

FINANCE DOCKET NO. 23395

ERIE--LACKAWANNA RAILROAD CO. DISCONTINUANCE OF
PASSENGER TRAINS NOS. 31 AND 32 BETWEEN BUFFALO
AND HORNELL, N. Y.

Decided October 27, 1965

Discontinuance by the Erie-Lackawanna Railroad Company of its passenger trains Nos. 31 and 32 between Buffalo and Hornell, N. Y., authorized.

Frederick G. Hoffman for petitioner.

Harry T. O'Brien for Public Service Commission of the State of New York as its interest may appear.

Joseph R. Cullen for city of Hornell, N. Y., protestant.

John P. Egan for city of Buffalo, N. Y., protestant.

Homer E. Peters, Francis B. Boardman, Joseph P. Scanlon, Kenneth C. Miller, and Edgar J. Albertson for labor organizations, protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, WALRATH AND GOFF

WALRATH, *Commissioner*:

Exceptions to the report and order of the hearing examiner, recommending denial of the petition, were filed by the railroad petitioner, and the Public Service Commission of the State of New York replied. Our conclusions differ from those of the examiner.

The Erie-Lackawanna Railroad Company (Erie-Lackawanna), a common carrier by railroad subject to the provisions of part I of the Interstate Commerce Act, by petition filed November 20, 1964, requests authority under section 13a(2) of the act to discontinue the operation of its passenger trains Nos. 31 and 32, which operate between Buffalo and Hornell, N. Y., wholly within the State of New York.

Authority to discontinue the trains had previously been denied by the New York Public Service Commission (Public Service

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Commission) on June 23, 1964. Protests to the instant petition were filed by the cities of Buffalo and Hornell and by railway and other labor organizations. The Public Service Commission appeared as its interest may be. A hearing was held at which testimony was presented on behalf of petitioner by traffic, operating and financial personnel, and by an employee of Eastern Greyhound Lines, and in opposition by public and railway labor witnesses. Briefs were filed by petitioner, the Public Service Commission, and jointly by the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Engineers.

The pertinent facts which are set out in detail in the recommended report are adopted as our own and will be restated only where necessary for clarity of discussion.

Trains Nos. 31 and 32 operate daily over what is essentially a branch line between Buffalo and Hornell, a distance of 93.6 miles. The trains are operated by a crew of six, two enginemen and four trainmen. By special arrangement the trains make stops at Attica to provide transportation for children attending the New York State School for the Blind at Batavia. The area through which the trains operate is predominantly agricultural. The normal consist of train No. 32 is five cars—a baggage and working mail car, a railway post office, a sealed mail car and two passenger coaches. The train leaves Buffalo at 8:45 a.m., stops at Warsaw to pick up passengers, and arrives in Hornell at 10:48 a.m. Train No. 32 continues beyond Hornell to Elmira, N. Y., where it is combined with a main-line train of petitioner operating from Chicago, Ill., to Hoboken, N. J. Train No. 31, which originates at Elmira, leaves Hornell at 6 p.m., with the engine crew that operated train No. 32 in the morning, stops at Warsaw to discharge passengers, and arrives in Buffalo at 8 p.m. Its normal consist is six or seven cars. At Buffalo, train No. 31 connects with a westbound passenger train of the Norfolk and Western Railway.

Through an actual count of tickets and cash sales for three study periods, the average number of revenue passengers per trip carried on trains Nos. 31 and 32 is shown in the table below.

