 on the Erie's international branch line to milepost 396.4 on the Lackawanna's Black Rock branch line at Buffalo, Erie County, N.Y., approximately 1,000 feet.

Extending from milepost 390.6 on the Lackawanna's line to milepost 420.0 on the Erie's line at Dingens Street, Buffalo, Erie County, N.Y., approximately 2,650 feet.

Extending from milepost 415.1 on the Erie's line to milepost 385.6 on the Lackawanna's line at Depew, Erie County, N.Y., approximately 2,200 feet.

Extending from milepost 199.7 on the Erie's line at Great Bend to milepost 178.3 on the Lackawanna's line at Hallstead, Susquehanna County, Pa. (including a bridge across the Susquehanna River), approximately 3,850 feet.

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Extending from milepost 293.3 on the Erie's line to milepost 269.0 on the Lackawanna's Buffalo division line at Erwins, Steuben County, N.Y., approximately 300 feet.

Extending (a) from milepost 284.9 on the Lackawanna's line to milepost 309.5 on the Erie's line, approximately 500 feet; and (b) from milepost 286.2 on the Lackawanna's line to milepost 310.7 on the Erie's line at Bath, Steuben County, N.Y., approximately 500 feet.

Extending (a) from milepost 6.0 on the Erie's Greenwood Lake branch line to milepost 8.5 on the Lackawanna's Harrison-Kingsland branch line, approximately 3,550 feet; and (b) from milepost 6.2 on the Erie's Greenwood Lake branch line to milepost 9.3 on the Lackawanna's Harrison-Kingsland branch line at Kearny, Hudson County, N.J., approximately 2,300 feet.

Where conditions pertaining to the foregoing projects require, adjacent trackage would be shifted to complete the proposed connections. Construction of the sections of 900 feet and 1,000 feet at Buffalo (Kensington Ave.), the 3,850 feet at Great Bend and 300 feet at Erwins, and the two sections of 500 feet each at Bath, are related to abandonment of the segments situated at the corresponding points, and would provide the connections needed to permit the movement of traffic over the parallel trackage which would be retained. The section of 2,650 feet at Dingens Street, Buffalo, would permit operation of the Lackawanna's passenger trains into its passenger station over trackage of the Erie, in a routing that would avoid passing through the Lackawanna's freight yard at East Buffalo. The section of 2,200 feet at Depew would provide access between the Erie's existing main-line trackage and a new freight yard contemplated to be situated on property of the Lackawanna in the vicinity of the latter's existing East Buffalo freight yard. The sections of 3,550 feet and 2,300 feet at Kearny would permit freight train movements, on the one hand, between Erie's so-called Croxton yard west of Hoboken and Jersey City, and, on the other, the Lackawanna's Kingsland industrial yard and its Harrison yard. The Croxton yard would constitute the unified company's main freight yard in the New York Harbor area.

The connections between the Lackawanna's Black Rock branch and (a) Erie's Niagara branch, and (b) Erie's international branch (1,900 feet), would be of two tracks of standard gage. The others would be of single track construction. At each point of connection the rails installed would conform in weight with the rails in the existing tracks. The construction would begin as soon as possible after authority is received and would be completed within about 12 months after the date of commencement. The cost of the proposed construction would be financed from available cash without the issuance of securities for that purpose. Estimates of the costs of each of the extensions including appurtenant additions and betterments to existing tracks, signals, communications and structures based upon 1956 levels, are as follows:

Point of connection	Feet of construction	Estimated cost	Point of connection	Feet of construction	Estimated cost
Black Rock, Buffalo.....	900	\$21, 168	Erwins.....	300	\$2, 110
Black Rock, Buffalo.....	1, 000	23, 781	Bath.....	1, 000	19, 679
Dingens Street.....	2, 650	255, 707	Kearny.....	5, 850	607, 328
Depew.....	2, 200	233, 769			
Great Bend.....	¹ 3, 850	1, 535, 000	Total estimated cost.....		² 2, 698, 542

¹ Includes construction of a bridge.
² \$2,986,642 upon adjustment to 1959 levels.

MERGER STUDIES AND REPORT

Methods and conclusions.—Consideration of the feasibility of merger initially was commenced in September 1956 when the Erie, the Lackawanna, and the Delaware and Hudson Railroad Corporation each appointed merger committees to explore possible terms and conditions relating to a merger of those three companies. Together, they retained Wyer, Dick & Co., a firm of transportation consultants, to prepare appropriate engineering and accounting analyses upon which to estimate the economies that would accrue as a result of the merger and consolidation of the three carriers. In July 1958, the New York investment banking firm, First Boston Corporation, was engaged by the three carriers to determine the feasibility of the three-carrier merger with respect to pertinent financial considerations. In September 1958, Wyer presented a preliminary report and recommendations which the carriers submitted to First Boston to include in the factors being considered. Having been directed to present only oral reports, First Boston, on about April 13, 1959, expressed its conclusion that there was no practicable basis for the three-carrier merger, and recommended that its consideration be discontinued. Its retainer was terminated on April 17, 1959. The Erie and the Lackawanna then directed Wyer to resume the merger studies on the basis of a two-carrier merger, and to reduce as far as possible the previously recommended capital expenditures. From the projects considered in the three-carrier merger, the new study eliminated the construction of a \$10,000,000 hump yard at Binghamton, the remodeling of a building in north New Jersey for general office use, and the creation of a subsidiary self-insurance company. No outside firm was engaged to study the financial aspects of the two-carrier merger. At a joint all-day meeting on April 22, 1959, the merger committees of the Erie and the Lackawanna, composed of several of the officers and board members of each, entered negotiations and mutually agreed upon the terms for the exchange of the capital stock of the applicants for shares of stock of the unified company.

By letter to the applicants dated June 22, 1959, Wyer summarized his preliminary conclusions and presented estimates of the ultimate increase in net income realizable, and the net cash required to effectuate the two-carrier merger. These conclusions are contained in a final report dated August 6, 1959, entitled "Report on Economics of Merger."

The application under consideration is founded primarily upon the recommendations contained in the Wyer report, which is described as embracing every important method of economy possible upon merger of the two companies. The studies are limited to those portions of the lines in New York, New Jersey, and Pennsylvania where physical changes might result from the merger, and the detailed traffic and routing considerations exclude all business of Erie originating, terminating, and moving entirely west of Buffalo. The changes in operation proposed as sources of potential savings include only those aspects which could not be achieved except by the process of merging the companies.

The studies comprising the Wyer report were constantly supervised by the president and vice president of the Wyer firm, an assistant vice president of the Erie, and a vice president of the Lackawanna, serving as a steering committee, and providing liaison with the officers and boards of the applicants. The committee decided the specific topics to be investigated in 22 definitive studies and 5 additional underlying studies, in reference to each of which the changes in net income and the net cash requirements were estimated. Procedures for investigating each subject were determined by the steering committee, and instructions were provided for the applicants' departments which would furnish the information required. Inspections which were part of the studies were made

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during 1957, and data for the calendar year of 1956 were the most recent available.

The savings and net cash requirements were determined at 1956 levels of revenues and expenses, and, after giving effect to changes in volume of business in each period subsequent to 1956, were adjusted to later levels. For example, revenues are adjusted to rate levels effective May 1, 1959; wage levels include increases effective to November 1, 1958; material prices accord with the published 1958 index of average unit prices of railway materials and supplies; and payroll taxes are adjusted to June 1, 1959. The results of the studies are concurred in by the steering committee, which itself participated in the more important inspections required as bases for exercising judgment. The estimated changes in net income and cash realized or required would not be achieved in full at the outset. The potential changes shown would not be realized for as many as 5 years because portions of the savings necessarily depend upon completion of the proposed abandonments and related construction projects. To provide for unforeseen contingencies, the aggregate results warranted by the studies are appropriately adjusted by a factor of 15 percent.⁶

The aggregate amount of the net savings reported by Wyer indicates that the modifications necessary to achieve efficient utilization of the applicants' facilities by the unified company, when operative, would result in increasing the combined present income available for fixed and contingent charges before Federal income taxes, up to \$15,931,810, or \$13,542,038 after allowance for contingencies. Each of the component net totals had been reduced by the cost of a 5 percent carrying charge on the net nonrecurring cash expenditures, required to effectuate the proposals. It is estimated that the gross cash expenditures necessary to provide the changes would be \$25,454,691, but, that the cash equivalent of \$25,197,616 would be recovered from the salvage of the abandoned facilities. Thus, the net cash requirements plus contingencies would be \$295,636, but, because there would be a lag in time prior to realizing cash from the accumulated salvage and the amount of income tax benefits, the maximum cash required to be available to proceed with the projects would be \$1,610,086 needed for expenditure during the end of the second year. Because of reasons especially applicable to the individual studies, some of the predicted increases in net income would not be realized in full until up to the fifth year after the merger date. The estimated percentage of achievement and the equivalent amounts of savings which would accrue during 5 years after the merger would be as follows: First year 9 percent, \$1,268,189; second year 46 percent, \$6,200,184, third year 75 percent, \$10,219,617; fourth year 93 percent \$12,588,226, and fifth year 100 percent, \$13,542,038.

Of the 22 studies of the Wyer report, the intervener railroads take issue with study V, "Possibility of Soliciting Carload Traffic for Longer Hauls," and study XIII, "Effect of Merger on System Freight Revenues," both of which are outlined and described in the immediately succeeding portion of this report entitled "Traffic Considerations." The labor association disputes the estimates of study XVI, "Labor Contracts," which is discussed hereinafter under the general topic "Employee Considerations." The net effect of the Wyer report referred to hereinabove includes in the overall result, the net savings and the cash requirements in regard to the traffic and employee studies.

⁶ The ultimate net savings and cash requirements arrived at in schedules showing the calculations pertaining to each individual study, in every instance, vary from the amounts entered under the corresponding items in a statement entitled, "Summary of Estimated Savings and Net Cash Requirements at Current Revenue and Expense Levels." The differences are not significant, and unless stated otherwise, the totals cited are drawn from the summary statement, which reflects amounts less favorable to the applicants' position.

Several of the Wyer report studies pertain to recommended modifications of the existing properties of the applicants in order to achieve physical unification of the lines and facilities. At Hoboken-Jersey City on the east and Buffalo on the west, and along their lines between those areas, the Erie and the Lackawanna each serves the same large terminals and various outlying stations, and cross or meet the lines of each other at 55 common points. Except where outstanding authorized coordinations¹ already permit joint operations, the applicants conduct individual carrier services at the common plants on separate properties with separate operating organizations. Inspection teams involved in the studies herein determined which facilities at such common points should be retained by the unified company and which should be released for sale or rental, and estimated the size of the work force which would be required at each point after the merger. Substantial savings are possible by coordinating the facilities and operations at the common points and areas of New York City (freight stations), Hoboken-Jersey City; Newark-Harrison-Kearny, Passaic, Paterson, Little Falls, N.J., Mountain View, N.J., Scranton-Avoca, Binghamton, Corning, Lancaster-Depew, Buffalo, and Black Rock.

Major modifications are planned at the four principal common points: namely, Buffalo, Binghamton, Scranton-Avoca, and Hoboken-Jersey City. The most extensive project pertains to the various yards and other facilities of the applicants at Buffalo and its environs. As shown hereinafter, the protesting carriers are concerned chiefly with the prospect of changes in the situation at the Buffalo area. Therefore, a description of the outstanding features of the contemplated Buffalo modifications is necessary. The Lackawanna's principal line enters the area from the east via Depew at East Buffalo, and continues to the passenger station at Buffalo; and a Lackawanna double-tracked freight line, over which the Pennsylvania and the Chesapeake have trackage rights, extends from East Buffalo to Black Rock. The Erie has a line from Hornell which enters from the east at East Buffalo and closely parallels the Lackawanna's line from Depew to East Buffalo; a line from Jamestown which enters from the south over trackage of the Buffalo Creek Railroad Company;² and its Niagara Falls branch which enters from the north via the Erie's Suspension Bridge and Black Rock. The Chesapeake & Ohio Railway Company (Chesapeake) has trackage rights over the Niagara branch between Suspension Bridge and East Buffalo, and the Wabash has trackage rights between Black Rock and a designated point in Buffalo. Lackawanna's principal freight yard is at East Buffalo, consisting of eastbound and westbound yards separated by its main lines. The Erie's principal freight yard is immediately west of the Lackawanna's freight yard and is comprised of six small yards designated as Canada, Old BSW, JX, Eastbound Receiving, Eastbound Departure, and North yards. Throughout the area, both applicants have numerous other tracks and small holding yards required for interchanging cars with other railroads and for serving industries.

The principal freight yard of the unified company within the Buffalo area for the originating and terminating of all freight trains and transfers would be located at East Buffalo where land owned by the Lackawanna is available for expansion and where the least amount of new construction would be required. Through freight trains and all passenger trains would use the Erie's line between Buffalo and Corning. To provide capacity to handle the combined traffic of the applicants, a new modern electronic hump retarder yard would be built between

¹ *Erie R. Co. Trackage Rights*, 295 I.C.C. 303; *Erie R. Co. Ferry Abandonment*, 295 I.C.C. 549, 599; and *Delaware, L. & W. R. Co. Trackage Rights*, 295 I.C.C. 743, involving facilities at Hoboken, and Jersey City, N.J., and between Binghamton and Gibson, N.Y.

² The Buffalo Creek Railroad Company is owned and leased jointly by the Erie and the Lehigh Valley.

the present main lines of the Erie and the Lackawanna, with the major portion of the new trackage located east of the Lackawanna's eastbound yard. About 80 percent of the expanded facility could be completed without disturbing the present operations of the applicants. Passenger trains would be rerouted from the Erie's line to the Lackawanna's line and would operate along the southerly edge of the new yard instead of through the middle of the Lackawanna yard, as at present. A freight car repair track would be located at the present Lackawanna shop at East Buffalo for running repairs, and the Lackawanna's repair building and trackage would be modified to provide progressive repairs. Two piggyback loading and unloading tracks would be adjacent and parallel to the leads at the west end of the present Lackawanna westbound yard; its freight house would be used for less-than-carload freight; and the Erie office building would be used for the station agency and clerical force.

The described concentration of freight yard operations and facilities in the Buffalo area would permit abandonment of the entire yards and building constituting the Erie's freight yards except the Canada yard, a repair yard, and an interlocking tower and plant, at East Buffalo; and freight house facilities located at Louisiana Street in Buffalo. The entire eastbound yard of the Lackawanna, and its enginehouse (except two tracks) and a track scale at its repair yard in East Buffalo also would be abandoned. Annually, the net savings which would be derived by instituting the foregoing changes are estimated to total \$1,803,556; and the net cash requirements, considering the salvage value and cash realizable from related sources, would be \$4,075,681, the cost of the interest on which has been included as an expense.

Similarly, unifications of the existing separate yard and other facilities at Binghamton would result in annual net savings of \$190,533, and net cash requirements of \$15,403; the changes within the Scranton-Avooca area would produce annual net savings of \$902,227, and the net cash requirements would be \$63,482; and the combined changes at Hoboken-Jersey City, including railroad and water front facilities and general yard and related installations in the New Jersey terminal area and the freight yards of Erie at Croxton, Jersey City, and Weehawken, and those of the Lackawanna at Hoboken, Secaucus, and Harrison, would provide annual net savings from all sources of \$1,584,581 and a net cash surplus of \$123,551. Additional net savings of this type would be achieved at each of the remaining common points where substantial savings are possible. Together, the aggregate net cash requirements for the projects at the 13 common points in question would total \$4,208,982, and the annual net savings would amount to \$4,529,228. In part, the foregoing savings would involve the abolishment of 395 operating positions, the elimination of 205 switch engine tricks per week, and the release for other uses of 17 yard and 6 road locomotives.

A summarization of the topics covered by the remaining 18 studies of the Wyer report, and statements of the more salient predicted effects of the recommendations therein, are sufficient to serve the purposes of the report. In view of there being no contentions by the interveners regarding the conclusions contained in the report (other than those of Studies V, XIII, and XVI), and as examination thereof reveals no serious errors favoring the position of the applicants, the finding is warranted that the savings shown, and the methods employed in their computation, are supported by the record and should be adopted. Other than the foregoing study concerning the common points, the report presents estimates of the annual savings which would accrue from (a) the elimination of duplicative facilities discussed hereinabove in regard to the proposed abandonment of lines; (b) combining the present scheduled freight trains of the Erie and the Lackawanna to permit operation of fewer regular trains each with heavier loads, and the selection of future basic routes for the movement of regular freight trains

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which would utilize the most advantageous portions of the applicants' existing lines to attain the lowest practicable out-of-pocket costs; and (c) the pooling and consolidation of less-than-carload traffic, locomotives and freight cars, passenger equipment and competitive through passenger trains, work equipment, marine facilities, and operations in the New Jersey-New York harbor area, facilities for repair of freight cars including abandonment of the Lackawanna's Keyser Valley shops and enlargement of Erie's shops at Meadville, materials and supplies, communication facilities and forces including construction and ownership of new telephone and teletype circuits and extension of radio communication in yard operations, and of the police departments of the applicants.

The organization of the unified company would be on a divisional basis with system headquarters in Cleveland. The system would have two operating divisions each supervised by a general manager, and seven divisions within the districts, each directed by a superintendent. The district and division designations, and the mileage to be embraced in each (without adjustments to give effect to the withdrawal of portions of the proposed abandonments) would be as follows:

Designation	Miles of line			Total
	Main	Branch	Other ¹	
Eastern district:				
New Jersey division.....	187	253	8	448
Middle division.....	372	511	85	968
Buffalo division.....	95	250	3	348
Total.....	654	1,014	96	1,764
Western district:				
Allegheny division.....	183	215	51	449
Mahoning division.....	88	188	3	279
Kent division.....	119	85		204
Marion division.....	245		20	265
Total.....	635	488	74	1,197
Grand total.....	1,289	1,502	170	2,961

¹ Denotes lines used under trackage rights.

As estimated (a) unification of the general expense items would permit annual savings totaling \$1,848,898, accounted for by the elimination of duplicative functions in the various departments, and lower costs for incidental items; (b) unification of the traffic departments including the on-line and off-line sales activities would engender annual savings of \$1,592,257; and (c) unification of forces engaged in supervising operating and maintenance department employees would be reduced by about 20 percent, and provide annual savings of \$1,092,459 in wages, salaries, and incidental expenses.

The present through passenger trains of the Erie between Hoboken and Chicago provide service competitive to that of Lackawanna's trains between Hoboken and Buffalo, and Hoboken and Binghamton. Changes in the operation of the through passenger trains alleged by applicants to be feasible after the merger would reduce the present four daily trains eastbound and four westbound between Hoboken and Buffalo to two trains in each direction between those points, and a new daily train each way would be inaugurated between Hornell and Buffalo. Other through passenger trains would not be disturbed. Comparing the existing and the proposed revised train-miles, unit-miles, and car-miles operated by the affected passenger trains; the potential loss in passenger and mail revenues and expected increase in express revenues; the out-of-pocket costs; and the Pullman deficits and joint-facility rentals, the estimated new service would provide net revenues \$519,488 greater than that which the ap-

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plicants together presently experience. Generally, in addition to the foregoing annual net savings, the unified company's expenses would be affected by small changes in the payment of annual ad valorem taxes, increased favorable joint-facility rental balances, and the cost of uniform plans of providing pension, group insurance, and medical payment for employees.

