

FINANCE DOCKET NO. 22551¹

ERIE-LACKAWANNA RAILROAD COMPANY DISCONTINUANCE
OF PASSENGER TRAIN NO. 40 BETWEEN ELMIRA, N. Y.,
AND HOBOKEN, N. J., TRAIN NO. 41 BETWEEN DENVILLE,
N. J., AND SCRANTON, PA., AND TRAIN NO. 43 BETWEEN
SCRANTON, PA., AND ELMIRA, N. Y.

Decided August 27, 1963

Upon investigation, found that the operation by Erie-Lackawanna Railroad Company of passenger train No. 40 from Elmira to Binghamton, N. Y., train No. 41 from Denville, N. J., to Scranton, Pa., train No. 43 from Binghamton to Elmira, N. Y., train No. 25 from Port Jervis to Binghamton, N. Y., and train No. 26 from Binghamton, N. Y., to Hoboken, N. J., is not required by public convenience and necessity and that the continued operation thereof will unduly burden interstate commerce. Investigation discontinued.

Rowland L. Davis, Jr., and J. P. Canny for railroad company.
William A. Goichman for Pennsylvania Public Utility Commission, protestant.

Andrew G. Schiavone for the State of New York.

Homer E. Peters, T. P. Shearer, Edward A. Martin, Gilbert B. Wood, W. H. Brown, Ferd Marcial, Leo M. Schario, Jr., Theodore Kuykendall, John Botens, Robert T. Gownley, and John J. Conner-ton for protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, MURPHY, AND TUCKER

TUCKER, *Commissioner*:

Pursuant to the provisions of section 13a(1) of the Interstate Commerce Act² the Erie-Lackawanna Railroad Company, a common carrier railroad subject to part I of the act, on April 5, 1963, filed with this Commission notices and supporting statements of

¹This report also embraces Finance Docket No. 22552, Erie-Lackawanna Railroad Company Discontinuance of Passenger Train No. 25 Between Port Jervis and Binghamton, N. Y., and Train No. 26 Between Binghamton, N. Y., and Hoboken, N. J.

²49 U.S.C. 13a(1).

proposed discontinuance of certain of its passenger train operations effective May 8, 1963. One notice, assigned Finance Docket No. 22551, involved the discontinuance of the operation of its passenger train No. 40 from Elmira, N. Y., to Hoboken, N. J., that portion of its passenger train No. 41 from Denville, N. J., to Scranton, Pa., and that portion of its passenger train No. 43 from Scranton, Pa., to Elmira, N. Y. A second notice, assigned Finance Docket No. 22552, involved a proposed discontinuance of the operation of that portion of its passenger train No. 25 from Port Jervis, N. Y., to Binghamton, N. Y., and its passenger train No. 26, operated from Binghamton, N. Y., to Hoboken, N. J. Copies of these notices of discontinuance were duly served and posted as required by the statute and by the regulations pertaining thereto.³

Protests and complaints against the discontinuance of the operation of these trains as proposed were received from individual users of the trains and from certain communities, business, civic, and labor organizations, and the Pennsylvania Public Utility Commission. By separate orders dated April 24, 1963, in Finance Dockets Nos. 22551 and 22552, we instituted investigations of the proposals to discontinue operation of these five trains and ordered that the train service be continued for a period not to exceed 4 months beyond the May 8 effective date specified in the notices. Because of the statutory time limitation relating to the required continuance of the service, the orders provided for the omission of an examiner's report and recommended order and for certification of the record to us for initial decision.

Joint hearings on a consolidated record were held in these proceedings in New York City, Port Jervis, N. Y., Scranton, Pa., Binghamton, N. Y., and Elmira, N. Y., during the period extending from June 3 to June 11, 1963. At these hearings appearances in opposition to the proposals were entered by the Pennsylvania Public Utility Commission, the Cities of Scranton, Pa., Binghamton, Port Jervis, and Middletown, N. Y., representatives of various employee labor organizations, and certain business and individual users. The State of New York is a party to the proceedings as its interest may appear. Thirty-three witnesses testified in the proceeding in opposition to the discontinuance of the trains as proposed in the notices. These included individual users of the railroad service, as well as representatives of various cities, communities, townships, businesses, schools, and civic and labor organizations.