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Average number of revenue passengers per trip

Study period	Train No. 31		Train No. 32	
	Boarded east of Hornell	Total	Destined east of Hornell	Total
July 1 to November 30, 1962- February 1 to December 31, 1963-----	57.4	59.2	39.1	41.4
January 1 to July 31, 1964--	45.3	46.4	33.6	34.1
	43.2	44.2	32.3	32.8

In addition to the instant trains, Erie-Lackawanna also provides round trip service between Buffalo and Hornell on its trains Nos. 10 and 15. Train No. 10 leaves Buffalo daily except Sunday at 5 p.m., stopping at Warsaw, and arriving in Hornell at 7:10 p.m. It continues east with stops at Elmira and Binghamton and Scranton, Pa., among other places, arriving in Hoboken, N. J., at 3:35 a.m. Comparable westbound service is provided by train No. 15 daily except Sunday, which departs from Hornell at 9:05 a.m., and arrives in Buffalo at 11:15 a.m. There is also a train, No. 37, on Sundays leaving Hornell at 10:30 a.m., and arriving in Buffalo at 12:40 a.m. The New York Central Railroad Company operates trains between Buffalo and New York City but they do not serve the intermediate points on petitioner's line. Eastern Greyhound operates four round trips daily between Buffalo and Elmira, with service at intermediate points, such as Hornell and Corning. Corresponding to schedules of trains Nos. 31 and 32, Greyhound's bus No. 217 leaves Buffalo at 8:30 a.m., and arrives in Hornell at 11:25 a.m. In the westbound direction bus No. 222 departs from Hornell at 5:26 p.m., arriving in Buffalo at 8:15 p.m. There is daily airline service between Buffalo and the Corning-Elmira and Broome County airports and New York City. Also, improved, all-weather, hard surface highways between Buffalo, Warsaw and Hornell provide adequate means for transportation by private automobile. Normal driving time between Buffalo and Hornell is approximately 2 1/2 hours.

In support of their continued use, a captain in the Erie County Sheriff's Department stated that trains Nos. 31 and 32 afford maximum security and convenience in the transportation of prisoners from Buffalo to Elmira. In 1964, 310 prisoners were transported on these trains. An official of the New York State School for the Blind testified that use of train No. 31 for a few students on weekends, and for 12 or 13 students during vacation and holiday periods, provided convenient and feasible transporta-

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tion for the children. Approximately 20 children, in age from 3 to 18, from the St. Mary's School for the Deaf use trains Nos. 31 and 32 every 2 to 3 weeks. The service is preferred because of the convenience and safety factors involved.

Estimates of the results of operating trains Nos. 31 and 32 in 1964 submitted by petitioner show total revenues of \$230,640. The passenger revenues were determined from the actual revenues for the three study periods and projected to a full year. Likewise, the mail, express, and milk revenues directly assignable to the subject trains were included in the estimate, but the feeder revenues, i.e., the system-connected revenues by reason of handling connecting passenger, mail and express traffic, were not taken into account in the estimates. These feeder benefits provide revenue for the system a part of which would be lost if the trains' operations were discontinued. As shown in petitioner's revised statement of estimated minimum savings resulting from discontinuance (appendix B), the net feeder revenue from passengers traveling on trains Nos. 31 and 32 was \$64,747 for 1964. The feeder revenue from the mail moved on these trains is not ascertainable from the record.

Out-of-pocket expenses¹ were estimated as \$277,797 in 1964, and \$288,660 for future annual operations. The increase in the latter is attributed to current increased costs and wages. Included in the 1964 and current cost estimates is the annual rental expense of \$17,350 for two passenger coaches of the Delaware and Hudson Railroad Corporation (D&H). The equipment is not used on the subject trains but could be returned to the owner line if petitioner's coaches become available through discontinuance.

Petitioner anticipates that it will retain the \$111,696 revenue which it presently receives for transporting storage mail on trains Nos. 31 and 32 by moving this traffic on other trains. The total annual revenue loss is estimated as \$295,387, which includes the net feeder revenue. Expenses incidental to transporting the storage mail amount to \$15,869, reducing the aggregate revenue loss to \$199,560. Thus, in relation to minimum out-of-

¹With respect to the selected out-of-pocket expenses, engine and traincrew wages are based on the actual wages paid to crews during each of the study periods. Taxes and vacation allowance were computed by applying the appropriate percentage to the amount of wages. Locomotive and passenger car repairs, fuel, locomotive water, lubricants and supplies, enginehouse expenses, and other train supplies were drawn from system average costs of passenger service on a locomotive and car-mile basis. Claims expense represents payments actually made because of damage or injury arising from operation of the trains.

pocket expenses of \$288,659, an annual savings of about \$89,000 is estimated.