Because a considerable portion of the present traffic of the applicants would be rerouted to secure the longest practicable movement over the unified lines, the physical facilities and maintenance practices at points and areas apart from the previously mentioned common points and duplicating lines, would account for net annual savings of \$1,317,304, and net cash realization of \$2,319,591. Among the changes contemplated are the routing of all traffic between Buffalo and points east thereof over the Erie's line between Buffalo and Corning; using the Lackawanna's line between Corning and East Buffalo for local freight service only; using the Lackawanna's line from Scranton to Stroudsburg primarily for passenger service; and expanding the facilities at the Erie's Hornell yard and increasing the use thereof for classification of Buffalo traffic. The changes in routing and usage would permit downgrading the classification of several segments of line, removing portions of the affected trackage, and eliminating facilities presently being utilized.

TRAFFIC CONSIDERATIONS

Applicants' position.—The ultimate savings mentioned hereinabove are dependent upon changes in the pattern of handling freight which the Erie and the Lackawanna, as originating, delivering, or intermediate carriers, presently interchange with other railroads. Generally, the rerouting would depend upon soliciting the shippers or receivers to designate routing which would assure movement over the line of the unified company for distances greater than presently moving over the lines of the applicants. The traffic most likely to be amenable to such efforts involves movements to and from points west of Buffalo, and movements to and from points in New England. Analysis of the cars which could be rerouted to benefit the unified company, and the differences in the revenues which would be entailed, shown in Study V of the Wyer report, discloses that additional net freight revenue of \$5,079,246 per year could be realized. On the other hand, analysis of existing traffic susceptible to being diverted away from the unified lines because of increased counter solicitation by the connecting railroads, Study XIII, indicates annual decreased net revenues amounting to \$3,967,026. The applicants estimate that the benefits foreseen as a result of the favorable routing would not be fully realized until the fifth year after the merger date, but would accumulate at the rate of about 20 percent the first year, and in succeeding years, in order, would total 35 percent, 65 percent, 90 percent, and 100 percent. However, the diversion expected to the detriment of the unified company would total 60 percent in the first year, 80 percent in the second, and 100 percent in the third year. Because of the difference in the rate of achieving the gain and loss of traffic subject to rerouting, at the end of the third year, the net effect will be a loss to the unified company.

The applicants together handled more than 1,750,000 freight cars during 1956. For purposes of conducting the studies upon which the foregoing conclusions are based the principal commodities that moved over each applicant's lines during the period November 1955 through October 1956 were determined, and the traffic moving in October 1956 was found to be typical of the entire year's carloading. Details showing the commodities, cars, tons, points of origin and destination, and the routing and revenues of carload freight, drawn from waybills

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of 59,444 cars which moved over the lines of the Erie, excluding cars handled wholly west of Buffalo and Hornell, and 54,707 cars moving over the Lackawanna's lines were recorded and tabulated. Included were 11,615 cars of the Erie and 5,342 cars of the Lackawanna which moved entirely within the study area, referred to as local traffic. The results shown by the waybill study were expanded to represent the 1956 total traffic by multiplying the October totals by a factor of 10.72 for the Erie, and 10.43 for the Lackawanna, which is the relationship of the October traffic to comparable totals for the year. The savings computed for 1956 were adjusted to a level 10 percent above the 1958 totals by decreasing the amounts by 18.7 percent, which represents the decline in carload traffic in the railroad industry in the period since 1956. Actual data for 1958 were not considered a reliable basis for comparison for the reason that freight movements that year were below normal due to depressed business conditions.

The traffic departments of each applicant determined which of the cars presently handled over their lines would be susceptible to solicitation by the unified company for longer hauls, and selected the available practical routing which might be used in regard to each car. Based upon their judgment of the factors involved in the individual shipments believed susceptible, the traffic officers determined that all the Erie cars and approximately 42 percent of the cars handled by the Lackawanna would be subject to being rerouted in favor of the unified company. Of the totals so regarded, it was estimated that 24 percent were obtainable for rerouting within 5 years, and would remain the same thereafter. Thereupon, the accounting departments developed the additional gross ton-miles, per diem charges, and private line car-miles, and by applying tariff rates estimated to be 13.2 percent higher in 1958 than in October 1956, determined the additional freight revenue which would accrue as a result of the rerouting. The estimated cost of handling the traffic the increased distance over the unified lines, based upon appropriate freight out-of-pocket costs per 1,000 gross ton-miles pertaining to the operating districts over which the traffic would move was deducted from the computed gross revenues, and average allowances were made for the handling of related empty cars. The resulting net revenues are shown as being equivalent to the estimated increase in the earnings of the unified company. The underlying details of the study as presented, are as follows:

Study V factors	Erie	Lackawanna	Total
Waybills studied—interline cars.....	53,712	57,182	110,894
Cars susceptible to rerouting:			
October 1956 count.....	79	24,546	24,625
Annualized 1956 total ¹	847	256,015	256,862
Cars scorable for rerouting:			
Interline forwarded.....	268	20,568	20,836
Interline received.....	579	15,541	16,120
Interline overhead.....		25,855	25,855
Total.....	847	61,964	62,811
Estimated additional revenue:			
Interline forwarded.....	\$86,936	\$2,107,997	\$2,194,933
Interline received.....	98,306	2,536,347	2,634,653
Interline overhead.....		2,303,285	2,303,285
Total.....	\$185,242	\$6,947,629	\$7,132,871
Less allowance for corrections.....	² 7,326	267,831	275,157
Estimated adjusted revenue.....	\$177,916	\$6,679,798	\$6,857,714
Additional gross ton-miles (in thousands).....	8,979	1,436,252	1,445,231
Additional out-of-pocket cost.....	\$9,378	\$1,388,589	\$1,397,967
Estimated increased earnings.....			\$5,459,747

¹ Annualized by multiplying by 10.72 for the Erie, and 10.43 for the Lackawanna.

² 3.955 percent for the Erie and 3.855 percent for the Lackawanna.

The connecting carriers which would lose part of their movements in the handling of carloads considered reroutable, the number of cars affecting each, and the revenues estimated to be diverted by the rerouting which would occur, as annualized from the data pertaining to October 1956, is summarized as follows:

Connecting railroad	Cars re-routed	Approximate revenue loss	Connecting railroad	Cars re-routed	Approximate revenue loss
Baltimore & Ohio.....	845	\$200,000	New York Central.....	4,704	\$546,000
Canadian National.....	1,439	241,000	Nickel Plate.....	20,839	3,647,000
Central of New Jersey.....	125	27,000	New York O. & W. ¹	6,122	315,000
Chesapeake & Ohio.....	3,473	682,000	Pennsylvania.....	584	113,000
Lehigh & Hudson River.....	21,434	579,000	Reading.....	21	3,000
Lehigh & New England.....	2,284	76,000	Wabash.....	5,862	889,000
Lehigh Valley.....	10	1,000			
Michigan Central.....	313	35,000	Totals.....	68,055	7,354,000

¹ New York, Ontario and Western Railway Company, abandoned pursuant to authority in Finance Docket No. 19861, decided October 10, 1957. Most of the traffic involved, absorbed by the Lehigh & Hudson and the Lehigh & New England.

In the same manner that a potential exists that certain traffic would be solicited for rerouting to the benefit of the unified company, the applicants represent that a portion of their present interline traffic is susceptible to rerouting to the detriment of the applicants. The diversion is expected to occur as a result of those railroads which connect with the applicants at Buffalo, soliciting for the movement of traffic for interchange with connections other than the applicants. As such rerouting involves existing competitive routes, it is possible that the adverse solicitation might have begun when the merger application herein was filed, and that as much as 40 percent of the rerouting might be effective prior to consummation of the merger. The most serious losses of this nature would involve traffic originating or terminating west of Buffalo and moving over the Lackawanna's lines to or from the New York Harbor or New England areas. The losses would be greater eastbound than westbound. No losses are estimated in Erie's traffic, since the solicitation policy of the unified company would be substantially the same as Erie's policy at the present time. The losses shown in Study XIII of the Wyer report, represent about half of the Lackawanna's overhead traffic between Buffalo and New England, and approximately 24.5 percent of the Lackawanna business originating or terminating at New York and interlined with connections at Buffalo. Estimates of the number of cars affected and the related revenues which would be lost annually, and, the net loss after deducting the estimated out-of-pocket costs which would be saved if the traffic does not continue to move, is shown as follows:

Lackawanna traffic	Cars	Revenue	Costs saved	Net loss
Overhead Buffalo-New England.....	26,492	\$2,244,992	\$819,454	\$1,425,538
From Buffalo to New York.....	18,023	3,131,510	620,679	2,510,831
To Buffalo from New York.....	1,888	341,300	63,206	278,094
Totals.....	46,403	\$5,717,802	\$1,503,339	\$4,214,463

The applicants state that the revenues which the unified company would not receive as a consequence of the rerouting the connecting carriers might institute would be divided among carriers operating east of Buffalo, as follows:

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Central of New Jersey.....	\$250, 042
Lehigh & Hudson.....	330, 466
Lehigh & New England.....	33, 215
Lehigh Valley.....	4, 756, 798
New York Central.....	347, 281

A further loss of \$32,286 in freight revenues would occur as a result of the unified company receiving lower divisions of the freight rates applying on the Erie's interline traffic to and from points on the Central of New Jersey. Such traffic presently is interchanged at Plains Junction, Pa., but, after the merger, would be interchanged at Taylor, Pa., on the Lackawanna's line. Comparing the net loss of revenue considered divertable by action of the connecting carriers, with the net earnings contemplated as a result of solicitation for longer hauls over its lines, the increased earnings of the unified company would amount to \$1,212,998.

Freight routes and service.—The Lackawanna's principal gateways for the interchange of freight are at Buffalo to and from points west thereof; Binghamton to and from Albany, upper New York State, and northern New England via the Delaware & Hudson and the Boston & Maine; Scranton (Taylor) to and from southern New Jersey, eastern Pennsylvania, Maryland, Potomac Yards, Va., and points in the south via the Central of New Jersey connecting at Rupert, Pa., with the Reading; and Port Morris, N.J., to and from southern New England via the Lehigh & Hudson to Maybrook where connection is made with the New Haven.

The Lackawanna's eastbound main-line freight service between Buffalo and Hoboken-New York area presently is provided by five scheduled symbol trains, the operating times of which would be adjusted to connect with the Erie's perishable goods trains at Hornell, and otherwise to maintain or improve the overall handling of cars to points of connection with the trains of other railroads. Eastbound scheduled trains from Buffalo to the connections at Binghamton consist of five trains which would be reduced to three trains scheduled to make connections at Binghamton. Cars for Taylor and Rupert and points south, now moving in two trains would be combined in a single train and operated to make the present connections at Taylor and Rupert. Southern New England cars, which presently move in two trains to Port Morris would be handled in one train with present deliveries and connections unchanged. Correspondingly similar changes would be provided in regard to schedules of westbound trains, and necessary connections provided by the Erie's and the Lackawanna's present freight-train service would be observed.

The presidents of the Erie and the Lackawanna, and other officials responsible for freight service, assert that the present schedules of freight service would be maintained without change insofar as they pertain to the frequency of service, the meeting of trains of connecting carriers, and the rendering of service competitive with the routes involving other carriers at Buffalo. As shown hereinbefore, in every possible instance where practical alternative direct routes are available, the unified company would seek to secure the long haul, and would route cars to and from points west of Buffalo and Hornell in a manner which would eliminate operations via the Buffalo gateway whenever the shipper fails to specify the junction point for interlining with the unified company's connecting carriers. The existing obligations of the Erie and the Lackawanna to each of their connecting carriers would continue to be honored. However, the unified company would seek to reduce its yard expenses and expedite the handling of freight cars by improving the interchange arrangements with other railroads and would negotiate changes satisfactory to the connections which

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would result in eventual elimination of present duplicating interchange arrangements.

Position of intervener railroads.—The railroads intervening conditionally in support, those intervening as their interests may appear, and those intervening conditionally in opposition to the application to merge, together take issue with aspects of the conclusions based upon the contemplated rerouting shown by Study V, and the alleged loss of present traffic to the connecting carriers mentioned in Study XIII.

The Nickel Plate is exercised about the predicted injury to its interchange traffic and related revenues as a direct consequence of the proposed merger of the applicants, and other traffic diversions which presumably would result. The attitude relates to the rerouting of interline traffic contemplated by the unified company (Study V), and the utilization of the Erie's long-haul gateways rather than the continued use of Buffalo in the handling of Nickel Plate traffic. Buffalo is the only point of junction between the Lackawanna, whose lines extend eastwardly, and the Nickel Plate, whose lines extend westwardly. A substantial portion of Nickel Plate's traffic to and from its western gateways at Chicago, Peoria, Ill., and St. Louis, Mo., moves via Buffalo, where most of its cars from and to points east thereof are interchanged with the Lackawanna. The combined Nickel Plate-Lackawanna through route competes with the Erie's single line route to and from Chicago, and with the combined route of Nickel Plate-Erie through the junctions of Buffalo and Lima, Ohio. In instances where present Lackawanna traffic for the Chicago, Peoria, or St. Louis gateways would be routed over the unified company's lines to the junction with the Nickel Plate at Lima and Chicago, the Nickel Plate's loss in revenues would involve divisions pertaining to movements of 326 and 523 miles, respectively. The traffic in the handling of which the Nickel Plate participates with the Lackawanna in joint routes, accounts for approximately 11.9 percent of the Nickel Plate's total gross freight revenues; and of the cars received by the Nickel Plate from connecting railroads, those delivered by the Lackawanna have represented an average of about 13.8 percent.

The fears expressed by the Nickel Plate are founded in part upon a study of loaded cars interchanged with the Erie at Buffalo, which reveals a decline of the equivalent of 64 percent in the total number of cars so interchanged between 1942 and 1958, inclusive, and shows in each of the years 1955 through 1958, in order, that the Nickel Plate delivered 28,155, 26,729, 22,750, and 19,394 cars to the Erie, and received from the latter 7,789, 7,002, 6,017, and 3,903 interchange cars. It contends that a similar future decline in Lackawanna's traffic moving over the unified lines would be inevitable, and when accomplished, would seriously prejudice the traffic of the Nickel Plate. It also charges that the Erie heretofore has managed to favor the schedules pertaining to the Nickel Plate's interchange traffic handled to or from Lima or Chicago, and place at a disadvantage in terms of service, the Nickel Plate traffic routed for connection at Buffalo.

On brief, the Nickel Plate points out that Wyer's report sets forth details of component studies which underlie the alleged increase in revenues and decrease in expenses, arrive at final totals which vary from those used in the overall summarization of the various studies considered together. The Nickel Plate's analysis of the computations indicate that the differences arise because the traffic figures which are based upon records of October 1956 are not reconciled with the operating data which are based upon November 1956 records. The results therefore are termed conflicting and unreliable, and the estimates used to represent 1958 totals are said to seriously understate the losses which
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the Nickel Plate probably would suffer because of the rerouting contemplated in the studies. The totals cited for purposes of this report are those shown in the summary portion of Wyer's report and are less in favor of the applicants' position than the items shown in the underlying studies. Obviously, whether the component totals are understated or overstated from the point of view of the interveners, the potential savings represent projected estimates which are reasonable approximations of what the unified company might experience after consummation of the proposed merger. Considering the many variables upon which personal judgment must be applied in arriving at conclusions, and the possibility that errors, if any, may favor the position of the applicants or the interveners herein, neither the Nickel Plate nor any intervener has presented bases for finding that the estimates are unreliable or otherwise not worthy of consideration.

The Nickel Plate cites evidence, adjusted to reflect 1958 levels, which shows that 67,489 carloads of present Nickel Plate-Lackawanna freight are susceptible to being rerouted by the unified company; that the applicants estimate only 16,943 of those cars entailing gross revenues of \$2,852,933 would be divertable within 5 years after the merger; that in regard to the rerouted carloads Nickel Plate could continue to handle 1,857 cars for shorter hauls over its lines and receive relatively lower revenues thereon, but would lose its entire participation in 15,086 of the divertable cars; and that an additional 11,693 cars, not showing Buffalo as the junction point, would be susceptible to being diverted from the Buffalo gateway to the Lima gateway for interchange with the Nickel Plate. Further, the applicants do not expect the Nickel Plate to benefit by any portion of the revenue losses reflected in the estimated diversion the unified company would suffer as a result of the retaliatory actions of the connecting railroads (Study XIII). The Nickel Plate uses April 1959 comparable traffic data multiplied by an appropriate factor to estimate future annual totals, and concludes that the unified company potentially would be able to divert 21,805 westbound Nickel Plate cars plus 11,745 eastbound cars, or a total of 33,550 carloads of freight, compared to the recomputed total of 28,636 cars based upon 1958 bases, which the applicant asserts would be divertable.

The Wabash contends that the Erie-Lackawanna merger as proposed would adversely affect the interests of the Wabash and those of its shippers, the communities which it serves, and the States of Missouri and Illinois where considerable of the Wabash facilities are situated and where many of its employees reside. Its lines extend westwardly from Niagara Falls (Suspension Bridge) and Buffalo to Detroit, Mich., Chicago, St. Louis, Kansas City, Mo., Des Moines, Iowa, and Omaha, Nebr., via numerous important intermediate points. The largest volume of interchange of the Wabash traffic within the Niagara Frontier area, which includes Niagara Falls, Ontario, Canada, and Black Rock, Buffalo, and Niagara Falls (Suspension Bridge), is with the Lackawanna. Such traffic is moved between the Lackawanna's Black Rock yard and the Wabash's Fort Erie yard in Canada across the Niagara River from Black Rock. It interchanges traffic with the Erie at Black Rock by means of a switching movement of about 1 mile to and from the Wabash's Fort Erie yard, and at Niagara Falls, as well as at Chicago and Huntington. During 1958, the Wabash's interchange of cars with the Lackawanna at the Niagara Frontier points, excluding traffic receiving switching service within the Buffalo switching district only, totaled 21,516 eastbound and 29,939 westbound, or, 51,455 carloads involving gross revenues to the Wabash of \$8,961,614 the equivalent of 8.3 percent of its total gross revenues; and with the Erie totaled 13,902 eastbound and 1,064 westbound, or 14,966 carloads involving gross revenues of \$2,291,015,

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the equivalent of 2.1 percent of its total gross revenues. The Wabash owns and operates a freight house on land owned by the Erie, and uses the latter's team tracks in Buffalo at Smith and Seneca Streets, and, since about 1898 operated between such facilities and Black Rock under lease, limited to through movements, over approximately 11 miles of the Erie's trackage.

The Wabash submits that the applicant underestimated by 2,652 cars the October 1956 Wabash-Lackawanna interchange traffic which would be susceptible of rerouting by the unified company. Recomputing the net results, the Wabash contends that its revenue losses would be \$1,900,000 on the basis of \$150 per car average Wabash revenues (approximately the average used by the applicants), or \$2,200,000 annually on the basis of \$174 average Wabash revenue per car on Wabash-Lackawanna interchange traffic in 1958. Further, the Wabash points out that its traffic connecting at the Niagara gateway consists of about 43.9 percent overhead or bridge business; almost half of the cars interchanged with the Lackawanna in that area originate on the Lackawanna; that Wabash-Lackawanna interchange traffic moves via Black Rock, the only junction point, even though practically none of the billing involved names the junction; that as the overhead carrier, the Wabash would have difficulty soliciting the shippers to insert Black Rock as the point of junction, and the traffic probably would be routed by the unified company via the Huntington or Chicago gateways; that previous combined solicitation efforts to secure Lackawanna-Wabash routings for traffic necessarily would end, and in its stead, the unified company would solicit for routes avoiding Buffalo; and that at the Black Rock connection, the Lackawanna presently delivers 1.4 cars to the Wabash for each car it receives from the Wabash, but the Wabash delivers 13 cars to the Erie for each car the latter delivers to the Wabash, and, after the merger, the latter ratio probably would prevail in regard to interchange between the unified company and the Wabash. In view of these and similar other characteristics, the Wabash contends that the proposed elimination of the Lackawanna as an independent railroad connecting at Niagara Frontier with the Wabash would change the competitive service via that gateway, and that to continue to compete with the unified company it would be imperative that the Wabash improve its position by effectively arranging to expedite the interchange of traffic with all its connecting carriers.