³49 CFR Part 43.

TRAINS INVOLVED

Train No. 40—This train originates at Elmira, N. Y., departing at 7:45 a.m., is operated via Binghamton (9:23 a. m.), Scranton (11 a.m.), and East Stroudsburg (12:43 p.m.), and arrives at the Hoboken terminal at 2:34 p.m., a distance of 250.4 miles. It is proposed under the notice to discontinue this train in its entirety. On the last day of the hearings, the proposal was modified, as hereinafter noted, whereby operation of the train would be continued from Binghamton to Hoboken, the discontinuance of service being only from Elmira to Binghamton, a distance of 58.7 miles. The normal consist of No. 40 is one coach from Elmira to Hoboken, two coaches from Binghamton to Hoboken, one coach and a diner from Scranton to Hoboken, one RPO car from Elmira to Hoboken, and, as required, a sealed mail car from Binghamton to Scranton, and the movement of dead-head baggage and express cars.

Train No. 41.—This train originates at Hoboken, N. J., departing at 7:45 a.m., is operated via Denville, N. J. (8:59 a.m.), Dover, N. J. (9:15 a. m.), and East Stroudsburg (10:25 a.m.), and terminates at Scranton, Pa., at 12:02 p.m., a distance of 133.1 miles. It is proposed to discontinue the operation of this train from Denville, N. J., to Scranton, Pa., a distance of 99.2 miles. The normal consist of No. 41 from Denville to Scranton is a coach, an express car, and an RPO and mail and baggage car operated from Hoboken to Scranton.

Train No. 43.—Train No. 43 originates at Hoboken, N. J., at 4:45 p.m., and is operated via East Stroudsburg, Pa. (6:51 p.m.), Scranton, Pa. (8:15 p.m.), and Binghamton, N. Y. (9:45 p.m.), terminating at Elmira, N. Y., at 11:15 p.m. Under the notice it is proposed to discontinue this train between Scranton and Elmira, a distance of 117.3 miles. However, the modification of this proposal as suggested on the last day of the hearings would discontinue No. 43 only from Binghamton to Elmira. The normal consist of this train from Binghamton to Elmira is one coach and an RPO car, operated from Hoboken to Elmira.

Train No. 25.—Train No. 25 originates at Hoboken, N. J., at 6:45 p.m., and is operated via Port Jervis, N. Y. (8:58 p.m.), arriving at its terminal point, Binghamton, N. Y., at 11:58 p.m., a distance of 214.1 miles. It is proposed to discontinue the operation of this train from Port Jervis to Binghamton, 126.9 miles. The normal consist of No. 25 from Port Jervis to Binghamton is one coach, a working mail car, a sealed mail car, and one RPO car.

Train No. 26.—This train originates at Binghamton, N. Y., at 4:35 a.m., and is operated via Port Jervis, N. Y. (7:25 a.m.), arriving at the Hoboken, N. J., terminal at 9:30 a.m. It is proposed to discontinue this train in its entirety (214.1 miles). Its normal consist is one coach, a baggage (express) car, an express (mail) car, and one RPO car.

JOINT MOTION OF ERIE-LACKAWANNA AND CERTAIN PROTESTANTS
FOR MODIFICATION OF DISCONTINUANCE PROPOSALS, AND WITH-
DRAWAL OF OBJECTIONS

On the last day of the hearings counsel for Erie-Lackawanna, with the concurrence of counsel representing the Pennsylvania Public Utility Commission, the New York State Legislative Board of Brotherhood of Railroad Trainmen, and the Cooperative Legislative Committee, Railroad Brotherhoods of Pennsylvania, moved that the Commission recognize and give consideration to an understanding reached by these respective parties as follows:

1. *Train No. 40.*—Erie-Lackawanna now proposes to discontinue operation of train No. 40 between Elmira and Binghamton, N. Y. It will continue to operate the train from Binghamton to Hoboken. The other parties to the understanding make no objection to the discontinuance of train No. 40 from Elmira to Binghamton.

2. *Train No. 41.*—Counsel for Pennsylvania Public Utility Commission, the New York State Legislative Board of Brotherhood of Railroad Trainmen, and the Cooperative Legislative Committee, Railroad Brotherhoods of Pennsylvania, make no objection to the discontinuance of train No. 41 from Denville, N. J., to Scranton, Pa.