The examiner concluded that the use of the trains by the prisoners, and the blind and deaf children, while regular, is infrequent, and involves relatively few passengers, and by itself would not support continued operation of the trains.

On the premise that various costs would absorb 50 percent of the estimated gross feeder revenues of \$129,496, the examiner adjusted petitioner's operating revenues to reflect a net gain of \$64,748 for 1964.² The examiner further concluded that the \$17,350 annual rental for the two D&H coaches was not properly allocable as an expense to the operation of trains Nos. 31 and 32 but should be charged to the cost of operating the train on which the coaches are used. However, he did not preclude consideration of the rental expense as savings to the petitioner in the event of discontinuance and subsequent substitution of two Erie cars for the D&H coaches. The adjustment of operating revenues to reflect one-half of the feeder benefits and the removal of D&H coach rental as an out-of-pocket expense result in an excess of operating revenues over expenses for both past and continued operation of the trains in question. The examiner held that in such circumstance, where petitioner was making a contribution to overhead expenses, the limited use of the trains justifies the continued operations.

The examiner was of the view that the Post Office Department would continue to tender the westbound storage mail to petitioner if train No. 31 were discontinued since most of this mail is destined to large midwestern cities and could be transported on another train of petitioner. However, he did not think the Department would continue to have petitioner move the eastbound storage mail for the reason primarily that transportation on train No. 10, leaving Buffalo at 5 p.m., would cause a delay of 8 hours. The revenue accruing from eastbound storage mail movement is estimated to be \$57,072. Elimination of this amount would reduce the anticipated savings of \$89,000 from discontinuance of the trains to about \$32,000. Contrary to petitioner's claim, the examiner was of the opinion that the petitioner would retain only a negligible amount of passengers if the trains should be

²In *Southern Pac. Co. Discontinuance of Trains*, 324 I.C.C. 577, it is stated: "The Commission has consistently permitted an allocation of 50 percent of revenues assigned to other lines as the feeder value of the contributing branch where the evidence of record does not furnish means of establishing a more accurate allocation."

discontinued inasmuch as the alternate trains run at night and there is adequate bus service to and from Corning and Elmira.

Petitioner excepts to certain conclusions of the examiner with respect to the revenues and expenses produced by operation of the trains, the financial results of their operations, and the amounts that may be regarded as savable upon discontinuance. Other exceptions are based on grounds that the examiner did not give sufficient weight to petitioner's systemwide passenger-operation deficits and to the stipulation between the parties that petitioner would continue to handle the storage mail. These matters will be referred to hereinafter.

While conceding that its feeder revenues are not included in its estimates of operating revenues in 1964, petitioner maintains that inclusion of such revenues shows only a marginal out-of-pocket profit of \$6,727 without any consideration of expenses for maintenance of right-of-way and structures, depreciation on equipment, station expenses or the cost of yard switching and terminal expenses. (See appendix A.) It is pointed out that, beginning February 1964 due to shortage of equipment on its own line, petitioner was compelled to rent passenger coaches from D&H; that the coaches were used temporarily last year in the Buffalo-Hornell service before going out to another part of the railroad; and that discontinuance of trains Nos. 31 and 32 will enable petitioner to return the two coaches to D&H and hence effect a reduction of \$17,350 in annual rent. Although the coaches are being used in another part of petitioner's system, their need and rental cost, it is urged, have direct relationship to the operating expense of the trains in question. The petitioner's fundamental argument is that depreciation or cost of owning the coaches now used on trains Nos. 31 and 32 is a legitimate out-of-pocket cost inasmuch as the discontinuance would provide replacement for the D&H coaches and thus avoid the rental expense of the latter equipment.