The Wabash also interchanges traffic with the Lehigh which, as the Lackawanna does, has its western terminus in the Buffalo area, and operates between that area and points in New Jersey adjacent to New York City. The Wabash's traffic within the Niagara area is interchanged with the Lehigh at Suspension Bridge and involves Wabash operations over facilities of the Canadian National Railways under an agreement dating from 1898, and the use of terminal services of the Canadian National in effecting delivery of Wabash cars to and from the connections at Suspension Bridge with the Lehigh, the Erie, and the Central, and at Black Rock with the Lackawanna, the Erie, and the Central. Cars moving to and from connections at Suspension Bridge involve lengthy transfer operations via Welland Junction, Ontario, Canada, on Canadian National's line about 17 miles by railroad west of Fort Erie, and 18 miles west and south of Suspension Bridge; and additional transfers to the Lehigh's main line at Depew, about 25.8 miles east and south of Suspension Bridge. Exhibits presented by the Wabash show that such interchange with the Lehigh, almost entirely at Suspension Bridge, consisted of 30,778 carloads during 1958, and 16,720 carloads in the first 6 months of 1959, and that the Wabash's revenues thereon were \$6,203,174 and \$3,421,222, respectively. The movement of Wabash traffic to Depew via Welland Junction involves 11 additional miles, which would be avoided if an
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arrangement permitting the Wabash-Lehigh interchange through Black Rock in lieu of Suspension Bridge. The Lehigh joins in contending that the proposed merger, if approved, would make it imperative that the Wabash terminate its trains at East Buffalo in order to effect substantial savings in time consumed on Wabash-Lehigh interchanges, and to materially improve the interchange of traffic with all connections, including the unified company.

The Lehigh's position is that the contemplated elimination of competition between the Erie and the Lackawanna, and the diminution of the Lackawanna's interchange traffic with the Nickel Plate and the Wabash to and from the west, and with the Lehigh & Hudson to and from New England points, would not result in the Lehigh's interchange business increasing to the extent predicted by Wyer's Study XIII, unless Lehigh could improve its connections with the western railroads and become competitive with the unified company. Its goal is asserted as to be able to provide service in conjunction with the connecting railroads that would overcome the present disadvantage of the Lehigh interchange route being longer in distance and time requirements than if the Lackawanna were the interchange carrier.

The lines of the Central and certain of its leased lines connect with the Lackawanna at Buffalo and Black Rock for the interchange of traffic to and from points on the Central's lines in the so-called Central Freight Association Territory, and connect with the Erie's lines at Buffalo and numerous points west thereof. The Central submits that the applicants' estimates of the revenue which the Central would lose as a result of the rerouting contemplated by the unified company is not realistic because more of the Central's interchange traffic susceptible to rerouting probably could successfully be solicited in whole or in part; and that the amount of revenues Study XIII shows might be diverted by the Central from the unified company is speculative and improbable, and is not supported by evidence of record.

The Central's principal concern regards the manner in which the unified company would change the routing of the Lackawanna's present traffic to, from, and via points now served commonly by the Erie and the Lackawanna, so that by using the Erie's junction west of Buffalo, the distance that the Lackawanna's traffic would move over the Central's lines after the merger would be shortened. This would be achieved by new tariffs of the unified company failing to identify the present Lackawanna origin and destination points, industries, and through routes, and permitting the use of the Erie's present routes to and from the points served commonly by the Erie and the Lackawanna. The Central contends that the movement of Lackawanna traffic over the Erie routes presently is not allowable and that such route changes would be effected automatically without the concurrence of the Central, and without regard to the public interest.

The Central also contends that effective tariff publication rules⁹ pertaining to the applicability of rates at intermediate points would make susceptible to the same type of rerouting by the unified company, traffic originating or terminating at local points of the Lackawanna intermediate to the common Erie-Lackawanna points. As examples of the effect of changing the routes pertaining to Lackawanna traffic to and from the present common points, the Central shows that traffic from a Lackawanna New York-New Jersey area point to Kankakee, Ill., would connect with the Central at North Judson, Ind., instead of at Buffalo, and the Central's division of the applicable rate would be reduced from 60 percent to 20 percent; that its division on shipments from Elmira to Elyria, Ohio, would change from 54 percent to 20 percent; and its division in shipments from Paterson, N.J., to Columbus, Ohio, would be reduced from 49 percent to

⁹ Interstate Commerce Commission Tariff Circular 20, Supplement No. 8, rule 27.(b).

20 percent. It also foresees instances where the Central's revenues would be reduced even where the traffic involved would continue to move over the same operating routes via the same junctions, because the Central's division with Erie generally are not as high as its divisions with the Lackawanna.

Requests to restrict unified company's routing.—Each of the intervening railroads, whose positions are discussed hereinabove, suggested conditions tailored to provide protection against the unified company's plans to reroute traffic which would decrease the distance of the hauls of the connecting railroads, or, reduce their proportion of the joint-rate revenues presently applying over the routes in which the interveners participate. Several intervening railroads professed satisfaction with the type of restrictive conditions which the Commission in the public interest heretofore has imposed upon parties to transactions relating to mergers, acquisitions of control, and other forms of unification of railroad properties and franchises. In view of the position of the connecting railroads regarding protective conditions, the applicants assert they have no objection to the imposition of conditions relating to the continued maintenance of routes and channels of trade via existing junctions and gateways; neutrality of handling traffic to and from connecting railroads; continuation of existing traffic and operating relationships with connecting railroads; serving connecting carriers without discrimination as to promptness and frequency; noninterference by the unified company with the rights of industries to route traffic over any or all existing routes and gateways; and the right of any person in interest to apply to the Commission for modifications of the aforesaid conditions as required in the public interest. The conditions specified by the applicants (standard conditions) have been imposed in a long series of decisions involving section 5 of the act. See *Detroit, T. & I.R. Co. Control*, 275 I.C.C. 455 (*Ironton case*); *Louisville & N.R. Co. Merger*, 295 I.C.C. 457 (*Louisville case*); and *Norfolk & W. Ry. Co. Merger*, 307 I.C.C. 401 (*Norfolk case*).

For convenient comparison of the language and scope of the several sets of suggested conditions, appendix E, attached hereto, sets forth the foregoing standard conditions proposed by the applicants and separately, those suggested by the Nickel Plate, the Wabash, the Lehigh, and the Central.

The Nickel Plate rejects as ineffective under the circumstances herein, the standard conditions which the applicants concede should be imposed. It submits 12 conditions which in its estimation would protect the Nickel Plate from the unified company's efforts to divert freight traffic and related revenues, and contends that if such appropriate safeguards are not imposed, the substantial lessening of competition that would result from the proposed merger would be contrary to the public interest. The Nickel Plate concludes that, unless the conditions it suggests are adopted, the application to merge should be denied in view of the detriment to competitive equality between the unified company and the connecting carriers outweighing the advantages that would accrue to the merging railroads.

Several of the conditions suggested by the Nickel Plate differ from the standard conditions only by the inclusion of the intervener's name. Common to most of the conditions are provisions that future changes undertaken by the unified company in relation to routes, facilities, services, and other operating features first to be agreed to in writing by the Nickel Plate; be subject to the Nickel Plate's full cooperation and the mutual agreement of all affected connecting carriers, particularly those also connecting with the Nickel Plate; be extended to the Nickel Plate if they involve carriers or routes competitive with the latter; and otherwise maintain the parity of the Nickel Plate as to services, rates, and

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charges. As framed, the requested conditions would require continuation of the existing services, uses of facilities, locations of connecting tracks, manner of interchanging traffic, and similar arrangements which are subject to written agreements; would assure the unified company's neutrality and impartiality, and its cooperation with the Nickel Plate regarding the establishment of freight-train service at, to, and from Buffalo at least equal in every respect to other routes between the same origins, destinations, and connecting carriers in which the unified company participates in similar or competitive service; would maintain without prejudice to the Nickel Plate the present freight-train service and schedules of traffic regarding times of departure and cutoff times for the handling of cars, with no additional trackage charges to the Nickel Plate for operating over facilities owned or controlled by the unified company; would permit the designation of those of the Lackawanna's present interchange tracks and facilities in the Buffalo area which the Nickel Plate deems necessary to reach any modified or new yards of the unified company and such facilities of other connecting carriers, upon compensation mutually agreed to or determined by arbitration; would provide granting to the Nickel Plate upon the same terms of payment, trackage and other rights which subsequently might be accorded to the Lehigh; would require continuation of the present Nickel Plate-Lackawanna interchange at Buffalo with respect to all cars moving on billings not designating other of the unified company's Nickel Plate interchange points; would extend to the Nickel Plate, rates via all points of connection, no higher than those via any competitive route in which the unified company participates individually or with any other railroad; and would assure to the Nickel Plate upon its request, whatever benefits, more favorable than enjoyed by the Nickel Plate, are accorded to any connecting railroad, whether arising as a result of acceptance of conditions, or any other circumstance. In addition, the Nickel Plate subscribes to conditions suggested by the Central, outlined hereinafter, which would prohibit the unified company from using the merger as a device to create new routes which would eliminate the Central as a connecting carrier, or, provide it shorter hauls than it now secures in conjunction with the Lackawanna.

The applicants consider the conditions proposed by the Nickel Plate, to the extent they would add restrictions not embraced in the standard conditions or in effective agreements between the applicants and connecting railroads, to be unjust and unreasonable, and request that they not be imposed. The objections generally are upon grounds that the Nickel Plate desires to acquire power to control the routing and service arrangements which normally are subject to negotiation between the affected railroads, or decision of the Commission when controversies arise; that the unified company would be unable to make changes believed necessary or desirable in light of experiences that may arise after the the merger is consummated; and that the future management of the unified company would be prevented from adopting changes in services, facilities, and practices expected to produce efficient and economical operations. In that vein, witnesses for the applicants asserted that several of the activities which the Nickel Plate would restrict normally must be controlled by local supervisory personnel as conditions warrant, and others would be ineffective if they were not capable of meeting changing conditions and fluctuating volumes of traffic.

The applicants also disapprove the imposition of the suggested requirement that all Nickel Plate interchange traffic which is not routed as to junction point be delivered at the Buffalo gateway. This, they charge would unfairly deprive the unified company of its right to enjoy the longest haul possible on traffic which it is entitled to so handle under the provisions of section 15(4) of the
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act; and unless consented to by the unified company would violate the regular and accepted practice among railroads. The applicants submit that the Nickel Plate and the other connecting railroads would continue to have the same opportunity for soliciting the affected shippers to designate the desired point of interchange as they have had in the past to solicit traffic for movement over the route involving the Lackawanna lines.

The Wabash requests that the merger under consideration be denied unless the conditions which it suggests are prescribed. The primary objective is to assure that shippers would continue having the present routes available and that Wabash would be able to render competitive and adequate transportation service through the Buffalo gateway by having direct connections with other railroads, particularly the Lehigh. The conditions would require the unified company to permit the Wabash and the Lehigh to utilize portions of existing trackage and interchange yard facilities including some of which the applicants are seeking to abandon; would enable Wabash to originate and terminate trains at East Buffalo in a manner that would improve its interchange arrangements with the Lehigh; would reduce the time necessary to effect transfer of cars to and from the unified company; and would maintain the Wabash's position to compete within the Buffalo area and to achieve the best possible interchange at Buffalo. The Wabash submits that unless the volume of its present traffic with Lackawanna is protected by the aforesaid conditions, the potential loss of revenues pertaining thereto would react adversely upon the transportation facilities and services of the entire Wabash system. Apropos thereto, the Wabash proffered testimony of spokesmen for the States of Missouri and Illinois and the Chamber of Commerce of the St. Louis metropolitan area pleading that the suggested conditions are essential for the general public served by the Wabash.

The Lehigh joins in the position of the Wabash, and in addition requests that it be permitted to install a track connection between the main lines of the Lehigh and the Erie at Union Road (east of the Lackawanna's Sloan yard); that the Nickel Plate conditions be imposed; and that in order to effect the desired trackage rights, permission to abandon portions of the Lackawanna's Black Rock branch line be denied. The Lehigh emphasizes that its interest is to prevent any change in the competitive status of the railroads within the Buffalo area that would be to the disadvantage of the public.

The applicants challenge the fundamental power of the Commission to require as condition precedent to approval of the proposed merger, the granting of trackage rights to connecting carriers desiring to achieve improved interchange arrangements, in view of the acknowledged fact that existing arrangements for interchange between those carriers would not be interfered with as a consequence of the merger. The only reason cited in support of the requested trackage rights is that the sponsors each desire additional or alternative methods of interchange traffic within the Buffalo area. Under the circumstances, the applicants urge that imposition of the trackage-rights and joint-use conditions would be unjust and unreasonable. Further, the applicants submit that the proposed trackage-rights conditions fail to delineate in reasonably precise terms the use proposed to be made of the applicant's facilities, or the character, time, and extent of the train movements contemplated by the interveners.

Responsible officials of the applicants analyzed the probable effect of the trackage rights, if ordered, and concluded that the feasibility of the proposed joint operations could not reliably be estimated until after a reasonable period of operation, involving the handling of the combined traffic of the Erie and the Lackawanna, has been experienced. The present volume of daily train movements over the sections of the lines designated by the interveners is 312 I.C.C.

extremely heavy in both directions, and includes over varying distances, operations under trackage rights by the Wabash, the Chesapeake, and the Pennsylvania, as well as considerable local switching to and from the Erie's team tracks and numerous industries with private sidings. Based upon a typical day's business, after giving effect to the new train schedules and other operating changes, the applicants estimate that the unified company's retained trackage between International Junction (leading to Suspension Bridge) and Black Rock would involve the slow speed movement of 53 trains on 1 segment and 65 trains on another segment, exclusive of local switch runs. Similarly, the area between the East Buffalo yards of the Erie and the Lackawanna, also mentioned by the interveners, would be subject to heavy normal traffic demands of various carriers, the movement of light engines between the proposed new yard and the Erie's engine house which would be retained, and the movement of passenger trains operating between Buffalo and points east thereof. Other prevailing factors which complicate the situation demonstrate that the suggested trackage rights and interchange arrangements, and the related proposals to use portions of Erie's present yards, would be awkward and create unsound operating conditions. Nevertheless, the applicants assert they would consider reasonable proposals of any carrier with respect to the granting of trackage rights over the line of the unified company, after a reasonable period of operating experience.

Central proposed several conditions regarding routes and gateways, including variations of the standard conditions, and an additional condition which would require that tariffs of the unified company containing routes in conjunction with the Central be restricted against applying Erie-Central through routes to traffic involving the Lackawanna points, unless consented to by the Central, or ordered by this Commission. In the event the foregoing proposal would not be accepted by the applicants, it offered an alternative condition which would require that all interchange traffic between points on the Central's lines in the Central Freight Territory, and points on the Lackawanna's present lines (including points presently common to the Erie and the Lackawanna) would be subject to the Central receiving as its division of the through rates, the present division with the Lackawanna regardless of the route or gateway via which the traffic actually moves.

The Central contends that the requested protection is necessary to prevent the unified company from forcing the Central against its will to short haul itself by the device of adding the Erie's junction points to the routes applying on the Lackawanna's traffic via Buffalo. It submits the changes in routes and related divisions occurring merely as a consequence of the merger would be arbitrary and give the unified company an undeserved advantage not related to its strengthened position compared to the combined competitive status of the Erie and the Lackawanna as individual carriers; and that unless the described condition is adopted the Central would be unable to compete for traffic heretofore interchanged with the Lackawanna, even by improving its own service and solicitation. While it expresses no objection to the combining of Erie and Lackawanna traffic which would be handled in single-line movement by the unified company, the Central opposes any loss of identification of the interchange traffic presently moving via Lackawanna's lines, and the points and industries served by the Lackawanna to and from which such traffic moves. In effect, the Central seeks to have the applicant ordered, against its will, to identify all present Lackawanna traffic in the same manner that the Central, in 1929, voluntarily agreed it would do as a means of protecting the minority interests of the lessor companies involved in *New York Central Unification*, 150 I.C.C. 278.

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It cites its experience and that of other railroads voluntarily engaging in the same practice as proof that separate identification, and routes published on that basis, involve no undue difficulties and result in no delays with respect to securing the agreement of connecting carriers for new routes. The Central asserts that it would have no adequate remedy if the requested condition or its alternative is not imposed, for the reason that negotiations with the applicants prior to the hearing have been unsuccessful and obviously would not be reinstated unless the Commission accedes to the Central's request.

The applicants charge that the foregoing special condition and the alternative provision would be unjust and unreasonable; would undermine the basic purpose of merging the operations of the Erie and the Lackawanna; would deny to the unified company the right to conduct operations as a single enterprise; would regard shippers at the same point differently merely because they formerly had or had not been served exclusively by the Lackawanna; would discriminate between shippers and industries; and would tend to discourage the possibility of future industrial development in the affected areas. Section 15(6) of the act is cited as providing adequate remedy to any connecting carrier which might be prejudiced by changes in the pattern of handling available traffic, and permits the filing of petitions to the Commission to prescribe just, reasonable, and equitable divisions of the through rates. Against the example of the Central's voluntary continuance to identify separately the industries and points on lines which had been subject of Commission approved unification, the applicants cite *Wheeling & L.E. Ry. Co. Lease*, 275 I.C.C. 185, wherein requests specifically to impose such a requirement as a condition precedent were denied.

Conditions prescribed re interchange traffic.—In light of the general conclusions supporting the recommended determination of the proposed merger and related transactions on the merits, and consistent with his findings thereon, the examiner finds that the standard conditions referred to hereinabove would assure adequate protection to all the connecting railroads against unfair disruption of the handling of the Lackawanna's present interchange traffic. Clearly, those of the conditions suggested by the interveners which contemplate relief against foreseeable direct adverse consequences are embraced in the standard conditions and apply to all affected railroads without specific mention of individual names. The prescribed requirements that the unified company maintain the present open routes and channels of trade, continue the present neutrality of handling traffic inbound and outbound without discrimination in any respect, continue present operating arrangements with all connecting railroads, and permit industries their full opportunity to select the routes and gateways over which to route their traffic, do not unduly permit the unified company any advantages not commensurate with the strengthened competitive position it will assume upon consummation of the merger. Notwithstanding the contentions and arguments presented by the interveners, the record does not warrant finding that the further conditions pleaded by the Nickel Plate, the Wabash, the Lehigh, and the Central should be imposed.

The examiner finds untenable the arguments that the standard conditions would not provide just and reasonable limitation against the unified company's ability in the future to favor certain routes and gateways or to vary in any respect the degree of cooperation with certain or any of the interveners in regard to schedules, interchange of freight, and train departure arrangements. To the extent that any such changes in the handling of the traffic of the applicants would violate one or more of the first five of the standard conditions, the interveners would have a forum for proper relief; to the extent such activities of the unified company might not comply with the procedures governing the determination of 312 I.C.C.

rates, routes, and the routings of traffic, the interveners would have recourse to the remedies provided in section 15 of the act; and to the extent the other forms of relief would be inadequate, the interveners could invoke the sixth of the standard conditions, and apply for the Commission's consideration of modification of the conditions as such may be required in the public interest. And, an important consideration which the interveners would disregard, is that the unified company would be in the same position of being able to seek relief against any unreasonable competitive action of certain or any of the interveners. It cannot be found that the public interest would benefit by imposing upon the unified company any general restraints which its railroad competitors are not likewise required to observe.