3. *Train No. 43.*—Erie-Lackawanna now proposes to discontinue operation of train No. 43 between Binghamton and Elmira only; it will continue to operate the train from Hoboken to Binghamton. The other parties to the understanding make no objection to the discontinuance of train No. 43 from Binghamton to Elmira.

4. *Trains Nos. 25 and 26.*—Counsel for Pennsylvania Public Utility Commission, the New York State Legislative Board of Brotherhood of Railroad Trainmen, and the Cooperative Legislative Committee, Railroad Brotherhoods of Pennsylvania, withdraw any objections that have been advanced by them or their witnesses with respect to the discontinuance of train No. 25 from Port Jervis to Binghamton, and train No. 26 from Binghamton to Hoboken, and make no objection to discontinuance of those trains as proposed.

These parties urge that in any order entered by the Commission in these proceedings, it find that public convenience and necessity now require the operation of train No. 40 between Binghamton and Hoboken, and train No. 43 between Scranton and Binghamton; but that it does not require the continued operation of train No. 40 from Elmira to Binghamton, train No. 43 from Binghamton to Elmira, train No. 41 from Denville to Scranton, train No. 25

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from Port Jervis to Binghamton, and train No. 26 from Binghamton to Hoboken. We will recognize and give consideration to this understanding to the extent that (1) Erie-Lackawanna now limits its discontinuance proposals with respect to trains No. 40 and No. 43 to the service between Elmira and Binghamton, and (2) the other parties to the understanding make no objection to discontinuance of the five trains as now proposed by Erie-Lackawanna.

FINANCIAL CONDITION

Erie-Lackawanna's net income statement⁴ covering a 10-year period from 1953 to 1962, inclusive, discloses that beginning in 1958 and continuing through 1962 the railroad suffered severe deficits ranging from \$7.6 million in 1958 to \$26.5 million in 1961. In 1962 the deficit was \$16.6 million. During the same 5-year period beginning in 1958 its gross operating revenues steadily decreased from \$229 million in 1958 to \$211 in 1962. From 1958 through 1962 the deficit recorded in the net railway operating income from passenger service ranged from a high of about \$14 million in 1959 to a low of \$9.5 million in 1962, based upon expenses computed and allocated upon a fully distributed cost basis.

The combined working capital position of the constituent (Erie-Lackawanna) companies as of December 31, 1958, was \$14.5 million; on December 31, 1960, the working capital of the merged company had dropped to \$4.8 million, then to \$2.9 million at the close of 1961. As of December 31, 1962, it was \$4.0 million, and on March 31, 1963, \$1.4 million. During 1961, 1962 and the first quarter of 1963, the working capital position of the company was aided by the salvage from property retired, amounting to approximately \$2.5 million in 1961, \$8.0 million in 1962, and \$3.3 million in the first quarter of 1963.

Because of its financial condition, Erie-Lackawanna urges that it is very much in the public interest for it to effect all possible savings in its operations, and most especially where such savings can be accomplished without greatly inconveniencing the public.

PASSENGER USE OF TRAINS

Trains Nos. 40 and 43.—Erie-Lackawanna's modified proposal to discontinue the operation of these trains only for the 58.7

⁴The statement is comprised of combined Erie Railroad Company and Delaware, Lackawanna and Western Railroad Company, data prior to the merger of the two railroads October 17, 1960, and the data of the single company thereafter.

miles between Binghamton and Elmira, N. Y., had the effect of eliminating substantially all of the public opposition voiced at the hearings with respect to these trains, which was directed primarily to the proposed discontinuance between Binghamton and Hoboken.

During a 5-month period, May-September 1962, for which data was available, there was an average of 14.6 revenue passengers per trip boarding train No. 40 at Elmira and points between Elmira and Binghamton. Of these, an average of 5 were destined to Binghamton, 5 to Hoboken, 1 to Scranton, and 1.7 to Newark. A 1-month check in March 1963 showed an average of about 10 revenue passengers per trip boarding train No. 40 at these points. Of these, an average of 4.3 were destined to Hoboken, 3 to Binghamton, 1 to Newark, and 0.5 to Scranton.