Contrary to the examiner's opinion, petitioner maintains that the handling of the eastbound storage mail on train No. 10 departing Buffalo at 5 p.m., would not delay delivery of this mail; that in fact more mail, including that mailed the previous night, would become available in the afternoon for movement on the evening train No. 10, since the prior night's mail is not available for movement in the morning on train No. 32.

Although petitioner has no binding contractual arrangement for the handling of mail, the parties to the proceeding did stipulate

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that in connection with such traffic the petitioner has a commitment from the Post Office Department that it will continue to use other trains of petitioner for the transportation of the mail now handled on trains Nos. 31 and 32. Subsequent to the hearing before the Public Service Commission the proposed discontinuance of the subject trains and the handling of the eastbound storage mail was discussed with the Department. The latter interposed no objection to the proposal. Petitioner complains that the examiner did not attach adequate significance to the Department's apparent assurance that it would retain the storage mail, especially in the light of the parties' stipulation.

The contention is also made on exceptions that insufficient consideration was given to petitioner's overall passenger operations as noted by the Commission in the *Norfolk-Nickel Plate* merger proceeding³ on page 24:

Other facets of the Erie-Lackawanna's troubling predicament, revealed by its Form A Annual Reports to the Commission, include an apparently ingrained deficit character of its extensive obligations in the passenger field, and the deterioration in its physical plant.

Discussion and Conclusions.—The essential factors to be considered in the instant proceeding are the general financial condition of the petitioner, the financial results of the operations to be discontinued, the use made by the public of the particular service, the availability of other transportation in the area, and the effects on the general public and on the involved carrier employees which would result from the proposed discontinuance. No one factor is controlling. See *Chicago & N. W. Ry. Co. Discontinuance of Service*, 307 I.C.C. 775.

As indicated in the examiner's report, the Erie-Lackawanna has had serious financial difficulties during the past several years. Starting in 1958, it has been faced with a mounting deficit which reached a peak of \$26.5 million in 1961. Deficits in net income for the period 1960-63 amounted to over \$80 million. Losses for the first 11 months of 1964 were over \$7 million. Since 1958, net losses have aggregated approximately \$105 million. Retained income which amounted to \$102.1 million at the beginning of 1962 has dwindled to \$56.6 million at the end of November 1964. Petitioner's precarious financial plight is attributed primarily to losses from passenger service, totaling

³*Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger*, 324 I.C.C. 1, (1964).

about \$130 million from 1954-63. The ratio of expenses to revenues in passenger service over this period ranged from 132 to 166 percent. Obviously, there is no question of the carrier's deteriorated financial condition.

Petitioner did not include depreciation as an item in its operating expenses but now claims that the \$17,350 rental represents the cost of ownership or depreciation on the coaches and is a more reliable measure of depreciation expense than system unit cost. We agree that it is proper to allow depreciation on the coaches as a savable expense. While the \$17,350 rental may be a slightly greater amount than the actual depreciation due to an element of profit under the lease, we will in this instance allow the full amount as an out-of-pocket expense. Equipment depreciation has been allowed as a charge to operating expenses where the equipment can be used to release or replace other equipment, or avoid the necessity of purchasing additional equipment. See *Chicago, M. St. P. & P. R. Co. Discontinuance of Service*, 307 I.C.C. 668, 674; *Minneapolis, St. P. & S. S. M. R. Co. Discontinuance*, 307 I.C.C. 677, 684. With respect to the rental for the D&H coaches, it appears that the two cars to be released by discontinuance of the subject trains are to be used for replacement of the D&H coaches elsewhere on the system, and the D&H coaches returned to their owner.

On the basis of the evidence before us, it is reasonable to assume that petitioner would retain the eastbound storage mail. The post office does not oppose the discontinuance proposal nor the handling of this traffic on train No. 10 since it appears that the movement of mail available the night before would be expedited rather than delayed. No objection was made to petitioner's explanation on exceptions in this respect. As we see it from a practicable business viewpoint, the petitioner in its present financial circumstances would have hardly pursued a discontinuance action unless it had reasonable assurance that it would retain the \$57,000 revenue for handling this mail.