The Nickel Plate argues on brief, and underlying the position and arguments of the other similarly interested interveners is the proposition that the merger, insofar as it pertains to traffic at, to, and from, the Buffalo gateway presents a situation the same as if the Erie were seeking to acquire control of a terminal or switching carrier which provides service to all connecting carriers. Cited in this connection are the *Chicago Junction Case*, 71 I.C.C. 631, in which 17 conditions were prescribed to protect connecting carriers, and *Niagara Junction Ry. Co. Control*, 267 I.C.C. 649, in which certain of the interveners who sought protection against the possible adverse effects of the terminal company being controlled by a competing line-haul carrier, were permitted to be included in the transaction and to acquire partial control of the terminal carrier. The underlying situation which the Commission recognized in those decisions pertained to the possible loss of revenue to the interveners as a result of lessened opportunity to solicit traffic and to route shipments where one of several connecting railroads would occupy a predominant position in the terminal railroad. No decision of the Commission or of the courts is cited to support the theory that the terminal railroad principle is applicable to portions of the through operations of a trunkline railroad. The examiner finds that the facts considered in the cited decisions are not compatible with those under consideration, and that the operations within the Buffalo gateway by the Erie and the Lackawanna cannot be considered apart from the entire line-haul operations. Pertinent too, is that the interveners have not proposed that any railroad be included in the transaction herein, nor have terms and conditions for such an arrangement been suggested. Consistent with the overall public interest, the merger proposed by the applicants should be approved without requiring the inclusion of any other railroad. There is no basis to provide any intervenor a further opportunity to petition the Commission to require its inclusion, and the examiner finds that the public interest would not be less adequately safeguarded by the applicants not including other railroads in the proposed transaction.

The standard conditions are identical to those prescribed by the Commission in the *Ironton* case, which the interveners distinguish from merger situations on grounds that in the former case the independence of the railroad whose control was in question was specifically intended to be preserved; and as there was no aspect of direct carrier competition between the railroad seeking authority to control and the carrier which would be controlled. Each of the differing characteristics was specifically considered and finally determined in the *Louisville* case and the *Norfolk* case decisions. The record provides no basis for finding that the interveners herein would desire any substantially different conditions to protect their interests, even if the Erie did not in fact operate any lines east of Buffalo, and if as complementary carriers, there were no element of active competition between the applicants. Also, except for the possibility of future voluntary adjustments of the arrangements pertaining to interchange routes and

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gateways, and the provisions that any party may seek modification of the conditions, if required, conditions framed to assure the continued independent existence of an affected carrier would appear more than sufficient to circumscribe the future activities of a surviving company in regard to the traffic of a railroad which would be absorbed completely. In the latter instance, the unified railroad should be afforded a reasonable opportunity to continue handling the combined traffic of each merging railroad.

The requests for operating rights over trackage and other facilities of the applicants in order to improve the existing physical connections at Buffalo between the Lehigh and the Wabash, and afford savings to them in operating costs and the time necessary to effect interchange of traffic between themselves and with the Nickel Plate, has little merit. The interveners appear to disregard the fact that upon consummation of the merger the unified company would operate in the stead of the Lackawanna, and to the extent possible would provide the service required by the public formerly using Lackawanna's service. Under the circumstances, for the Commission to order the applicants to rearrange their contemplated operating facilities and procedures, to provide direct connections between competing railroads at points where the unified company otherwise would connect with the interveners for the interchange of traffic, would be neither just nor reasonable. Were the Commission to impose a condition requiring the granting of several joint use and lease arrangements contemplated by the Lehigh and its connections, the unified company would be placed at a competitive disadvantage which the applicants are not confronted with at the present time. Clearly, such a result would be contrary to the public interest. In this connection, it is necessary only to underline that the present interchange arrangements would be adequately protected by the standard conditions; that the existing physical connections between the interveners would not be interfered with or impeded in any respect as a result of the proposed merger; and that the unified company is committed to accept for consideration any future requests made by its connecting railroads for arrangements of new or modified trackage rights. Nothing herein is to be construed as relieving the affected carriers from filing appropriate requests for approval by this Commission of any trackage rights entered into at some future date.

Upon consideration of arguments presented in the briefs filed by the Wabash and the Lehigh, and in view of the fact that in its orders authorizing applications filed pursuant to section 5(2) of the act, the Commission may subject the participating carriers to such terms and conditions and modifications of the proposed transactions it finds to be just and reasonable and consistent with the public interest, including the ordering of the acquisition of trackage rights and joint operation of terminal facilities by other railroads in proceedings not voluntarily initiated by the owning carriers and over their protests (see *Fresno Passenger Terminal Case*, 290 I.C.C. 753, 760), the conditions which the Commission frequently imposes upon the issuance of certificates of public convenience and necessity to abandon all or part of lines of railroad whereby the abandoning carrier is required to offer the property in question to another person or corporation for continued use in railroad operation, contrary to Wabash's contention, has no applicability to the lines of the applicants within the Buffalo area, where the unified company by use of relocated trackage would continue to provide the same service to the public which the Erie and the Lackawanna presently provide; and although the acquisition of the capital stock of the Lackawanna by the Erie would have the effect of eliminating the existing competition between those railroads, no monopoly of railroad service within the affected area would be created, and subject to the terms, conditions, and modifications imposed

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by the Commission, its approval and authorization would be exclusive and plenary and would relieve the unified company and its officers and employees from operation of the antitrust laws and all other restraints, limitations, and prohibitions by law. In considering the antitrust implications the standards outlined in the decision of the United States Supreme Court in *McLean Trucking Co. v. United States*, 321 U.S. 67, have been applied, and as hereinafter further elaborated, there are no substantial circumstances which would warrant denying to the unified company the full protection embraced in section 5(11), of the act.

By a stipulation dated September 18, 1959, the applicants agree with the Delaware & Hudson (1) to preserve without change the existing through routes and rates, and channels of trade via the existing junctions and gateways between the applicants and the Delaware & Hudson, unless a change is agreed by the parties, or is authorized by the Commission; and (2) to handle freight traffic to and from New England points over the lines of the unified company as expeditiously as possible, whether moving via the Delaware's Binghamton-Mechanicville gateway or the Erie's Maybrook gateway, with service and joint schedules for the handling of such traffic being as favorable in competitive opportunity over the one route as over the other; and confirming that the unified company and the Delaware & Hudson each will have responsibility for reasonable participation in the continuation of competitive schedules via the Binghamton-Hudson-Mechanicville route. The stipulation is binding upon the parties and their successors and assigns, and expresses the intent that its terms be incorporated as a condition to the Commission's approval of the merger under consideration.

At the hearing, the president of the Erie agreed with counsel for the New Haven that the unified company would be amenable to a condition imposed by the Commission for the purpose of assuring preservation of the present Maybrook gateway route on a basis competitive with the Binghamton gateway route to and from New England. As in the Delaware & Hudson stipulation, the agreement assures continuation of the degree of competitive parity to and from Buffalo and points west thereof which presently exists over the routes of the Lackawanna and the Erie.

Similarly, in a stipulation dated October 6, 1959, also offered as a condition to the merger, the applicants and the Lehigh & Hudson, on behalf of themselves and their respective successors and assigns, agree that freight traffic to and from New England would be handled as expeditiously as possible when moving via the Port Morris gateway to the Maybrook gateway and in the reverse direction; that present service and joint schedules between the unified company and the Lehigh & Hudson would be as favorable as presently provided, or, as may mutually be agreed upon; that presently existing through routes and rates via existing junctions, interchanges, and gateways, and the divisions of rates now in effect and applicable via such through routes, shall remain effective unless by agreement of the parties, or by order of the Commission; and that all trackage and joint facility agreements presently existing between either or both applicants and the Lehigh & Hudson would be recognized and maintained in force by the unified company. Relying upon the stipulation, the Lehigh & Hudson indicates it has no objections to the proposed merger herein.

A letter of understanding dated September 18, 1959, by the president of the Chesapeake and signed as accepted by the presidents of the Erie and the Lackawanna sets forth that the unified company would maintain within the Buffalo area service, joint rates, and through routes, at least of the quality then offered by the applicants; that effective operating and interchange arrangements between the Chesapeake and each applicant in this area would continue at the option of the Chesapeake as provided in agreements of July 1, 1930, and January 312 I.C.C.

8, 1954, as amended, until such time that a new or consolidated yard facility is established, and arrangements at least as satisfactory to the Chesapeake as presently exists would be made for the required trackage rights, access, use and facilities; and that in arriving at new arrangements there would be no disadvantage to the Chesapeake over present arrangements in cost or service.

The foregoing stipulations on behalf of the unified company and individual railroads cover primarily the protection of specified existing patterns of interchange of traffic and continuation of present trackage and joint facility arrangements which are embraced in the general language of the standard conditions. While the contracting parties desire that their agreements be made conditions imposed by the Commission, it would serve no useful purpose, and in fact, might be the cause of confusion and future complications in the event the parties desire to modify or terminate the agreements. The protection sought to be afforded in the stipulations is compatible with the intent and tenor of the conditions heretofore recommended, and having been amicably agreed to by the parties, need no further emphasis by the Commission. In any event, should future disagreements arise from the stipulations, the parties thereto would not be barred from invoking the condition available to any party or person having an interest to apply for modification of the standard conditions.

EMPLOYEE CONSIDERATIONS

Estimated effect upon employees.—The average number of the employees comprising the total staffs of the applicants, based upon counts made each month during 1956, 1957, and 1958, in order, are shown as follows:

	1956	1957	1958
Erie.....	18,134	17,245	15,021
Lackawanna.....	9,969	9,273	7,981

Consolidation of the applicant's work forces upon the merger becoming effective would entail a reduction in the total number of employees, and dislocation and rearrangement of the place of employment of many of the remaining employees. The seniority rosters of the Erie and the Lackawanna would be merged into single lists of employees headquartered at the various points involved. On the basis of the 1956 employment figures, available when study was prepared, the unified company would have 28,103 employees at the time of merger. Estimated totals pertaining to the employment situation at the end of each of the first 5 years of unified operation, are shown as follows:

	Year after merger					
	First	Second	Third	Fourth	Fifth	Total
Total employees.....	27,689	26,854	26,533	26,157	26,069	-----
Jobs abolished.....	403	818	484	190	87	1,982
Reemployable locally.....	189	384	227	89	41	930
Jobs transferred.....	430	958	481	191	99	2,159
Deprived of employment.....	172	383	192	76	40	863
Created by attrition.....	2,507	2,440	2,402	2,387	2,380	12,116
Attrition jobs unused.....	2,318	2,056	2,175	2,298	2,339	11,186

Divided according to the general class of employees in groups as reported to this Commission, the 1,982 job abolishments would affect totals of: executive 76, clerical 636, maintenance of ways and structures 184, maintenance of 312 I.C.C.

equipment and stores departments 396, miscellaneous transportation 245, transportation yard employees other than yard crews 29, yard crews—engineers 51, firemen 51, conductors 51, brakemen 101, and train crews—engineers 31, firemen 31, conductors 27, brakemen 70, and 3 extra-board men.

The probable cost of affording job protection rights to the employees who would be affected adversely as a direct result of the merger, reflected in the Wyer report, shows increased annual costs of \$505,133 chargeable to wages and rules adjustments necessary to equalize those which differ as to the Erie and the Lackawanna employees, and \$74,597 chargeable to nonrecurring payments equivalent to 5-percent interest on the cost of payments to the affected employees; plus additional cash requirement of \$3,108,187 chargeable to operating expenses with accompanying Federal income tax benefits of 52 percent, making total net cash required, \$1,491,930. Study XIV, which supports the foregoing estimates assumes that approval of the merger would be made subject to the same conditions as those prescribed in *New Orleans Passenger Terminal Case*, 282 I.C.C. 271 (*New Orleans case*), which the applicants contend should be imposed in the proceeding herein. The cited case provides for application of the terms of the so-called Washington Job Protection Agreement of May 21, 1936, subject to limitations defined in certain of the conditions included in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C. 177.

Employment records of the applicants for 1954, 1955, and 1956 were analyzed to determine the normal annual attrition due to deaths, retirements, dismissals, and resignations. Because most resignations involve junior employees, the applicants estimate that only between 40 percent and 60 percent of the jobs created by attrition within the five maintenance and transportation employee groups, and 80 percent of the professional, clerical, and general groups of jobs would be available for filling by employees whose jobs would be abolished; that all the executive and officials positions would be so available; that displaced employees at locations where substantial forces were located would be reemployed locally; and that other displaced employees would be offered transfers to locations where jobs created by attrition would be available. Components of the total costs and net cash requirements shown include the expected costs to the unified company to provide displacement allowances for persons placed in a worse position; coordination allowances for persons deprived of employment; separation allowances payable in lump-sum settlements; moving allowances payable to affected employees who accept employment at other locations; and allowances for losses incurred by employees obliged to sell their homes and move to other locations. Wyer and the applicants assert that the interpretations of the protective conditions were applied to achieve a conservative result and that if there are discrepancies, they reflect overstatements of what the cost would be to the unified company.

Requests for additional labor protective conditions.—An officer of the Railroad Marine Union requested the imposition of conditions to assure severance payments and job protection to the affected employees. The Railway Labor Executive's Association opposes the merger as not consistent with the public interest in view of the predicated adverse effect upon more than 4,000 employees of the applicants, and the disadvantages alleged by the other interveners.

The labor association's brief is devoted to arguing that section 5(2)(f)¹⁰ of

¹⁰ Section 5(2)(f). "As a condition of its approval, under this paragraph 2, of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. *In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date*

the act requires the prescribing of labor protective conditions adequate to assure the "employment" of all adversely affected employees for a minimum of 4 years after the effective date of the merger, rather than the providing of "compensation" in lieu of the employment. Accepting statements of proponents of the merger which indicate that the proceeding herein will prove to be a landmark in the field of railroad development which other railroads contemplating future mergers would accept and follow as a pattern, the labor association contends that since enactment of the aforesaid labor provision as part of the 1940 amendment to the Interstate Commerce Act, the instant proceeding is the first major case of precisely the type of merger transaction which the Congress intended to regulate. Therefore it asserts that extreme care should be taken to insure complete compliance with the mandate of section 5(2) (f), in the event the merger proposed herein is approved by the Commission. It asserts that the issue was not determined in the recent approval of the merger of the Norfolk & Western Railway Company and the Virginian Railway Company inasmuch as the railroads and representatives of the employees had reached an agreement which satisfied the requirements of section 5(2) (f).

Supporting the argument that the second section of the aforesaid law is explicit in requiring that the employment status of every employee be preserved for a period of 4 years after the date of the Commission's order of approval, the labor association cites the decision of the Supreme Court in *Railway Labor Executive's Assn. v. United States*, 339 U.S. 142 (rehearing denied), in which it considered the effective period for the application of labor protection prescribed by the Commission in its initial decision in the *New Orleans* case, 287 I.C.C. 763. The legislative history of section 5(2) (f) considerations before the House of Representatives and the Senate and their respective committees and conference committees, is outlined in detail to demonstrate that the employees must not be adversely affected for a minimum of 4 years. As the Commission's decision on further hearing of the *New Orleans* case, following the Supreme Court decision, gives full cognizance to the intent of the enactment pertaining to the minimum period of protection, further discussion herein on that point is not necessary. The other proposition allegedly intended in the second sentence of subparagraph (f), is that the protection envisions an indefinite "employee freeze" by which savings were to be realized through normal attrition. Thereupon, the conclusion is presented that appropriate fair and equitable minimum protection would provide not less than 4-year preservation of employment to every employee of every carrier affected by approval of transactions pursuant to section 5(2) of the act.

The labor association deems the proceeding herein as the ideal one in which to provide protection in the form of preservation of employment without relation to any other protection by way of compensatory benefits, because the applicants estimate that during the first 5 years after merger when employees would be affected, normal attrition would create openings for 600 percent more employees than would be affected by job abolishments; and that appropriate safeguarding of the affected employees of the applicants would probably involve

of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees." [Emphasis supplied.]

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a smaller financial burden than the payments estimated in Study XVI, under the provisions of the New Orleans conditions. Included with the labor association's brief are conditions which it suggests should be imposed for a period of not less than 4 years, in the form (except for changes in the railroads' names) introduced in evidence in the Norfolk & Western merger proceeding, to which the Commission referred in approving the application therein. Those conditions are reproduced and attached hereto as appendix F.

Employee protective conditions the same as those prescribed in *New Orleans Passenger Terminal* case, *supra.*, would fully comply with the statutory standards requiring fair and equitable arrangements to protect the interests of railroad employees affected. Nothing contained in the arguments of the labor association disproves the adequacy of such conditions in terms of employment or compensation, which are without significance if not coupled together. It is not necessary to find that the conditions stipulated in the Norfolk & Western merger case would be fair and equitable, although nothing herein prohibits the applicants and the employee organizations from agreeing upon the provisions of those conditions. Nor should there be any presumption that if the parties had willingly agreed to the Norfolk & Western conditions, such would be found fair and equitable for purposes of being imposed as conditions in view of the circumstances pertaining to the proposed merger. See *Florida East Coast Ry. Co. Reorganization*, 307 I.C.C. 5. The New Orleans conditions will be included in the certificate and order recommended herein.

STOCK EXCHANGE CONSIDERATIONS

Factors of value.—The stock exchange terms agreed upon by the applicants provide for the issuance of 1.25 shares of common stock of the unified company for each of the Erie's 2,450,090 shares of common stock (\$40 per share stated value), to be accomplished by the Erie declaring a 25-percent stock dividend of approximately 612,522 shares which would increase its outstanding common stock to 3,062,612 shares; and 1 share of the unified company's stock for each share of the Lackawanna's 1,638,624 shares of common stock (\$50 per share par value), which added to the Erie's participation would result in the unified company having 4,701,236 shares of common stock without par value, but, having a stated value of \$32 per share. The Erie's preferred stock would continue outstanding as the preferred stock of the unified company, and Erie would participate to the extent of 65.14 percent of the unified company's outstanding stock, and Lackawanna's would participate to the extent of 35.86 percent. The principal factors pertaining to the applicants which the committees considered in deliberations leading to the agreement, were (1) earnings for individual years and averages of various periods during the 10 preceding years, (2) allowances in considering the records of earnings to remove distortions arising from extraordinary occurrences such as Hurricane Diane in 1955 and service losses on nondepreciable road properties retired and not replaced, (3) savings realizable (Wyer report), (4) annual and average railway operating revenues, (5) prospective earning power, (6) net working capital, and (7) stock values based upon market prices. Also considered by the applicants' committees which negotiated the final stock exchange ratio were the relationship of the applicants' respective gross revenues, fixed charges, contingent charges, net investment in transportation property, investment in affiliated and other companies, net current assets, earnings per share of common stock, equipment ownership, and traffic potentials. The data underlying most of the studies are shown in the balance sheet and income account statements appended hereto, and in the Form "A" Annual Reports to this Commission of the Erie and the Lackawanna for
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the years 1949 through 1958, which by reference were incorporated into the record herein.