During the same periods, on the average only one revenue passenger boarded train No. 43 at Binghamton and all stations between Binghamton and Elmira; and an average of 17.7 persons disembarked from the train at all stations between Binghamton and the Elmira terminal.

Train No. 41.—During the 5-month period heretofore noted there was an average of 12.7 revenue passengers using train No. 41 daily from Dover, N. J., to Scranton, Pa., a distance of 95 miles, 6 of whom disembarked at the terminal point, Scranton. For the month of March 1963 the daily average was only 8.5 passengers using train No. 41 between Dover and Scranton. The use of train No. 41 between Hoboken and Denville was not specified inasmuch as that portion of the operation will be continued.

Train No. 25.—During the 8-month period, May-December 1961, there was an average of 21.8 revenue passengers per day boarding train No. 25 at stations between Hoboken and Susquehanna inclusive, destined to points west of Port Jervis. In the first 9 months of 1962 this daily average was 18.7 passengers. In March 1963 the daily average was 12 passengers. The number of passengers using train No. 25 from Hoboken to Port Jervis, essentially in commuter service, was not specified inasmuch as the train is to remain in service between those points under the proposal.

Train No. 26.—During an 8-month period, May to December 1961, an average of 11.8 revenue passengers boarded train No. 26 at all stations from Binghamton to Hoboken. In the first 9 months of 1962 this average was 12.3. For the single month of March 1963 an average of only 8.5 persons boarded the train daily.

ALTERNATE SERVICES

Erie-Lackawanna will continue to operate four daily passenger schedules each way between Elmira and the metropolitan area, three of which are by way of Scranton and one by way of Port Jervis. In addition, between Elmira and the metropolitan area there are six daily airline schedules and seven bus schedules in each direction. There are 12 daily bus schedules between Elmira and Binghamton.

Between Binghamton and the metropolitan area by way of Scranton, Erie-Lackawanna will continue to operate four daily schedules each way, and two each way by way of Port Jervis. There is an abundance of both airline and bus service between New York's metropolitan area and Binghamton and Scranton.

The area more seriously affected by the proposed discontinuances is that served by trains No. 25 and No. 26 west of Port Jervis. The westbound train No. 25 leaving Hoboken at 6:45 p.m., affords a very convenient service for persons traveling to and resort area west of Port Jervis, and in particular for weekend use. The stations which would be affected by the discontinuance are Shohola, Pa. (population 100), Lackawaxen, Pa. (250), Narrowsburg, N. Y. (525), Callicoon, N. Y. (750), Hancock, N. Y. (1,830), Deposit, N. Y. (2,025), and Susquehanna, Pa. (2,591).

As previously noted, Erie-Lackawanna will continue to operate 2 daily schedules in each direction over this line. However, the alternate services of its train No. 7 leaving Hoboken at 12:30 a.m., or its train No. 21 leaving at 9:00 a.m., are not as convenient, especially for weekend travelers. The small communities on the line have no direct airline service. A few have no bus service, and at others the bus service is limited. These limited transportation services, of course, are reflective of the limited usage and needs of the area.

There is an extensive network of highways affording adequate means for travel by private automobile. Statistics show that in 1961, 90.2 percent of the intercity passenger miles were traveled in private cars, in contrast to 2.7 percent by railroad, 2.6 percent by bus, and 4.5 percent by air.

FINANCIAL RESULTS OF OPERATION

The statistical exhibits received in evidence at the hearing reflecting the financial results of the operation of the five trains

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involved were prepared to represent the *loss* incurred in operating the trains as originally proposed for discontinuance and the *savings* in selected out-of-pocket expenses which would result from such discontinuances. Passenger revenue losses were computed upon the basis of a judgment of some of the railroad personnel that 40 percent of the passenger revenue of these trains would be retained through a diversion to some of the carrier's remaining schedules. In the circumstances the data of record with respect to the operating revenues and expenses of these trains, though somewhat incomplete, is sufficient to require the conclusions and findings hereinafter set forth.

Trains Nos. 40 and 43.—The modification of the carrier's discontinuance proposals requires appraisal and valuation of the financial operating data in light of the altered circumstances. In lieu of discontinuing train No. 40 in its entirety and train No. 43 from Scranton to Elmira, Erie-Lackawanna now proposes to operate No. 40 from Binghamton to Hoboken and No. 43 from Hoboken to Binghamton.