As indicated hereinbefore, inclusion of the coach rental as an expense would show a marginal profit of about \$6,700 for continued operations. However, when weighed against estimated savings of \$89,000 resulting from discontinuance, the comparatively small return does not justify the continued operation of the trains in issue especially where, as here, the overall fiscal posture of the carrier's system is weak, and the public has demonstrated no substantial need for this passenger service. Only a small number

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of persons ride the trains between Buffalo and Hornell. Some special groups do use them at regular intervals, but this patronage is infrequent and only occasional, and more importantly, is hardly sufficient to form a basis for continuing the trains. The public need, not the relatively private and special requirements of a limited few, must govern our determination. Besides the absence of public demand for the service, the record clearly indicates that the tributary area lacks prospect for increasing patronage in the foreseeable future. Furthermore, the traveling public has at its disposal reasonably adequate alternative transportation, namely, other trains, buses, airlines and private vehicles operating over a good public roads system. With little adjustment, the special groups of travelers mentioned should be able to have their needs accommodated by this alternate transportation. Operation of unneeded trains such as trains Nos. 31 and 32, even though marginally profitable on an out-of-pocket cost basis, is both uneconomical and unnecessarily burdensome on the carrier, where as here, the discontinuance would have no really injurious effect on the public, and, at the same time, would permit a substantial saving to be made by a financially distressed carrier.

Upon consideration of all the evidence, we find that the present and future public convenience and necessity permit the discontinuance of service by the Erie-Lackawanna Railroad Company of its passenger trains Nos. 31 and 32 between Buffalo and Hornell, N. Y., and that the continued operation of such trains will constitute an unjust and undue burden upon the interstate operations of that carrier and upon interstate commerce.

An appropriate order will be entered.

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APPENDIX A

*Estimated annual results of continued operation of
trains Nos. 31 and 32*

Operating revenues:	
Passenger:	
On subject trains -----	\$76,584
50 percent of feeder benefits -----	64,748
Mail:	
RPO-----	41,976
Other-----	111,696
Milk-----	384
Total operating revenues -----	<u>295,388</u>
Out-of-pocket expenses:	
Locomotive repairs-----	71,277
Passenger car repairs-----	42,857
Engine crew wages-----	32,521
Fuel-----	23,915
Locomotive water, lubricants and supplies-----	1,488
Enginehouse expenses-----	14,520
Traincrew wages-----	56,779
Other train supplies-----	4,746
Railroad retirement tax, unemployment tax and vacation expenses-----	15,070
Claims-----	1,932
Rental of D&H coaches-----	17,350
Lodging costs-----	6,205
Total out-of-pocket expenses -----	<u>288,660</u>
Excess of revenues over expenses-----	6,728

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APPENDIX B

Estimated savings resulting from discontinuance of trains Nos. 31 and 32 based on operating revenues (except express revenues) for the period January 1 through July 31, 1964, projected to a full year.

Revenue loss:		
Local revenue-----	-\$230,640	
Net feeder revenue-----	64,747	\$295,387
Revenues to be retained:		
Mail-----		111,696
Net revenue loss-----		183,691
Expenses incident to retaining portion of mail:		
Passenger car repairs-----	14,286	
Other train supplies -	1,583	15,869
Total revenue loss and additional expenses-----		199,560
Out-of-pocket expense savings:		
Locomotive repairs-----		71,277
Passenger car repairs-----		42,857
Engine crew wages-----		32,522
Fuel-----		23,914
Locomotive water, lubricants and supplies -		1,488
Enginehouse expenses-----		14,519
Traincrew wages-----		56,779
Other train supplies-----		4,746
Railroad retirement tax, unemployment tax and vacation expenses-----		15,070
Claims paid by claim department-----		1,932
Rental of D&H coaches-----		17,350
Lodging costs-----		6,205
Total expense-----		288,659
Net savings-----		89,099

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