Data pertaining to the relative earnings of the applicants presented in evidence to support the determination of the stock exchange ratio, and summarized as part of the individual proxy statements to the stockholders and the affected bondholders of both applicants, among others, includes the following:

*Income available for fixed charges before Federal income taxes
(without adjustments)*

Year	Erie	Lackawanna
1953.....	\$26,237,764	\$14,661,690
1954.....	9,582,121	7,267,452
1955.....	14,752,284	4,639,051
1956.....	17,193,592	7,510,194
1957.....	11,242,138	5,206,802
Total.....	79,012,899	39,285,189

Fixed charges

	1958	1953-1957, inclusive	Times earned
Erie.....	\$4,999,321	\$24,996,605	3.16
Lackawanna.....	4,447,576	22,237,880	1.77

The net income of the applicants after payment of annual dividends on Erie's preferred stock (\$2,014,000 in 1953 and 1954, and \$626,000 thereafter) and after elimination of charges for nondepreciable road property retired and not replaced, and flood expenses and loss of revenues resulting from Hurricane Diane damages in 1955, are shown as follows:

Net income after preferred dividends, but, before Federal income taxes

	Erie		Lackawanna	
	Adjusted net income	Credits included	Adjusted net income	Credits included
1953.....	\$18,207,589	¹ \$1,257,497	\$9,549,618	¹ \$309,954
1954.....	635,770	¹ 182,933	2,044,372	-----
1955.....	7,202,813	² 1,407,654	5,073,915	¹ 170,188
1956.....	8,322,611	-----	2,625,096	² 5,339,993
1957.....	2,144,969	-----	245,766	-----
Total.....	36,513,752	2,848,084	19,538,767	5,820,135

¹ Service loss on nondepreciable road property retired and not replaced.
² Flood expense including loss of revenue due to Hurricane Diane.

The adjusted net income total for the Erie, shown immediately hereinabove, divided by the 2,450,090 outstanding shares of Erie common stock shows the equivalent of \$14.90 net income per share, and during the same period Lackawanna's adjusted net income, divided by its 1,635,624 outstanding shares of capital stock shows \$11.92 net income per share, and related to each other reflects the ratio of 1.25 to 1 in favor of the Erie's position. The proportion of the applicant's contribution to the aggregate adjusted net income, \$56,052,519 for the 5-year period considered, is 65.14 percent as to the Erie, and 34.86 percent as to the Lackawanna.

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A similar study of adjusted net income after the payment of fixed charges, but before Federal income taxes, and deducting the fixed sinking-fund charges for the 1953-57 period (reflecting the aforementioned credits pertaining to the service losses on retired nondepreciable road property and the hurricane damage expenses) shows the following:

Adjusted income after fixed charges, before Federal income taxes, less fixed sinking fund charges

Year	Adjusted net income	
	Erie	Lackawanna
1953.....	\$22,310,868	\$10,048,117
1954.....	4,653,924	2,515,860
1955.....	11,161,743	5,535,875
1956.....	12,281,226	3,097,320
1957.....	6,116,769	708,832
Total.....	56,524,530	21,906,004
Sinking fund.....	1,225,000	none
Adjusted income less sinking fund.....	55,299,530	21,906,004

¹ \$245,000 fixed sinking-fund charges per year for the 1953-57 period.

Together, the foregoing adjusted net income after fixed charges less the sinking-fund obligations equals \$77,205,534, of which the Erie's proportionate contribution is equivalent to 71.63 percent, and the Lackawanna's proportion is 28.37 percent. On such basis, the bondholders of the Erie and the Lackawanna have agreed that 72 percent of the annual system available net income of the unified company would be earmarked to meet the Erie's mortgage obligations, and the remaining 28 percent would be utilized to cover those of the Lackawanna. The excess of the amounts so allotted to meet the obligations of either applicant over the amounts actually required to satisfy its contingent-interest payments and sinking-fund obligations, if any, would be available to meet the similar obligations of the other applicant, if needed. The effect of the provision is to bar the payment of dividends on any class of the unified company's stock out of system available net income unless all contingent-interest and sinking-fund obligations are first satisfied. The balance remaining after all contingent charges are provided would be available for dividends or other proper corporate purposes. The allocation of available net income as provided would be important only in years in which the unified company might fail to earn enough to pay its contingent charges.

Applying the foregoing ratio of system available net income to the pro forma combined available net income of the Erie and the Lackawanna during each year 1953 through 1958, and the average of the periods 1953-58 and 1956-58, as if the applicants' operations had been combined (calculated without giving effect to the more than \$13,000,000 estimated savings before income taxes envisioned by the applicants, and after giving effect to the tax savings resulting from the deduction of interest on \$27,776,200 principal amount of the Erie's income debentures issued in exchange for 277,762 shares, 68.9 percent, of the Erie's series A preferred stock pursuant to an exchange offer dated April 1, 1955, which expired December 28, 1955, and as if the substitution of such debentures for the portion of the said preferred stock had been in effect during each of the years shown), is as follows:

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Year	Actual available net income separately for—		Pro forma available net income for obligations of—	
	Erie	Lackawanna	Erie (72 percent)	Lackawanna (28 percent)
1953.....	\$17,215,163	\$7,626,885	\$17,886,275	\$6,955,773
1954.....	9,175,929	4,411,025	9,782,607	3,804,347
1955.....	10,980,284	(137,770)	7,806,610	3,035,904
1956.....	11,494,631	5,472,046	12,216,007	4,760,670
1957.....	6,789,351	971,054	5,587,492	2,172,913
1958.....	(493,376)	(3,094,002)	(2,582,912)	(1,004,466)
Average 1953-58.....	9,193,664	2,541,540	8,449,347	3,285,857
Average 1956-58.....	5,930,202	1,116,366	5,073,529	1,973,039

() Denotes deficit.

The foregoing actual available net income of the Lackawanna for the years shown (excluding deficits) would cover its contingent interest obligations of \$466,047, between 2.08 times (1957) and 16.37 times (1953), and would average 5.45 times during the 6-year period 1953-58, and 2.40 times during the 3-year period 1956-58; and under the agreed 28 percent proportion for the Lackawanna's obligations in the years in question, had such been effective, the contingent interest would have been earned between 4.66 times (1957) and 14.93 times (1953), and would have averaged 7.05 times during the 1953-58 period, and 4.23 times during the 1956-58 period. The Lackawanna's contingent sinking fund obligations amounting to \$243,220, other than its general sinking fund (\$366,455 after application of available net income to the payment of contingent interest) would have been earned between 2.08 times and 29.44 times under the actual available net income, and between 7.02 times and 26.68 times under the proportionate share of the pro forma available net income.

The actual net income of the Erie and the Lackawanna during each of the years 1953 through 1958, and the 3-year and 6-year period averages used hereinabove, expressed in terms of earnings per share of common or capital stock (giving effect to the 1955 exchange involving the Erie's preferred stock), and the earnings per share which the actual net income would have provided had the Erie and the Lackawanna been combined during those years under stock exchange ratio terms provided in the proposed merger agreement, is as follows:

Net income per share of outstanding stock

Year	Erie common	Pro forma 1.25-for-1	Lackawanna capital	Pro forma 1-for-1
1953.....	\$4.61	\$4.77	\$3.94	\$3.82
1954.....	2.08	2.36	2.25	1.89
1955.....	2.97	1.67	(.58)	1.34
1956.....	3.08	3.36	3.06	2.69
1957.....	1.21	.90	.26	.72
1958.....	(1.75)	(2.19)	(2.40)	(1.75)
Average 1953-58.....	2.03	1.81	1.09	1.45
Average 1956-58.....	.85	.69	.31	.65

() Denotes deficit.

Using \$13,000,000 as the potential annual savings expected to accrue from consummation of the proposed merger, and deducting Federal income taxes thereon at the rate of 52 percent, the net savings realized after taxes would be \$6,240,000 per year. Such net savings are equivalent to \$49.79 per share on the outstanding preferred stock the unified company would assume, on which annual dividend requirement is \$5 per share, or \$626,650; leaving a balance 312 I.C.C.

of \$5,613,350 net savings which is equivalent to \$1.19 per share on the common stock which the unified company would have outstanding. Multiplying the present Erie common stock value by 1.25, makes its proportion of the estimated net savings equivalent to \$1.49 per share.

Dividends per share paid by the applicants on their respective preferred, common, and capital stock during the same years and periods shown above, are as follows:

Year	Erie preferred	Erie common	Lackawanna capital	Year	Erie preferred	Erie common	Lackawanna capital
1953.....	\$5.00	\$1.75	\$0.50	1957.....	\$5.00	\$1.00	\$0.625
1954.....	5.00	1.50	0.75	1958.....	5.00	1.21	0.78
1955.....	5.00	1.50	1.00	Average 1953-58.....	5.00	0.83	0.81
1956.....	5.00	1.50	1.81	Average 1956-58.....	5.00	0.83	0.81

Records of the New York Stock Exchange published prices on the Erie's and the Lackawanna's stock by quarter years 1948 through 1958, inclusive, and on April 21, 1959, August 7, 1959, and October 15, 1959, are contained in the record herein. Summarized, the highest and lowest prices for each of the years and dates pertaining to the outstanding common and capital stock, are as follows:

Published market prices

Year	Erie's common stock		Lackawanna's capital stock		Year	Erie's common stock		Lackawanna's capital stock	
	High	Low	High	Low		High	Low	High	Low
1948.....	16½	9½	13¼	7¾	1955.....	24¾	20¼	25¼	16
1949.....	14¾	9¼	9¾	5½	1956.....	23½	19¾	25¾	18¼
1950.....	19¾	10¾	14¼	7½	1957.....	20¾	6½	25½	6½
1951.....	24¾	16¾	17¼	10¾	1958.....	13	6¾	12¾	6¾
1952.....	23½	17¾	15¾	11½	April 21, 1959.....	12	11¾	10¾	10¾
1953.....	22¾	16	15¾	10¾	August 7, 1959.....	13¾	13¾	10¾	9¾
1954.....	22½	16½	20¾	12¼	October 15, 1959.....	13¾	13¼	10¾	9¾

Erie's preferred stock, series A, was recorded in 1957 as high 77 and low 43; in 1958 as high 60¾ and low 44½; and on August 7, 1959, as high and low 69¾. The series B preferred stock is not listed on any exchange and no market for it exists.

The Lackawanna's president asserted that not less than 22 distinct elements, including freight traffic business and distribution, had been appraised by the committees of the applicants which negotiated the stock exchange ratio. Several of those mentioned as supporting the overall 1.25 to 1 conversion basis and the underlying 65 percent to 35 percent proportion of participation are discussed immediately hereinabove or in earlier portions of this report. Among the others, it is pointed out (in each of the following comparisons, unless otherwise stated, the data pertains to the year 1958 or December 31, 1958; and the first amounts or percentages shown pertain to Erie and the second to Lackawanna) that of the combined market value of the publicly held common stock, computed on the highest price listed April 21, 1959, the relationship is approximately 62.5 percent compared to 37.5 percent; that during the 1948-57 period, annual gross revenues averaged \$169,000,000 compared to \$86,400,000, and fixed charges, contingent interest, and preferred dividends were \$9,321,000 a year, or 5.52 percent of the gross revenues compared to about \$5,326,000 or 6.17 percent; that investment

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in affiliated companies was \$10,088,770 par value compared to \$1,919,371 par value, and investment in nonaffiliated companies was \$1,728,099 par value compared to \$2,704,941 par value, excluding the Lackawanna's investment in the Nickel Plate stock; that current fixed and contingent indebtedness and equipment obligations is \$208,700,000 compared to \$118,500,000; that of the bonds, the first maturity date pertains to an Erie mortgage due in 1964 in the amount of \$11,968,000 compared to a first maturity date in 1973 amounting to \$25,839,800; that in addition to its funded indebtedness, the Erie is party jointly with other railroads to certain contingent guarantees or suretyships covering 20 percent of \$55,808,000 liability due in 1982, 50 percent of \$8,011,625 guarantees due in 1962 and 1966, and 50 percent of \$2,491,000 guarantees due in 1995, compared to no contingent liabilities for the Lackawanna; that net current assets as of March 31, 1959, were approximately \$11,000,000 compared to \$16,000,000; that during the last 9 months of 1959, improvements in the cash position foreseen were \$4,400,000 compared to \$1,600,000; that the general standards of track and equipment maintenance of the Erie's lines east of Salamanca and Buffalo are comparable to those of the Lackawanna, and the operating efficiency of both are practically identical; that crosstie replacements in 1958 averaged 19 per mile compared to 66 per mile; that tax carry-forward was approximately \$7,500,000 compared to such being substantially eliminated as a result of the sale of the Lackawanna's Nickel Plate stock; that freight-car ownership was 20,463 compared to 12,411; that the total freight handled was 26,175,931 tons compared to 18,067,858 tons, of which the terminating business (involving substantially greater accounting expense than other types) amounted to 11,757,733 tons or 44.9 percent compared to 6,315,626 tons or 34.9 percent; that revenues involving the transportation of anthracite coal (the movement of which is declining each year) was \$2,870,000 or 2 percent of the total freight revenues compared to \$4,210,000 or 7.4 percent of the total revenues; and that gross revenues from passengers, mail, and express was \$13,549,000 compared to \$15,134,000, of which commutation and suburban service of each applicant provided about 66 percent of the total.

As of May 31, 1959, the book value of the Erie's common stock was \$68.90 per share, and the book value of the Lackawanna's capital stock was \$109.01 per share. The pro forma book value of the unified company's common stock as of the same date, after giving effect to the proposed merger, would be \$73.90 per share, making the book value on the equivalent of 1.25 shares of the present Erie common stock equal to \$92.38. The applicants did not place any importance upon the book value as a factor in determination of the stock exchange ratio. Similarly, the applicants placed no significance upon the relationship between the total assets and total liabilities, and did not consider the ratio of earnings to investments to be valid factors in establishing the terms for converting the existing stock issues for the stock of the unified company.

Position of dissenting stockholders.—A group of 8 or 10 individual owners of shares of capital stock of the Lackawanna, who were represented at the stockholders meeting and voted against the proposed merger, by counsel participated in the hearing in this proceeding. They presented no witnesses and offered no positive evidence. Counsel for the group made numerous motions for the production of evidence by the applicants, some of which was produced voluntarily, some produced or specifically incorporated into the record at the order of the examiner, and some not required to be produced upon the examiner's rulings, that such would be immaterial or irrelevant. Requests for subpoenas to require their production also were denied. Allegations included in the dissenters' brief regarding denial of adjournment of the hearing and undue limitation upon cross-examination, and the closing of the hearing in the absence of the dissenters'

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counsel are treated at the outset of this report under the heading "Motion to reconvene hearing."

The dissenters contend that the applicants failed to establish that the proposed terms for the distribution to the present holders of Lackawanna stock of the stock of the unified company would be "just and reasonable" as required by law. Neither the record nor any pleading presented by the dissenters offers any suggestion of precise inequities of the agreed plan, and no alternative plans are submitted for the guidance and consideration of the Commission. The dissenters allege that the 1.25 to 1 ratio and the 65 percent-35 percent proportion are not supported in the record, but were developed after the negotiations were concluded and the ratio determined. Even if that order at arriving at a meeting of the minds were feasible, the record does not support the dissenters' theory. No attempt is made to refute the various criteria, outlined hereinabove, which the applicants present in support of the conclusions regarding the appropriate relationships between the value to the unified company of the contributions which the Erie and Lackawanna would offer. The chief argument is that denial of access to the First Boston reports (oral) prevented the discovery of factors which allegedly would indicate different bases for judging the applicants' positions, and that any opinions and conclusions regarding the applicants while studying the feasibility of their merging with a third carrier (Delaware & Hudson), necessarily would be germane to this proceeding. The record shows that in regard to the Erie and the Lackawanna, all the background data and material available to First Boston as part of the three-carrier study is part of the record in the present proceeding. The dissenters concede that the raw data is available, but decry the fact that the First Boston studies and analyses are not reviewable herein. The repeated insistence to the contrary does not warrant finding that any portion of the First Boston estimates are material or relevant in the 2-carrier merger transaction.

Supporting their position, the dissenters mention that the applicants failed to give appropriate consideration (a) to the difference in the book values of the applicants which is \$40.11 per share in Lackawanna's favor and would be reduced in relation to the book value of the unified company from the present \$109.01 to \$73.90 per share; (b) to the elimination of the preemptive right of Lackawanna stockholders which are protected by the laws of Pennsylvania; and (c) to the discontinuance of the cumulative voting rights which the laws of Pennsylvania also provide for corporations chartered there. In concert with explanations by the applicants' witnesses on cross-examination, and upon review of the entire record, the examiner finds that these rights have minute value, if any. As grounds for that conclusion, it is shown that (a) because a preponderance of the applicants' investments are in operating properties as opposed to liquid assets, book value does not reflect the earning power of the properties or influence the market price of its capital stock, and, as it designates only the historical cost of the properties involved, less depreciation, indebtedness, and other items, book value does not directly relate to current real value; (b) the Lackawanna stockholders have had no occasion to exercise their preemptive rights since about 1912, and as it is not contemplated that new stock of Lackawanna would be issued by the unified company, any value such rights ever might have had would be extinguished; and (c) the cumulative rights never have attached to the Lackawanna stock issues, as shown by the various special acts of the Pennsylvania Legislature (dating back to 1832) which comprise the Lackawanna's corporate charter.¹¹ There is no conflict between the foregoing views and the directives of the Supreme

¹¹ Filed September 15, 1920, with the Commission in Finance Docket No. 65, *Delaware, L. & W. R. Co. Stock*, 67 I.C.C. 427.

Court in *Schwabacher v. United States*, 334 U.S. 182, and the other cases cited by the dissenters. Any just and reasonable consideration of the book value, preemptive rights, and cumulative voting rights would not change the aptness of the terms of exchange of stock provided in the merger agreement.

The dissenters further allege that the exchange ratio is not fair and reasonable because the applicants failed to accord appropriate consideration to the effect of the sale by the Lackawanna on or about March 2, 1959, for \$18,853,445, of 628,722 shares of stock of the Nickel Plate, which the Lackawanna had accumulated in varying amounts since 1947 at a recorded cost of \$3,503,886, and, thus realized capital gain or profit of approximately \$15,349,562 before Federal income taxes, or, the equivalent of about \$9 per share for each share of Lackawanna stock. The argument, presented without proof or support by any theory of accounting, is that although approximately \$10,000,000 of the sale price remained available as cash after certain obligations were satisfied, the value thereof was not properly considered in establishing the exchange ratio. The Lackawanna shows that the sale of the Nickel Plate stock, its "last big liquid asset," was necessary in order to avoid bankruptcy in view of the Lackawanna's (a) having more than \$3,000,000 unpaid bills and facing discontinuance of credit by suppliers; (b) requiring \$1,000,000 to make payment on a bridge loan due August 1, 1959, against which the Nickel Plate stock had been pledged; (c) requiring about \$1,000,000 to complete the Binghamton-Gibson coordination project which would effect annual savings of about \$600,000; and (d) facing growing deficiencies in tax accounts, and audited accounts and wages payable. The sale represented an opportunity to restore the cash position and the net working capital of the Lackawanna. The reasons for the sale of the stock are sound, and without question indicate a proper exercise of management's prerogative. While sale of the stock had the effect of reducing the Lackawanna's earnings in an amount equivalent to the annual dividends received on the Nickel Plate stock (in excess of \$1,000,000 per year since 1954), such disadvantage was offset by the improvement in the Lackawanna's available working capital. The result of the sale of the stock was appropriately reflected in the Lackawanna's current financial statements considered at the time the stock exchange ratio was negotiated. Therefore, the finding is warranted that the questioned transaction was accorded consideration, and that the effect thereof supports the exchange of the Lackawanna's stock for the stock of the unified company on the agreed basis.

In general terms without evidence in support of its position, the dissenters charge that the consideration, if any, accorded to other factors likewise is inappropriate and warrants a finding that the terms of the proposed merger are unfair in their treatment of the Lackawanna's stockholders. For instance, the present ratio of outstanding stock is pointed to as being 3 to 2 in favor of the Erie, but, after the merger would represent a proportion of $3\frac{3}{4}$ to 2 of the unified company's stock; that the 72 percent-28 percent apportionment of system available net income prejudices Lackawanna stockholders; that Lackawanna stock would be subject to the priority of Erie preferred stock issues which have voting rights, and that the relative market value of the stock of the Erie and Lackawanna does not support each of the Erie's shares being converted into 1.25 shares of the unified company's stock. The same contentions were voiced in the cross-examination of the applicants' witnesses, and against each point facts and related opinions were cited indicating that the consideration accorded by the applicants was appropriate. Considered in its entirety, the record establishes that the stock exchange ratio was equitably arrived at upon full and careful consideration of every element pertaining to financial arrangements and operational advantages. While the dissenters

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have disclosed a few aspects where the advantages to the Lackawanna stock-owners may be less pronounced than the associated benefits to Erie stockholders, other elements reflect an opposite result. This merely shows that under normal conditions it could not be expected that every facet of the past and future relationship of the applicants, standing alone, would fully reflect the proposed ratio. Nevertheless, the overall effect of all the factors analyzed hereinabove justify finding that the stock exchange arrangements are just and reasonable, and basically are fair to all the stockowners in question.