The 1962 operating revenues of No. 40 were approximately \$140,222 and of No. 43 approximately \$159,532.⁵ The generally considered out-of-pocket expenses⁶ for the operations of train No. 40 total \$205,270; those for train No. 43 were not specified by the carrier. The discontinuance of the Elmira-Binghamton portion of the operation of both trains as now conducted will eliminate the cost of 58.7 miles of operation in each direction, where the passenger revenue and use has been extremely light. Both the train and engine crews of train No. 40 from Elmira to Binghamton are coupled with train No. 43 for a turnaround crew operation between these points. Thus the entire crew expense for the operation of No. 40 and No. 43 between Elmira and Binghamton will be eliminated, materially reducing the present operating cost.

Train No. 41.—The 1962 operating revenues of this train total about \$37,175 while its out-of-pocket expenses were \$107,104.⁷

⁵Revenues as stated do not include revenues for storage mail cars, work mail cars, and express cars, which the carrier stated it was unable to furnish without a costly study, but do include revenues from RPO cars. The carrier testified that it anticipated that the revenues from the storage mail cars, work mail cars, and express cars would be retained through transfer to other trains.

⁶These include locomotive repairs, passenger-train car repairs, equipment depreciation, crew wages, train fuel, enginehouse expense, train supplies and expenses, and locomotive water, lubricants, and supplies. Apart from the crew wages, which were the actual expenses, and depreciation, the other items were computed upon system averages. Excluded from such expenses were maintenance-of-way, terminal, and general supervisory and overhead expenses.

⁷See footnote 5, *supra*.

The proposed discontinuance of train No. 41 from Denville to Scranton constitutes a reduction of 72 percent of the present mileage of the train and will result in a rather substantial reduction in operating expenses. In addition, Erie-Lackawanna presently operates an extra train from Hoboken to Denville to protect a commutation train operated eastbound from Denville to Hoboken. Under the proposal for the discontinuance of train No. 41 from Denville to Scranton, that train will provide the facilities for the eastbound commutation train and eliminate the extra train presently operated for that purpose.

Train No. 25.—In 1962 the revenue from passengers boarding No. 25 east of Port Jervis, N. Y., destined to points west of Port Jervis, and those originating west of Port Jervis, was \$45,033; in 1961 it was \$48,905. This revenue was increased by the mail revenue from RPO cars to a total of \$93,577 in 1962 and \$97,290 in 1961. Selected out-of-pocket expenses attributable to the operation of train No. 25 from Port Jervis to Binghamton totaled \$123,674 in 1962 and \$99,552 in 1961. Inasmuch as train No. 25 will continue in its essentially commuter service from Hoboken to Port Jervis the carrier did not furnish operating financial data with respect to the train as a whole.

Train No. 26.—Total passenger revenue for train No. 26 in 1962 was \$31,091, and in 1961 it was \$26,836. Revenue from the RPO service for these respective years was \$49,654 and \$49,596. Crew wages alone for 1962 exceeded the aggregate of these revenues, and substantially equaled it in 1961. The out-of-pocket expense for operating train No. 26 was \$187,923 in 1962 and \$165,518 in 1961. The net loss resulting from train No. 26 is substantial.

PROTESTANTS

The 33 witnesses who testified in opposition to the proposals for discontinuance of the 5 trains are divided about evenly between those protesting with respect to trains Nos. 25 and 26, and those with respect to trains Nos. 40 and 43. As previously noted, the latter protests are substantially satisfied by the decision of Erie-Lackawanna to continue operation of Nos. 40 and 43 between Binghamton and Hoboken. There is virtually no opposition to the discontinuance of train No. 41 as proposed.

Included among those opposing discontinuance of trains Nos. 25 and 26 are merchants and hotel owners who depend largely upon the resort patronage in the area served by these trains, and

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persons traveling to and from the resort areas, especially on weekends. The mayors of Susquehanna, Pa., and Middletown, N. Y., the acting mayor of Port Jervis, N. Y., and the supervisors of the townships of Shohola, Delaware, and Highland appeared in opposition to the proposed discontinuance of trains Nos. 25 and 26. Generally, they gave evidence concerning the effect which the reduction in rail service may have upon their communities. Although many of the persons using the resort facilities of the area travel by private car, those who use the train service can mean the difference between a profitable and a nonprofitable season, according to some of the protestants. Also opposed to these discontinuances are the high school principal at Callicoon, N. Y., who uses train No. 26 in connection with senior class trips to Washington, D. C., and for personal use in traveling to New York City; and the postmaster for Delaware Township. Most of these protestants expressed the view that the alternate services are not satisfactory, particularly for persons wishing to leave New York City after work on a Friday evening and arrive in the resort area for a weekend of a satisfactory duration.