CONCLUSIONS AND FINDINGS

Principal evidentiary conclusions.—The evidence presented by and on behalf of the applicants, viewed in light of disclosures developed on cross-examination by the interveners collectively, and by evidence introduced to counter or modify the applicants' specific estimates and general predications, lead to determinations as to individual facts and their accumulative effect upon each other. While many of the conclusions herein are indicated in the individual topics covered, the principal ultimate conclusions warranted by the evidence of record, in summary, are as follows:

1. No present users of the lines and service of the Erie and Lackawanna oppose the transactions on grounds of adverse effect upon their transportation requirements, however, important affected shippers testified in favor of the proposals.

2. The entire line of the Lackawanna is situated near and parallel to the Erie's line east of Buffalo and Salamanaca, and the applicants compete with each other for traffic to and from many points which both serve independently or in coordinated operations specifically authorized by the Commission.

3. The Erie and the Lackawanna serve the terminal area of the Buffalo gateway where the Erie actively competes with various other connecting trunkline railroads for the interchange of traffic which originates or terminates at points served solely by the Lackawanna, moving to and from points west of Buffalo and points in the so-called trunkline and New England freight territories.

4. In recent years the operations of each applicant produced income less than sufficient to satisfy their annual fixed charges and contingent interest payments and resulted in both railroads being financially weak despite continued efforts to reduce avoidable operating costs individually, and to coordinate certain separate operations to the financial benefit of both.

5. Subject to the applicants or the unified company first applying for and receiving appropriate required authorizations from State regulatory agencies or from this Commission for the discontinuance or change in whole or in part of the operation or service of any train operating over tracks to be utilized in lieu of trackage herein permitted to be abandoned; and subject, also, to the necessary facilities being provided to assure continued service to specified industrial sidings and spur tracks, the present and future public convenience and necessity permit abandonment of described portions of the lines of the Erie and the Lackawanna, as amended.

6. Consistent with the proposed merger arrangements, the present and future public convenience require construction of specified portions of connecting trackage.

7. The estimates and prognostications embraced in the Wyer report generally reflect appropriate methods and procedures of study, and, in view of the contingencies provided, arrive at reasonably accurate conclusions pertaining to the effect of the proposed merger within the first 5 years of unified operation, although it is recognized that wholly or partly divergent methods of applying

judgment factors could produce other specific long-term predictions equally reasonable and reliable.

8. Subject to the condition that unless otherwise specifically authorized, the existing methods of interchange with other railroads are not unilaterally interfered with to the disadvantage of operations of such other carriers, the proposed relocation, elimination, and modification of spur, industrial, team, switching, or sidetracks within yard and terminal facilities of the Erie and the Lackawanna located wholly within one State are within the area of managerial discretion based upon factors of convenience, improvement of service, reduction of operating costs, and ability to compete with affected railroads and with other media of transportation.

9. The merger of the Lackawanna into the Erie would eliminate the present direct competition each with the other for the same traffic, but would not reduce the competition which confronts the applicants because of the availability to the public of the services of various connecting railroads and other forms of transportation, and in effect, would not substantially lessen such competition or tend to create a monopoly.

10. The net effect of the potential changes in freight traffic patterns via the Buffalo gateway (subject to the continued maintenance of all existing through routes, gateways, and channels of trade) which would result from the unified company securing longer hauls in the movement of carloads interchanged by the Lackawanna with the Erie and other connecting railroads, and conversely, in the potential loss of Lackawanna interchange traffic to other connecting railroads, would be commensurate with the effectiveness of the power of each railroad, including the unified company, to solicit the available business upon service and related traffic considerations.

11. Past amicable cooperation in traffic and service practices involving through routes via the Lackawanna and the Nickel Plate and the Lackawanna and the Wabash have resulted in substantial tonnage of freight being interchanged with such connections rather than with the Erie, and any interruption of such arrangements necessarily would adversely affect the revenues accruing to the Nickel Plate and the Wabash.

12. The conditions desired by several interveners seeking to prevent the establishment of new routes and gateways unless agreeable to the said interveners, would impede the ability of the unified company to compete for longer hauls on the interchange traffic now handled by the Lackawanna and the Erie, but would place no protective restrictions upon the retaliatory effect of counter-solicitation efforts of other connecting railroads and would unfairly and unreasonably operate to thwart the advantages the unified company should be encouraged to generate.

13. Upon consummation of the merger, the Wabash and the Lehigh and any other similarly situated railroad, upon terms and conditions agreeable to the parties thereto, would be able to negotiate with the unified company for the arrangement of necessary joint facility usage within the Buffalo area and elsewhere; and, on the basis of public interest, appropriate applications pertaining to designated facilities upon just and reasonable terms may be filed with the Commission by the Wabash and the Lehigh, or any other railroad or person.

14. The terms of the agreement of merger dated June 24, 1959, subject to modifications embraced in the recommendations herein, provide adequate protection to the interests of applicants commensurate with their respective contributions to the unified company, and assures to the owners of the stock of the Erie and the Lackawanna, satisfactory proportionate ownership and represen-

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tation in the management and operation of the unified company and equitable participation in the benefits anticipated upon consummation of the merger.

Numerous specific contentions by the interveners and by the applicants not separately discussed hereinabove are embraced in related topics covering broader area of consideration; and, conclusions and findings contrary to those contained herein, or otherwise not reflected, have been carefully considered and found without merit or not justified.

General discussion.—Each of the approvals, authorizations, and certifications sought by the applicants herein revolve about and are contingent upon the proposed merger of the Lackawanna into the Erie for ownership, management, and operation. The ultimate determination pursuant to the provisions of section 5(2) of the act is that, subject to such term and conditions and modifications as the Commission may find to be just and reasonable, the proposals of the applicants would be consistent with the public interest. The statute requires the Commission, in its consideration, to give weight to certain primary elements affecting the public interest, as follows: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected. In administering these provisions, the Commission is to be guided by consideration for adequacy of transportation service, essential conditions of economy and efficiency, and appropriate provision and best use of transportation facilities. See *New York Central Securities Corp. v. United States*, 287 U.S. 12 (25).

Of the foregoing elements, only the effect of the merger herein upon competition developed any controversy which requires special discussion. Elimination of direct competition by the Erie and the Lackawanna for the considerable volume of traffic involved presents the heart of the hoped for annual savings inherent in the proposal to merge. That aspect would permit the discontinuance of operation of duplicative facilities not required to provide adequate transportation service to the public, and would result in the creation of a unified company in position to enjoy a measure of prosperity not attainable separately by either applicant. In the *Louisville Merger* case, *supra*, the competition between the railroads seeking to merge was weak and insubstantial because the prior relationship through corporate affiliation between the affected carriers for more than 75 years had refined the competitive aspects to the point where any change resulting from the merger would be minor. Likewise, in the *Norfolk Merger* case, the competition between the applicants pertained to minor tonnages, secondary to the principal traffic handled by each. However, in each case the applicants were strong or relatively prosperous, and the lessening competition would be unimportant for the reason that strong competition for the available traffic would continue to be afforded by other forms of transportation within the territories in question. In the situation herein, the traffic affected by competition between the applicants is substantial; the railroads involved are weak carriers financially; and the existing competition by other railroads and other forms of transportation would continue as strong, or stronger, than at present. Considering all the circumstances, the change in the competitive situation between the Erie and the Lackawanna would reflect to the benefit of the general public, and its elimination would have no adverse effect upon adequate transportation service.

Another aspect of competition involves the potential effect of the merger upon railroads which connect with the Lackawanna in the handling of traffic via

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through routes to and from points west of Buffalo. To the extent that the unified company would be successful in soliciting traffic (now moving over Lackawanna's lines and those of other connecting railroads) for movement solely over Erie's present through routes or over routes connecting with the interveners at gateways at or near the western portion of Erie's system, the participation of the interveners would be eliminated or the number of miles they would handle such traffic would be drastically reduced. Considering the inbred characteristics of the present traffic patterns via the Buffalo gateway and the required maintenance by the unified company of all existing open routes and channels of trade assured by the standard conditions mentioned hereinbefore; and that the capacity of the unified company to improve its service is limited by the need for complete cooperation of all the railroads participating in through movements, and the avoidance of damaging retaliatory changes which indiscreet unilateral actions might evoke, all of which are constant elements in practical railroad operations, it is concluded that the magnitude of the diversion of revenues and net income from the interveners would not exceed the amounts estimated by the applicants. It is not intended to belittle the disadvantages to the interveners, but, the injuries from which they seek to be insulated are part of the risk involved in the daily business of railroading within areas where strong railroad competition exists. It is not contended, and it cannot be found, that the effect of the merger of the Erie and the Lackawanna upon the volume of interchange traffic at the Buffalo gateway would jeopardize the capacity of the Nickel Plate and the Wabash to maintain adequate transportation service to the public. See *Toledo, P. & W.R. Co. Control*, 295 I.C.C. 523 (536). The same conclusion applies with greater force to the potential diversion of the affected interchange traffic of the Central, the Pittsburgh & Lake Erie, the Lehigh, and other interveners, some of which are in position to enjoy greater participation in traffic presently moving over the lines of the Lackawanna.

The record herein demonstrates that consummation of the proposed merger would enhance the adequacy of service available to the public. Completion of the proposed abandonment of lines of railroad of the applicants and construction of new connecting trackage as contemplated, which likewise warrant approval, would constitute the best use of the facilities in the public interest. The failure of other railroads in the territory to petition the Commission requesting to be included in the transaction does not effect the public interest. The merger of the Erie and the Lackawanna would not involve any increase in their combined total fixed charges. The issuance of capital stock by the Erie for the unified company, and the assumption of the obligations and liabilities of the Lackawanna by the Erie would not be inconsistent with the public interest and likewise merit approval. Among the contributing advantages which justify the approval of the merger and the proposed related authorizations are the resulting general improvement in providing transportation service under conditions permitting more efficient use of motive power and equipment; elimination of duplicative facilities and savings in traffic and general expenses; consolidation of freight and passenger terminal facilities; consolidation and modernization of yards, and locomotive and car shops; and reductions in the combined costs of traffic, accounting and other departments. The greater financial stability of the unified company would permit operational improvements requiring larger expenditures than either applicant would be able to finance under present conditions, and the availability of sites for industrial development where facilities which would be abandoned are situated would tend to generate traffic presently not moving over the lines of the applicants.

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The savings which the merger would permit, even if only partly realized within the first 5 years after the merger is consummated, warrants approval of the transaction, and that it would result in continuing benefits to the shipping public, to the owners of the securities and stock of the applicants, and the general improvement of the overall situation confronting the railroads in the performance of interstate commerce. In total, the merger would conform with the purposes and objectives of the national transportation policy. The officers and key personnel of the Erie and the Lackawanna, and representatives of important industries which use the services of the Erie and the Lackawanna and several railroads in the same territory supported the application and stressed many reasons why the proposals herein would be advantageous to the applicants and to the public generally. They summarize various causes and effects which the Commission appraised in the descriptions and discussions in the *Louisville Merger* case and the *Norfolk Merger* case. The same findings as to their cogency in those deliberations apply to the situation affecting the Erie and the Lackawanna and the intention to merge their properties and franchises, and for purposes of supporting the ultimate findings which follow hereinafter, require no further enumeration.

Findings.—Subject to the specified conditions for the protection of adversely affected railway employees of the applicants, and the maintenance of existing joint routes, interchange arrangements, switching practices, and solicitation restrictions, referred to hereinabove, the examiner finds that (a) merger of the properties and franchises of The Delaware, Lackawanna and Western Railroad Company into the Erie Railroad Company for ownership, management, and operation, (b) acquisition by the latter of sole or joint control through ownership of stock of railroad carriers subsidiary to or affiliated with the former, and (c) acquisition of trackage rights by the Erie Railroad Company, as successor in interest, over the line of the Pennsylvania Railroad Company now jointly used by The Delaware, Lackawanna and Western Railroad Company, are transactions within the scope of section 5(2) of the Interstate Commerce Act, as amended; that the terms and conditions proposed are just and reasonable; and that the transactions will be consistent with the public interest.

Subject to the condition, by reference made part of the order attached hereto, that, before issuing any of the stock herein authorized, the Erie Railroad Company shall file with this Commission a copy of the amendment to its certificate of incorporation duly certified by the appropriate public officer, providing for the changes in its stock, the examiner further finds that (a) the proposed issue by the Erie Railroad Company of not exceeding 4,701,384¹⁵/₃₂ shares of common stock, without par value, and scrip certificates representing fractional interests therein, of Erie-Lackawanna Railroad Company, not exceeding 49,200 shares of common stock, without par value, of Erie-Lackawanna Railroad, to be sold at \$21.3125 a share to satisfy existing stock options granted under The Delaware, Lackawanna and Western Railroad Company's restricted stock option plan, and the issue to holders of Erie Railroad Company preferred stock, series A and B, of new certificates of Erie-Lackawanna Railroad Company, on a share-for-share basis; (b) the proposed assumption by it of obligation and liability with respect to the payment of principal and interest on \$121,368,950 of mortgage and other funded obligations and \$19,163,000 of equipment trust obligations of The Delaware, Lackawanna and Western Railroad Company, all in connection with the proposed merger, as aforesaid, are for lawful objects within its corporate purposes and compatible with the public interest, which are necessary

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and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and are reasonably necessary and appropriate for such purposes; and (c) the portion of the application herein which seeks authority to assume obligation and liability under the joint agreement of merger, in respect of conditional sales contracts, should be dismissed for want of jurisdiction.

The examiner further finds that the present and future public convenience and necessity (a) permit abandonment of portions of the lines of railroad of the Erie Railroad Company and The Delaware, Lackawanna and Western Railroad Company in Erie, Broome, and Steuben Counties, N.Y., and Susquehanna and Lackawanna Counties, Pa., and (b) require construction of connecting lines of railroad and extensions of the applicants' respective lines in Erie and Steuben Counties, N.Y., Susquehanna County, Pa., and Hudson County, N.J., to be commenced on or before December 31, 1960, and completion of the said construction on or before December 31, 1961.

In view of the findings herein, the examiner recommends that the certificate and order be entered.

APPENDIX A

Erie Railroad Company

INCOME STATEMENT

	1956	1957	1958	5 months, ended May 31, 1959
Operating income:				
Railway operating income—				
Railway operating revenues.....	\$175,899,859	\$173,160,296	\$152,745,896	\$66,193,915
Railway operating expenses.....	137,693,502	141,081,738	127,623,042	54,557,203
Net revenue from railway operations.....	38,206,357	32,078,558	25,122,854	11,636,712
Railway tax accruals.....	13,965,956	12,278,457	13,161,131	5,613,614
Railway operating income.....	24,240,401	19,800,101	11,961,723	6,023,098
Rent Income:				
Rent from locomotives.....	110,274	118,663	102,052	43,511
Rent from passenger-train cars.....	229,205	228,519	176,606	84,311
Rent from floating equipment.....	3,321	2,713	845	325
Rent from work equipment.....	23,097	29,390	33,721	6,723
Joint facility rent income.....	816,902	882,131	815,441	437,273
Total rent income.....	1,182,799	1,261,416	1,128,665	572,148
Rents Payable:				
Hire of freight cars—Debit balance.....	8,767,061	8,469,530	7,964,050	3,290,780
Rent for locomotives.....	24,423	33,759	9,971	3,307
Rent for passenger-train cars.....	170,375	166,030	122,167	18,844
Rent for floating equipment.....	55,237	21,944	1,730	275
Rent for work equipment.....	4,329	5,031	5,755	1,570
Joint facility rents.....	1,088,715	1,550,413	2,313,863	971,856
Total rents payable.....	10,110,140	10,246,707	10,417,536	4,286,632
Net rents.....	(8,927,341)	(8,985,291)	(9,288,871)	(3,714,484)
Net railway operating income.....	15,313,060	10,814,810	2,672,852	2,308,614
Other income:				
Income from lease of road and equipment.....	9,760	9,733	9,907	4,386
Miscellaneous rent income.....	446,824	498,063	548,732	341,686
Income from nonoperating property.....	47,008	46,231	50,450	17,172
Separately operated properties—Profit.....	39,171	296,860	862,641	336,307
Dividend income.....	241,983	213,355	117,505	28,192
Interest income.....	451,054	287,273	269,799	215,258
Income from sinking and other reserve funds.....	1,074	881	880	366
Release of premiums on funded debt.....	3,195	3,170	3,146	1,302
Miscellaneous income.....	15,037	33,440	405,786	59,596
Total other income.....	1,255,106	1,388,966	2,268,846	1,004,265
Total income.....	16,568,166	12,203,776	4,941,698	3,312,879

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Erie Railroad Company—Continued

INCOME STATEMENT—Continued

	1956	1957	1958	5 months, ended May 31, 1959
Miscellaneous deductions from income:				
Miscellaneous rents.....	\$46,891	\$53,850	\$80,565	\$46,418
Miscellaneous tax accruals.....	65,139	58,324	62,697	29,125
Separated operated properties—Loss.....	3,342	-----	-----	-----
Miscellaneous income charges.....	32,304	19,833	122,239	31,380
Total miscellaneous deductions.....	147,676	132,007	265,501	106,923
Income available for fixed charges.....	16,420,490	12,071,769	4,676,197	3,205,956
Fixed charges:				
Rent for leased roads and equipment.....	147,064	157,620	145,914	62,392
Interest on funded debt:				
(a) Fixed interest not in default.....	4,614,627	4,813,581	4,695,328	1,914,638
Interest on unfunded debt.....	95,970	93,922	102,457	41,272
Amortization of discount on funded debt.....	59,705	60,246	55,622	22,023
Total fixed charges.....	4,917,366	5,125,369	4,999,321	2,040,325
Income after fixed charges.....	11,503,124	6,946,400	(323,124)	1,165,631
Other deductions:				
Interest on funded debt:				
(c) Contingent interest.....	3,332,615	3,345,800	3,345,755	1,394,060
Net income after fixed charges and other deductions.....	8,170,509	3,600,600	(3,668,879)	(228,429)
Disposition of net income:				
Income applied to sinking and other reserve funds:				
(b) Income applied to capital funds.....	1,884,947	1,801,937	-----	-----
(c) Income applied to sinking funds.....	1,078,958	1,096,348	-----	-----
Total appropriations of income.....	2,963,905	2,898,285	-----	-----
Balance of income transferred to re- tained income—Unappropriated.....	5,206,604	702,315	(3,668,879)	(228,429)

() Denotes red figure.

Erie Railroad Company retained income—unappropriated

	1956	1957	1958	5 months, ended May 31, 1959
Balance at beginning of year.....	\$31,891,077	\$74,649,224	\$75,695,125	\$69,228,369
Credit balance transferred from income.....	5,206,604	702,315	-----	-----
Profit from sale of property.....	456,917	315,582	-----	-----
Profit from sale of investment securities.....	18,774	5	220,947	-----
Profit from company bonds reacquired.....	36,375	293,729	-----	-----
Other credits to retained income.....	284,830	34,157	42,228	124,884
Total.....	37,894,577	75,995,012	75,958,300	69,353,253
Debit balance transferred from income.....	-----	-----	3,668,879	228,429
Loss on sale or retirement of property.....	1,089,942	1,402,515	314,223	-----
Loss on sale of investment securities.....	27,763	-----	3,075,099	-----
Loss on company bonds reacquired.....	-----	76,440	-----	-----
Other debits to retained income.....	23,913	77,382	142,904	-----
Appropriations for sinking and other reserve funds.....	180,000	180,000	1,981,211	946,057
Appropriations released.....	(42,377,541)	(4,512,592)	(3,078,285)	-----
Dividends.....	4,301,276	3,076,142	625,900	312,950
Balance carried to balance sheet.....	74,649,224	75,695,125	69,228,369	67,865,817
Total.....	37,894,577	75,995,012	75,958,300	69,353,253

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Erie Railroad Company general balance sheet

ASSETS

	December 31, 1958	May 31, 1959
Current assets:		
Cash.....	\$6,492,111	\$6,699,945
Temporary cash investments.....	6,777,680	8,021,524
Special deposits.....	173,047	896,095
Net balance receivable from agents and conductors.....	4,230,544	4,349,009
Miscellaneous accounts receivable.....	4,601,031	4,263,936
Interest and dividends receivable.....	67,080	95,522
Accrued accounts receivable.....	2,991,178	3,693,270
Working fund advances.....	74,483	74,163
Prepayments.....	66,765	110,932
Material and supplies.....	8,834,352	9,298,128
Other current assets.....	79,164	83,125
Total current assets.....	34,387,440	37,585,649
Special funds:		
Sinking funds.....	1,272	702
Capital and other reserve funds.....	24,752	24,752
Insurance and other funds.....	29,718	29,718
Total special funds.....	55,742	55,172
Investments:		
Investments in affiliated companies (less reserve for adjustment of investment in securities).....	18,891,902	16,748,654
Other investments.....	2,153,395	2,551,231
Total investments.....	21,045,297	19,299,885
Properties:		
Road and equipment property.....	511,585,941	511,642,245
Road.....	306,874,001	307,741,712
Equipment.....	189,767,930	188,959,842
General expenditures.....	14,944,010	14,940,691
Improvements on leased property—Road.....	374,634	374,823
Donations and grants—Credit.....	(7,368,385)	(7,376,412)
Total transportation property.....	504,592,190	504,640,656
Accrued depreciation—Road and equipment.....	(126,573,111)	(129,735,872)
Amortization of defense projects—Road and equipment.....	(14,374,459)	(14,148,790)
Recorded depreciation and amortization.....	(140,947,570)	(143,884,662)
Total transportation property less recorded depreciation and amortization.....	363,644,620	360,755,994
Miscellaneous physical property.....	3,081,479	3,059,329
Total properties less recorded depreciation and amortization.....	366,726,099	363,815,323
Other assets and deferred charges:		
Other assets.....	1,755,942	1,810,020
Unamortized discount on long-term debt.....	761,601	740,574
Other deferred charges.....	2,749,359	3,544,348
Total other assets and deferred charges.....	5,266,902	6,094,942
Total assets.....	427,481,480	426,850,971

() Denotes red figure.

LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:		
Traffic and car-service balances—Cr.....	781,628	1,176,804
Audited accounts and wages payable.....	3,204,789	3,321,109
Miscellaneous accounts payable.....	1,902,575	1,845,635
Interest matured unpaid.....	1,283,442	210,994
Dividends matured unpaid.....	34,940	183,972
Unmatured interest accrued.....	4,003,891	3,590,540
Accrued accounts payable.....	6,196,300	8,578,501
Federal income taxes accrued.....	1,205,388	1,203,938
Other taxes accrued.....	3,896,225	4,422,428
Other current liabilities.....	1,038,750	1,044,971
Total current liabilities (exclusive of long-term debt due within 1 year).....	23,547,928	25,578,892
Long-term debt due within 1 year:		
Equipment obligations and other debt.....	4,747,700	4,632,700
Long-term debt due after 1 year:		
Funded debt unmatured.....	181,837,950	181,334,950
Equipment obligations.....	23,354,750	21,877,525
Total long-term debt due after 1 year.....	205,192,700	203,212,475
Reserves:		
Casualty and other reserves.....	6,828,200	6,567,902

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Erie Railroad Company general balance sheet—Continued

LIABILITIES AND SHAREHOLDERS' EQUITY—Continued

	December 31, 1958	May 31, 1959
Other liabilities and deferred credits:		
Other liabilities.....	\$4, 422, 970	\$4, 278, 886
Unamortized premium on long-term debt.....	39, 734	38, 028
Other deferred credits.....	656, 416	900, 769
Accrued depreciation—Leased property.....	292, 154	304, 135
Total other liabilities and deferred credits.....	5, 411, 274	5, 521, 818
Shareholders' equity:		
Capital stock:		
Capital stock issued—		
Common stock.....	98, 003, 600	98, 003, 600
Preferred stock.....	12, 518, 000	12, 518, 000
Stock liability for conversion—		
Common stock.....	4, 735	4, 735
Total capital stock.....	110, 526, 335	110, 526, 335
Capital surplus:		
Other capital surplus.....	17, 763	17, 763
Retained income:		
Retained income—Appropriated.....	1, 981, 211	2, 927, 269
Retained income—Unappropriated.....	69, 223, 369	67, 865, 817
Total retained income.....	71, 209, 580	70, 793, 086
Total shareholders' equity.....	181, 753, 678	181, 337, 184
Total liabilities and shareholders' equity.....	427, 481, 480	426, 850, 971

APPENDIX B

The Delaware, Lackawanna and Western Railroad Company income statement

	1956	1957	1958	5 months, ended May 31, 1959
Operating income:				
Railway operating income:				
Railway operating revenues.....	\$88, 786, 209	\$85, 904, 749	\$76, 279, 080	\$30, 222, 817
Railway operating expenses.....	73, 638, 924	73, 454, 958	68, 376, 669	26, 901, 805
Net revenue from railway operations.....	15, 147, 285	12, 449, 791	7, 902, 411	3, 321, 012
Railway tax accruals.....	5, 596, 764	7, 961, 595	7, 829, 066	3, 231, 638
Railway operating income.....	9, 550, 521	4, 488, 196	73, 345	89, 374
Rent income:				
Rent from locomotives.....	10, 475	14, 718	8, 690	4, 385
Rent from passenger-train cars.....	356, 175	386, 058	366, 631	161, 786
Rent from floating equipment.....	7, 466	6, 188	4, 920	1, 980
Rent from work equipment.....	44, 305	5, 087	982	3, 723
Joint facility rent income.....	85, 119	934, 185	553, 893	310, 422
Total rent income.....	503, 540	1, 346, 236	935, 116	482, 296
Rents payable:				
Hire of freight cars—Debit balance.....	1, 539, 560	1, 993, 007	2, 136, 305	1, 025, 015
Rent for locomotives.....	3, 471	7, 233	11, 048	973
Rent for passenger-train cars.....	237, 292	265, 448	267, 606	121, 606
Rent for floating equipment.....	15, 722	21, 196	2, 884	546
Rent for work equipment.....	12, 785	98	18	-----
Joint facility rents.....	80, 852	95, 762	63, 959	28, 265
Total rents payable.....	1, 889, 682	2, 382, 744	2, 481, 820	1, 176, 405
Net rents.....	(1, 386, 142)	(1, 036, 508)	(1, 546, 704)	(694, 109)
Net railway operating income.....	8, 164, 379	3, 451, 688	(1, 473, 359)	(604, 735)
Other income:				
Income from lease of road and equipment.....	1, 883	1, 883	1, 883	-----
Miscellaneous rent income.....	137, 853	143, 562	283, 799	120, 620
Income from nonoperating property.....	694, 336	774, 442	642, 789	258, 925
Dividend income.....	1, 381, 367	1, 308, 583	1, 270, 784	353, 747
Interest income.....	186, 717	164, 399	101, 213	106, 135
Income from sinking and other reserve funds.....	4, 833	5, 483	6, 520	1, 087

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The Delaware, Lackawanna and Western Railroad Company income statement—Continued

	1956	1957	1958	5 months, ended May 31, 1959
Other income—Continued				
Miscellaneous income.....	\$11,224	\$189,971	\$907,395	\$110,585
Total other income.....	2,418,213	2,588,323	3,214,383	951,099
Total income.....	10,582,592	6,040,011	1,741,024	346,364
Miscellaneous deductions from income:				
Miscellaneous rents.....	116,750	116,750	156,545	63,040
Miscellaneous tax accruals.....	441,047	464,836	480,200	200,000
Miscellaneous income charges.....	58,177	67,775	124,974	90,167
Total miscellaneous deductions.....	615,974	649,361	761,719	353,207
Income available for fixed charges.....	9,966,618	5,390,650	979,305	(6,843)
Fixed charges:				
Interest on funded debt:				
(a) Fixed interest not in default.....	4,307,788	4,447,904	4,397,676	1,797,820
Interest on unfunded debt.....	48,179	45,806	45,786	17,941
Amortization of discount on funded debt.....	56,907	4,260	4,115	
Total fixed charges.....	4,412,874	4,497,970	4,447,577	1,815,761
Income after fixed charges.....	5,553,744	892,680	(3,468,272)	(1,822,604)
Other deductions:				
Interest on funded debt:				
(c) Contingent interest.....	472,224	463,066	466,047	194,187
Total other deductions.....	472,224	463,066	466,047	194,187
Balance of income transferred to retained income—Unappropriated.....	5,081,520	429,614	(3,934,319)	(2,016,791)

() Denotes red figure.

The Delaware, Lackawanna and Western Railroad Company retained income—unappropriated

	1956	1957	1958	5 months ended May 31, 1959
Balance at beginning of year.....	\$85,240,493	\$85,036,267	\$86,239,447	\$81,632,483
Credit balance transferred from income.....	5,081,520	429,614		
Profit from sale of property.....	32,574	156,514		
Profit from sale of investment securities.....				15,349,562
Profit from company bonds reacquired.....	1,455	35,877		
Other credits to retained income.....	31,954	2,233,726		
Appropriations released.....	1,688,824	1,634,835	551,988	
Total.....	92,076,820	89,526,833	86,791,435	96,982,045
Debit balance transferred from income.....			3,934,319	2,016,791
Loss on sale or retirement of property.....	66,292	628,276	316,781	
Loss on sale of investment securities.....		276		
Other debits to retained income.....	4,894,230	559	355,714	185,718
Appropriations for sinking and other reserve funds.....	1,688,824	1,634,135	552,138	
Dividends.....	391,207	1,024,140		
Balance carried to balance sheet.....	85,036,267	86,239,447	81,632,483	94,779,536
Total.....	92,076,820	89,526,833	86,791,435	96,982,045

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The Delaware, Lackawanna and Western Railroad Company general balance sheet

ASSETS

	December 31, 1958	May 31, 1959
Current assets:		
Cash.....	\$1,308,283	\$2,470,837
Temporary cash investments.....		10,092,180
Special deposits.....	1,953,181	1,920,026
Loans and notes receivable.....	1,127	660
Net balances receivable from agents and conductors.....	2,047,053	1,919,861
Miscellaneous accounts receivable.....	1,356,857	1,460,760
Interest and dividends receivable.....	325,862	48,791
Accrued accounts receivable.....	2,734,259	1,781,528
Working fund advances.....	136,849	137,047
Prepayments.....	160,169	148,937
Material and supplies.....	4,704,940	4,260,434
Other current assets.....	28,100	27,519
Total current assets.....	14,756,680	24,268,580
Special funds:		
Sinking funds.....	500	500
Capital and other reserve funds.....	75,894	139,309
Insurance and other funds.....	141,849	141,849
Total special funds.....	218,243	281,658
Investments:		
Investments in affiliated companies.....	5,250,290	5,234,417
Other investments.....	5,142,859	1,599,304
Total investments.....	10,393,149	6,833,721
Properties:		
Road and equipment property.....	360,115,597	358,803,237
Road.....	222,420,916	222,727,484
Equipment.....	122,811,763	121,225,602
General expenditures.....	14,882,918	14,850,151
Donations and grants—Credit.....	(490,611)	(486,644)
Total transportation property.....	359,624,986	358,316,593
Accrued depreciation—Road and equipment.....	(82,357,832)	(82,941,774)
Amortization of defense projects—Road and equipment.....	(5,284,207)	(5,275,071)
Recorded depreciation and amortization.....	(87,642,039)	(88,216,845)
Total transportation property less recorded depreciation and amortization.....	271,982,947	270,099,748
Miscellaneous physical property.....	10,477,928	10,388,713
Total properties less recorded depreciation and amortization.....	282,460,875	280,488,461
Other assets and deferred charges:		
Other assets.....	1,271,174	1,065,110
Other deferred charges.....	474,373	749,997
Total other assets and deferred charges.....	1,745,547	1,815,107
Total assets.....	309,574,494	313,687,527

() Denotes red figure.

LIABILITIES AND SHAREHOLDERS' EQUITY

	December 31, 1958	May 31, 1959
Current liabilities:		
Traffic and car-service balances—Cr.....	\$800,667	\$926,563
Audited accounts and wages payable.....	5,070,072	2,463,977
Miscellaneous accounts payable.....	1,102,065	1,026,905
Interest matured unpaid.....	284,702	871,444
Dividends matured unpaid.....	7,069	6,989
Unmatured interest accrued.....	1,233,253	563,811
Accrued accounts payable.....	1,588,852	1,023,780
Other taxes accrued.....	172,263	1,077,217
Other current liabilities.....	544,070	567,876
Total current liabilities (exclusive of long-term debt due within 1 year).....	10,803,013	8,528,542
Long-term debt due within 1 year:		
Equipment obligations and other debt.....	4,403,745	3,309,614

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The Delaware, Lackawana and Western Railroad Company general balance sheet—Continued

LIABILITIES AND SHAREHOLDERS' EQUITY—Continued

	December 31, 1953	May 31, 1959
Long-term debt due after 1 year:		
Funded debt unmatured.....	\$95,899,250	\$92,480,250
Equipment obligations.....	23,447,692	21,417,716
Total long-term debt due after 1 year.....	119,346,942	113,897,966
Reserves:		
Pension and welfare reserves.....	4,667,988	4,541,972
Equalization reserves.....		102,801
Casualty and other reserves.....	1,787,461	1,711,042
Total reserves.....	6,455,449	6,355,815
Other liabilities and deferred credits:		
Other liabilities.....	1,865,716	2,263,024
Other deferred credits.....	1,229,326	709,474
Total other liabilities and deferred credits.....	3,095,042	2,972,498
Shareholders' equity:		
Capital stock (\$50 par value).....	81,931,200	81,931,200
Capital surplus:		
Premiums and assessments on capital stock.....	354,843	354,843
Paid-in surplus.....	1,457,282	1,457,282
Other capital surplus.....	93,995	99,730
Total capital surplus.....	1,906,120	1,911,855
Retained income:		
Retained income—Appropriated.....	500	500
Retained income—Unappropriated.....	81,632,483	94,779,537
Total retained income.....	81,632,983	94,780,037
Total shareholders' equity.....	165,470,303	178,623,092
Total liabilities and shareholders' equity.....	309,574,494	318,687,627

APPENDIX C

Pro forma general balance sheets as of December 31, 1958, and May 31, 1959, after giving effect to merger of Erie Railroad Company and The Delaware, Lackawanna and Western Railroad Company

ASSETS

	December 31, 1958	May 31, 1959
Current assets:		
Cash.....	\$7,800,394	\$9,170,782
Temporary cash investments.....	6,777,680	18,113,704
Special deposits.....	2,126,228	2,816,121
Loans and notes receivable.....	1,127	660
Net balance receivable from agents and conductors.....	6,277,597	6,268,870
Miscellaneous accounts receivable.....	5,853,512	5,346,976
Interest and dividends receivable.....	392,942	144,313
Accrued accounts receivable.....	5,725,437	5,474,798
Working fund advances.....	211,337	211,210
Prepayments.....	226,934	259,869
Material and supplies.....	13,539,292	13,558,562
Other current assets.....	107,264	110,644
Total current assets.....	49,039,744	61,476,609
Special funds:		
Sinking funds.....	1,772	1,202
Capital and other reserve funds.....	100,646	164,061
Insurance and other funds.....	171,567	171,567
Total special funds.....	273,985	336,830
Investments:		
Investments in affiliated companies.....	24,142,192	21,983,071
Other investments.....	7,296,254	4,150,535
Total investments.....	31,438,446	26,133,606

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Pro forma general balance sheets as of December 31, 1958, and May 31, 1959, after giving effect to merger of Erie Railroad Company and The Delaware, Lackawanna and Western Railroad Company—Continued

ASSETS—Continued

	December 31, 1958	May 31, 1959
Properties:		
Road and equipment property	\$871,701,538	\$870,445,482
Road	529,294,917	530,469,196
Equipment	312,579,693	310,185,444
General expenditures	29,826,928	29,790,842
Improvements on leased property—Road	374,634	374,823
Donations and grants—Credit	(7,858,996)	(7,863,056)
Total transportation property	864,217,176	862,957,249
Accrued depreciation—Road and equipment	(208,930,943)	(212,677,646)
Amortization of defense projects—Road and equipment	(19,658,666)	(19,423,861)
Recorded depreciation and amortization	(228,589,609)	(232,101,507)
Total transportation property less recorded depreciation and amortization	635,627,567	630,855,742
Miscellaneous physical property	13,559,407	13,448,042
Total properties less recorded depreciation and amortization	649,186,974	644,303,784
Other assets and deferred charges:		
Other assets	2,777,116	2,625,130
Unamortized discount on long-term debt	761,601	740,674
Other deferred charges	3,223,732	4,294,345
Total other assets and deferred charges	6,762,449	7,660,049
Total assets	736,701,598	739,910,778

() Denotes red figure.