A number of the protestants are of the view that the railroad has failed to promote its service and actually has discouraged its use by operating old and poorly maintained cars, failing to have station facilities available, particularly in bad weather, and failing to maintain schedules.

DISCUSSION AND CONCLUSIONS

Counsel for Erie-Lackawanna announced at the outset of the hearing that it is its position that the burden of proof in section 13a(1) proceedings rests upon protestants; but nevertheless the carrier decided to go forward with its presentation of evidence in an effort to substantiate the data submitted in support of its notices of discontinuance, and make available for cross-examination appropriate witnesses with respect to such data. The procedural order and evidentiary standard used in this case are the ones usually employed in discontinuance cases and have been approved by the Commission.⁸

The record herein shows that no significant number of passengers are using the five trains in the areas of the proposed discontinuances. Train No. 26 from Binghamton to Hoboken, a

⁸*Great Northern Ry. Co. Discontinuance of Service*, 307 I.C.C. 59; *Chicago Great Western Ry. Co. Discontinuance of Service*, 317 I.C.C. 99.

distance of 214 miles, carries an average of only about 12 revenue passengers per trip; train No. 25 about 20, west of Port Jervis to Binghamton, a distance of about 127 miles; train No. 41 about 12 passengers west of Denville, N. J., to Scranton, a distance of 95 miles; and trains Nos. 40 and 43 from 14 to 18 passengers between Elmira and Binghamton, a distance of about 59 miles. This lack of public usage when coupled with the remaining several daily schedules Erie-Lackawanna will continue to operate over the routes, and the abundance of other common carrier transportation services at the major points on the routes, compels the conclusion that continued operation of these trains in their present services is not required by public convenience and necessity.

Even though the five trains are discontinued according to the amended proposal, it is likely that a good portion of both the passenger traffic and the mail, baggage, and express traffic of these trains will be retained by Erie-Lackawanna through its remaining train schedules. The carrier thus will benefit further by such additional revenue for its remaining trains produced without any appreciable increase in expenses.

Erie-Lackawanna's financial condition is such that it dictates that economies in operation be effected where practicable. Considering these circumstances we must conclude that where elimination of operating expenses and losses of the magnitude here involved can be accomplished through the discontinuance of the trains as herein proposed with so little inconvenience to the public generally, it would constitute an undue burden upon interstate commerce to require the carrier to continue the present service of these trains.

The discontinuance of the trains will involve the elimination of a number of jobs. While we have no authority to impose protective conditions for employees in a proceeding under section 13a(1) of the act, the probable adverse effect which the discontinuances may have upon the employees is a factor to be considered.⁹ We conclude, however, that when considered with the other factors here involved, the resulting job losses are not of controlling significance.¹⁰ In this connection the withdrawal of objections to the discontinuance of the trains as now proposed by certain of the protesting railroad brotherhoods is significant.

⁹*Great Northern Ry. Co. Discontinuance of Service, supra.*

¹⁰*cf. Texas & P. Ry. Co. Discontinuance of Service, 307 I.C.C. 259.*

Contentions of the parties as to matters of law or fact not specifically discussed herein have been considered and found to be without material significance or not justified.

Upon consideration of the record herein we find that the operation by the Erie-Lackawanna Railroad Company of train No. 40 from Elmira to Binghamton, N. Y., train No. 41 from Denville, N. J., to Scranton, Pa., train No. 43 from Binghamton to Elmira, N. Y., train No. 25 from Port Jervis to Binghamton, N. Y., and train No. 26 from Binghamton, N. Y., to Hoboken, N. J., is not required by public convenience and necessity, and that the continued operation thereof will constitute an undue burden on interstate commerce.

An appropriate order will be entered discontinuing the investigation.

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