LIABILITIES AND SHAREHOLDERS' EQUITY

	December 31, 1958	May 31, 1959
Current liabilities:		
Traffic and car-service balances—Credit	\$1,582,295	\$2,103,367
Audited accounts and wages payable	8,170,485	5,407,366
Miscellaneous accounts payable	3,004,640	2,872,540
Interest matured unpaid	1,568,144	1,082,438
Dividends matured unpaid	42,009	190,941
Unmatured interest accrued	5,237,144	4,154,351
Accrued accounts payable	7,785,152	9,602,281
Federal income taxes accrued	1,205,388	1,203,938
Other taxes accrued	4,068,488	5,499,645
Other current liabilities	1,582,820	1,612,847
Total current liabilities (exclusive of long-term debt due within 1 year)	34,246,565	33,729,714
Long-term debt due within 1 year:		
Equipment obligations and other debt	9,151,445	7,942,314
Long-term debt due after 1 year:		
Funded debt unmaturing	277,737,200	273,815,200
Equipment obligations	46,802,442	43,295,241
Total long-term debt due after 1 year	324,539,642	317,110,441
Reserves:		
Pension and welfare reserves	4,667,988	4,541,972
Equalization reserve		102,801
Casualty and other reserves	8,615,661	8,278,944
Total reserves	13,283,649	12,923,717
Other liabilities and deferred credits:		
Other liabilities	6,038,686	6,291,910
Unamortized premium on long-term debt	39,734	38,028
Other deferred credits	1,885,742	1,610,243
Accrued depreciation—Leased property	292,154	304,135
Total other liabilities and deferred credits	8,256,316	8,244,316

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Pro forma general balance sheets as of December 31, 1958, and May 31, 1959, after giving effect to merger of Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company—Continued

LIABILITIES AND SHAREHOLDERS' EQUITY

	December 31, 1958	May 31, 1959
Shareholders' equity:		
Capital stock:		
Capital stock issued—		
Proposed new issue—		
Common (4,701,384 ¹ / ₂ shares—\$32.00 stated value).....	\$150,444,303	\$150,444,303
Erie Railroad—		
Common (2,450,090 shares—\$40.00 stated value).....		
Preferred (125,180 shares—\$100.00 par value).....	12,518,000	12,518,000
Lackawanna Railroad—		
Common (1,638,624 shares—\$50.00 par value).....		
Stock liability for conversion—		
Erie Railroad—		
Common (118,375 shares—\$40.00 stated value).....		
Total capital stock.....	162,962,303	162,962,303
Capital surplus:		
Premiums and assessments on capital stock.....		
Paid-in surplus (Note 2).....	31,307,357	31,307,357
Other capital surplus.....	111,758	117,493
Total capital surplus.....	31,419,115	31,424,850
Retained income:		
Retained income—appropriated.....	1,981,711	2,927,769
Retained income—unappropriated.....	150,860,852	162,645,354
Total retained income.....	152,842,563	165,573,123
Total shareholders' equity.....	347,223,981	359,960,276
Total liabilities and shareholders' equity.....	736,701,598	739,910,778

APPENDIX D

Lackawanna obligations to be assumed

Title of securities	Dates of issue and maturity	Rate of interest	Amount as of March 31, 1959
The Morris and Essex Railroad Company, first refunding gold mortgage bonds.	{Dec. 1, 1900 Dec. 1, 2000	} 3½ percent.....	\$32,670,000
The Morris and Essex Railroad Company, construction mortgage Gold Bonds, series A.	{Nov. 2, 1925 Nov. 1, 1975		
Same, series B.....	{Nov. 1, 1928 Nov. 1, 1975	} 4½ percent.....	9,784,000
Same, series C.....	{Nov. 1, 1930 Nov. 1, 1975		
The Delaware, Lackawanna and Western Railroad Company, Pennsylvania division first mortgage bonds, series A.	{May 1, 1950 May 1, 1980	} 4¾ percent.....	3,974,000
The Delaware, Lackawanna and Western Railroad Company, Pennsylvania division, refunding mortgage and collateral trust bonds, series A and B.	{May 1, 1950 May 1, 1985		
The New York, Lackawanna and Western Railway Company first and refunding mortgage bonds, series A.	{May 1, 1922 May 1, 1973	} 4 percent.....	\$ 12,622,000
Same, series B.....	{May 1, 1923 May 1, 1973		
Same, series C.....	{July 1, 1942 May 1, 1973	} 5 percent.....	\$ 5,216,300
The Delaware, Lackawanna and Western Railroad Company income mortgage bonds.	{July 1, 1942 May 1, 1993		
Oswego and Syracuse division mortgage bonds.....	{Feb. 20, 1943 May 1, 1993	} 4 percent fixed..... 2 percent contingent.	\$ 975,050
U.C. & S.V. division mortgage bonds.....	{May 1, 1942 May 1, 1992		
Warren Railroad Company first and refunding mortgage bonds.....	{Aug. 1, 1900 Aug. 1, 2000	} 3½ percent.....	\$ 1,030,000

See footnotes at end of table.

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Lackawanna obligations to be assumed—Continued

Title of securities	Dates of issue and maturity	Rate of interest	Amount as of March 31, 1959
Warren division mortgage bonds.....	{ Apr. 15, 1942 May 1, 1992	{ 4 percent fixed.... 2 percent contin- gent.	¹⁰ \$1,166,300
Lackawanna of New Jersey division first mortgage bonds series A.....	{ July 1, 1942 May 1, 1993	{ 4 percent fixed....	¹¹ 6,593,175
Same, series B.....	{ July 1, 1942 May 1, 1993	{ 4 percent contin- gent.	¹² 2,028,575
Morris and Essex division collateral trust bonds.....	{ July 1, 1942 May 1, 2042	{ 4 percent fixed.... 2 percent contin- gent.	¹³ 9,619,550
Equipment trust, series H.....	{ Mar. 15, 1949 Mar. 15, 1964	{ 2½ percent.....	1,260,000
Equipment trust, series I.....	{ Apr. 1, 1949 Apr. 1, 1964	{ 2½ percent.....	1,260,000
Equipment trust, series J.....	{ Apr. 1, 1950 Apr. 1, 1965	{ 2¾ percent.....	931,000
Equipment trust, series K.....	{ Mar. 1, 1952 Mar. 1, 1967	{ 3 percent.....	1,584,000
Equipment trust, series L.....	{ Jan. 15, 1953 Jan. 15, 1968	{ 3½ percent.....	3,888,000
Equipment trust, series M.....	{ Aug. 15, 1954 Aug. 15, 1969	{ 2¾ percent.....	3,990,000
Equipment trust, series N.....	{ May 15, 1956 May 15, 1971	{ ¹⁴ 3¾ percent..... ¹⁴ 3¾ percent.....	¹⁴ 6,250,000
Total obligations.....			140,531,950
Less holdings in Lackawanna treasury.....			2,564,700
Net obligations as of March 31, 1959.....			137,967,250

¹ Including \$30,000 of such bonds held in Lackawanna treasury.

² Including \$216,600 of such bonds held in Lackawanna treasury.

³ Including \$559,000 of such bonds held in Lackawanna treasury.

⁴ Including \$308,000 of such bonds held in Lackawanna treasury.

⁵ Including \$150,500 of such bonds held in Lackawanna treasury.

⁶ Including \$1,400 of such bonds held in Lackawanna treasury.

⁷ Including \$154,000 of such bonds held in Lackawanna treasury.

⁸ Including \$538,000 of such bonds held in Lackawanna treasury.

⁹ Including \$29,000 of such bonds held in Lackawanna treasury.

¹⁰ Including \$191,000 of such bonds held in Lackawanna treasury.

¹¹ Including \$327,875 of such bonds held in Lackawanna treasury.

¹² Including \$7,625 of such bonds held in Lackawanna treasury.

¹³ Including \$51,700 of such bonds held in Lackawanna treasury.

¹⁴ 3¾ percent on \$3,325,000 principal amount. 3¾ percent on \$2,925,000 principal amount.

APPENDIX E

Applicants' proposed conditions (standard condition)

1. Upon consummation of the merger, the Erie-Lackawanna Railroad Company shall maintain and keep open all routes and channels of trade via existing junctions and gateways, unless and until otherwise authorized by the Commission.

2. The present neutrality of handling traffic inbound and outbound by The Delaware, Lackawanna and Western Railroad Company shall be continued so as to permit equal opportunity for service to and from all lines reaching the rails of that carrier without discrimination as to routing of movement of traffic and without discrimination in the arrangement of schedules or otherwise.

3. The present traffic and operating relationships existing between The Delaware, Lackawanna and Western Railroad Company, on the one hand, and all lines connecting with its tracks, on the other, shall be continued insofar as such matters are within the control of the Erie-Lackawanna Railroad Company.

4. The Erie-Lackawanna Railroad Company shall accept, handle, and deliver all cars inbound and outbound, loaded and empty, without discrimination in promptness or frequency of service as between cars destined to or received from competing carriers, and irrespective of destination or route of movement.

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5. The Erie-Lackawanna Railroad Company shall not do anything to restrain or curtail the right of industries now located on The Delaware, Lackawanna and Western Railroad to route traffic over any or all existing routes and gateways.

6. Any party or any person having an interest in the subject matter may at any future time make application for such modification of the above conditions, or any of them, as may be required in the public interest, and jurisdiction will be retained to reopen the proceeding on our own motion for the same purpose.

Nickel Plate's proposed conditions

1. Erie-Lackawanna shall maintain and keep open all rates, services, facilities, practices, routes, and channels of trade in connection with Nickel Plate via existing interchange locations and connections of Lackawanna and Erie with Nickel Plate and via facilities of Lackawanna, Erie, Erie-Lackawanna and controlled lines, and without any disadvantage to Nickel Plate in either cost or service, unless and until the cancellation or restriction of such rates, services, facilities, practices, routes and channels of trade or the change or elimination of such interchange locations or connections is agreed to in writing by Nickel Plate.

2. Erie-Lackawanna shall be strictly neutral and impartial as to, and shall cooperate fully with, Nickel Plate in establishing and maintaining, and shall establish and maintain, in both directions via lines of Erie-Lackawanna at, to, and from Buffalo, N.Y., freight train service and schedules for traffic interchanged or interchangeable with, or which if so routed could be handled by, Nickel Plate at least equal in every respect to that established or maintained on any other portion of or any other route or routes used or usable by Erie-Lackawanna for handling traffic between the same origin and destination or connecting carriers, all to the end that service for all such traffic, including time and frequency and the same cooperation as to train departure times as Lackawanna now accords Nickel Plate, via Nickel Plate's using existing interchange locations at Buffalo to and from Erie and Lackawanna shall be fully competitive with any service which Erie-Lackawanna shall establish or maintain for itself and/or any other connection via any route to, from, or between any station or stations and/or any connection or connections of Erie-Lackawanna. It is understood that reference to Buffalo, N.Y., in this and other conditions includes East Buffalo, Sloan, Cheektowaga and other environs of Buffalo, N.Y.

3. Each of the present locations for interchange of cars between Nickel Plate and Erie and Lackawanna at Buffalo, N.Y., shall remain open for interchange between Nickel Plate and Erie and Lackawanna or Erie-Lackawanna unless and until changes are made as a result of mutual agreement of the parties.

4. In view of the applicant's expressed desire that Nickel Plate interchange cars to Erie-Lackawanna either in the present Erie yard area near Bailey Avenue, Buffalo or, via the line of Erie, in the area of Lackawanna's present East Buffalo yard, proposed to be enlarged by Erie-Lackawanna, Nickel Plate shall have:

(a) the right to interchange cars to Erie, Lackawanna or Erie-Lackawanna in the area of Lackawanna's present East Buffalo yard, proposed to be enlarged by Erie-Lackawanna, via the present line of the Lackawanna to said area from the present connection of Nickel Plate with Lackawanna at Nickel Plate Junction, as well as via said line of the Erie; and train cutoff times shall be increased by Erie, Lackawanna and Erie-Lackawanna to compensate for the
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additional distance and time involved in such operations by Nickel Plate, to the end that present and future competitive schedules shall be maintained and;

(b) the right to use the lines referred to in (a) hereof to effect interchange of cars with other carriers in the Buffalo area upon the payment of reasonable compensation, said compensation to be determined by arbitration if the parties cannot agree thereon.

5. Erie, Lackawanna, and Erie-Lackawanna shall handle westbound car deliveries to Nickel Plate at Buffalo with promptness and dispatch via their most expeditious routes.

6. In the event Lehigh Valley is granted the right, either by agreement or by condition imposed by the Commission, to operate over lines of the Erie, Lackawanna, or Erie-Lackawanna to interchange cars to Nickel Plate, Nickel Plate shall have the right upon the same terms to operate over such lines to interchange cars to Lehigh Valley.

7. The following traffic shall, when routed for movement via the Nickel Plate unless the shipper specifies another junction, be delivered by Erie-Lackawanna to Nickel Plate at Buffalo, N.Y.:

(a) All traffic originating at stations or facilities presently served or used by Lackawanna, and

(b) All traffic from New England received by Erie-Lackawanna at points of interchange with the Delaware and Hudson Railroad Corporation, The Lehigh and Hudson River Railway Company, Lehigh and New England Railroad Company, The New York, New Haven and Hartford Railroad Company, and all traffic received by Erie-Lackawanna from The Central Railroad Company of New Jersey and from terminal railroads in the New York-New Jersey harbor area.

8. Erie-Lackawanna shall, at the request of Nickel Plate, to the extent it is within the power of the Erie-Lackawanna, publish and maintain rates via all points of connection between the Erie-Lackawanna and Nickel Plate between all stations of Erie-Lackawanna and all stations on connections of or lines beyond the Erie-Lackawanna, on the one hand, and all stations on Nickel Plate and on connections of and lines beyond Nickel Plate, on the other, no higher than apply or may apply between the same points via any route in which Erie-Lackawanna participates either individually or with any other connection or connections.

9. The Erie-Lackawanna shall accept, handle, and deliver all cars, loaded and empty, routed via Nickel Plate without discrimination in promptness or frequency of service as between cars destined to or received from any carrier via the line or lines of Erie-Lackawanna, irrespective of destination or route of movement.

10. The Erie-Lackawanna shall not restrain or curtail, or take any action tending to restrain or curtail, the rights of any shipper or receiver located on the line or lines of the Erie-Lackawanna or anywhere else to route traffic over the lines of Nickel Plate.

11. In the event Erie, Lackawanna, or Erie-Lackawanna agrees or agree with any other railroad, by the acceptance of conditions or otherwise, in respect of service or interchange arrangements or use of facilities at, to, or from Buffalo on terms more favorable than those contained herein in respect of Nickel Plate, Nickel Plate at its sole option may at any time upon written notice to Erie, Lackawanna, or Erie-Lackawanna obtain the benefit of such agreement, terms, or conditions.

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12. The Nickel Plate may at any future time petition or make application to the Interstate Commerce Commission for the modification or enforcement of the above conditions or any of them.

The Nickel Plate also subscribed to conditions 1 and 2 as proposed by the New York Central.

Wabash's proposed conditions

NOTE.—Wabash failed to spell out the language of specific conditions implied in its petition to intervene, in exhibits and testimony presented at the hearing, or on brief. The conditions below are drawn from portions of statements by officers of Wabash which also contain explanations justifying the relief sought.

1. The Erie Railroad Company and The Delaware, Lackawanna and Western Railroad Company, for themselves and for the Erie-Lackawanna Railroad Company, afford the Wabash Railroad Company a direct and workable connection (together with crossovers, sidings, interchanges, and other appurtenant facilities) with the Lehigh Valley Railroad Company and other railroads serving the Buffalo gateway.

2. The Erie-Lackawanna Railroad Company, upon reasonable terms, be required to permit Wabash or Lehigh Valley, or both, (a) use of a combination of specified tracks necessary to reach East Buffalo; (b) use of that portion of the Erie East Buffalo yard which the applicants propose to remove; (c) use of a connection from Lehigh Valley tracks at or near Union Road to Erie tracks, and trackage rights over the present Erie tracks to the Erie East Buffalo yard; and (d) trackage rights over the old passenger line of the Erie from I.Q. Tower to F.W. Tower.

3. As less desirable alternatives, (in the event the rights and use detailed in condition 2, are denied) the Erie and the Lackawanna be required to grant to Wabash or Lehigh Valley, or both (a) trackage rights over the Lackawanna tracks from the connection with the Canadian National Railways at Black Rock (including the Lackawanna Black Rock facilities) to the Lackawanna Sloan yard, together with appropriate connections at that yard, to the Erie East Buffalo yard; or, (b) a connection from Sloan yard to the Lehigh Valley tracks in the vicinity of Union Road.

Lehigh Valley's proposed conditions

1. The Erie-Lackawanna Railroad Company be required to grant to the Lehigh Valley Railroad Company, (a) trackage rights from Black Rock to East Buffalo yard of Erie, together with trackage rights over Erie from F.W. Tower through East Buffalo to Union Road; (b) the right to install a connection from Erie's main line to Lehigh Valley's main line at Union Road; and (c) use of so much of the yard or yards of Erie in East Buffalo and Black Rock as is necessary for Lehigh Valley to interchange with its connections at those yards.

2. Application to abandon a portion of Lackawanna's Black Rock branch line be denied.

New York Central's proposed conditions

1. All presently existing routes, rates, and services via existing junctions and gateways between applicant Erie and/or applicant DL&W, on the one hand, and the New York Central or the Pittsburgh and Lake Erie, on the other, shall be maintained unchanged by the merged company unless a change is agreed to by the New York Central or the Pittsburgh and Lake Erie or is authorized 312 I.C.C.

by this Commission, and all such existing routes, rates, and services, and in particular those via the Buffalo gateway shall in all respects be maintained by the merged company on a fully competitive basis with any other routes, rates or services that may be established or maintained by the merged company.

2. Tariffs publishing through routes between the New York Central, on the one hand, and the Erie or DL&W, on the other, may not be adopted or republished by the merged company in such a manner as to permit the application of such Erie-New York Central routes to (or from) points on the DL&W (whether or not such points are common to applicant Erie and applicant DL&W) without the consent of the New York Central or the further order of this Commission.

3. The present traffic and operating relationships existing between the applicants, on the one hand, and the New York Central and the Pittsburgh and Lake Erie, on the other, shall be continued insofar as such matters are within the control of the merged company.

4. The New York Central or the Pittsburgh and Lake Erie may at any future time make application for the modification of the above conditions as their own or the public interest may require.

If for any reason condition 2 above is unacceptable to the applicants, the Central's interest could be protected by the following alternate condition 2a:

2a. On all traffic moving in interchange service between points on the New York Central in central territory and points on applicant DL&W (including points common to applicant DL&W and applicant Erie), the New York Central shall be entitled to divisions of joint rates on the basis of its present divisions with applicant DL&W, regardless of the route or gateway via which such traffic actually moves, unless Central consents to a different basis of divisions or until the further order of this Commission.

APPENDIX F

Suggested employee protective conditions

A fair and equitable arrangement for the protection of the interests of the employees adversely affected herein and one which will not result in employees of the Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company being placed in a worse position with respect to their employment for a period of 4 years, will be provided by applying the same conditions imposed in the *New Orleans Union Passenger Terminal* case, F.D. No. 15920 (New Orleans conditions), for the protection of all employees of both the Erie and the Lackawanna who may be adversely affected with respect to their rates of pay, rules, or working conditions, or rights or privileges pertaining thereto, upon approval and effectuation of the proposed merger and related transactions, and in addition thereto the following:

(a) On the effective date of the proposed merger, the Erie-Lackawanna will take into its employment all employees of the Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company who are willing to accept such employment, and none of the present employees of either of said carriers shall be deprived of employment or placed in a worse position with respect to their employment or compensation due therefor for a period of 4 years from this Commission's order of approval herein, because of the merger of the said railroads or any program of economies undertaken as a result thereof;

(b) Section 13 of the Washington Agreement and condition No. 8 of the "Oklahoma Conditions" as found in the "New Orleans Conditions" shall not be applicable and the following provision shall apply:

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"In the event any dispute or controversy arises with respect to the protection afforded by these conditions or by the New Orleans Conditions (Except as defined in Section 11 of the Washington Agreement and Condition 9(d) of the Oklahoma Conditions) or in connection with any agreement entered into between the carrier parties hereto and the representatives of their employees relating to the said merger and related transactions, as provided by the New Orleans Conditions, including an interpretation, application, or enforcement of any of the provisions of said agreements, which cannot be settled by the carrier or carriers and the employee or his authorized representative within 30 days after the dispute arises, it may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the disputed controversy to an arbitration committee, each party shall within 10 days, select one member of the arbitration committee and the two members thus chosen shall select a third member who shall serve as chairman. Should the two members be unable to agree upon the appointment of the third member within 10 days, either party may request the National Mediation Board to appoint the third member. The decision of the majority of the arbitration committee shall be final and conclusive. The salaries and expenses of the third member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them."

It should be the intent and effect of the foregoing conditions that all employees adversely affected by the merger prior to a date 4 years from the effective date of the order of approval are to receive as a minimum the protection afforded by the second sentence of section 5(2)(f), namely, complete preservation of employment for 4 years, but if the total amount received by affected employees who are benefited by that sentence is less than they would have received under the New Orleans conditions, applied from the date of adverse effect to them, then they are entitled to the remaining benefits which they would have received under the latter. Should the amount of compensation which an employee receives by virtue of the protection afforded under the second sentence of section 5(2)(f), equal or exceed the amount to which he would have been entitled to under the New Orleans conditions, then he shall receive nothing under the latter.

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