

FINANCE DOCKET NO. 24886

**ERIE-LACKAWANNA RAILROAD COMPANY<sup>1</sup> DISCONTINUANCE  
OF TRAINS NOS. 10 AND 15 BETWEEN HOBOKEN, N. J., AND  
BUFFALO, N. Y.**

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*Decided May 23, 1968*

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Upon investigation, found that continued operation of its passenger trains Nos. 10 and 15 by Erie-Lackawanna Railroad Company or its successor, Erie Lackawanna Railway Company, between Buffalo, N. Y., and Hoboken, N. J., is required by the public convenience and necessity, and that such continued operation will not unduly burden interstate commerce. Operation ordered continued for 1 year from the date hereof, and investigation discontinued.

*Richard Jackson and Wallace R. Steffen* for respondent.

*Kent H. Brown, George Hamilton Forman, John C. Grindley, Louis J. Lefkowitz, Walter J. Myskowski, Joseph S. Notarianni, A. I. Okun, Frank J. Ondrusek, Dunton F. Tynan, Alan M. Zalbowitz, and Walter E. Zullig,* for State, municipal, civic, and user protestants.

*John Gilroy, Peter J. Heinz, Jr., Joseph P. Scanlon, Henry P. Schmidt, T. P. Shearer, and Gilbert B. Wood* for railway labor protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, BUSH, AND STAFFORD

STAFFORD, *Commissioner*:

Pursuant to the provisions of section 13a(1) of the Interstate Commerce Act, as amended, the Erie-Lackawanna Railroad Company, a common carrier by railroad subject to the provisions of part I of the act, filed a notice and supporting statement on December 21, 1967, proposing to discontinue, effective January 22, 1968, its passenger trains Nos. 10 (New York Mail), eastbound, and 15 (The Owl), westbound, operating between Buffalo, N. Y., and Hoboken, N. J., approximately 402 miles. Copies of

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<sup>1</sup>Effective April 1, 1968, Erie-Lackawanna Railroad Company was succeeded by Erie Lackawanna Railway Company, which became a part of the Norfolk & Western Railway System. As used herein, "respondents," "the railroad," or other such terms apply to either entity, depending on context.

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the notice were served and posted in accordance with respondent's understanding of the statutory prescription and our rules and regulations thereunder. As hereinafter discussed, certain protestants question the efficacy of the posting, moving to strike the notice and so nullify the proceeding, and we deny the motion and assert jurisdiction.

Protests to the proposal were filed on behalf of various State, civic, business, and railway labor interests, as well as by users of the trains, and by order of January 9, 1968, we instituted an investigation of the matter and required continued operation of the trains pending a hearing and decision, but, unless otherwise ordered herein, not for a period longer than 4 months beyond the date when the discontinuance otherwise would have become effective. By letter of May 13, 1968, counsel for the Erie-Lackawanna advised that the trains would be continued beyond the statutory period to May 31, 1968. Because of the statutory limitation on the time available for investigation and decision, our order provided for omission of a report and recommended order by the examiner as part of the decisional process. In the period February 26-March 1, 1968, hearings were held at Buffalo and Binghamton, N. Y., Scranton, Pa., and Hoboken.

The discontinuance is opposed by St. Mary's School For The Deaf, at Buffalo; the Parents Association For The Hearing Impaired, Inc., whose members, some of whom have children at St. Mary's, reside for the most part in the Binghamton-Waverly-Elmira, N. Y., area; the Broome County, N. Y., Chamber of Commerce; the Board of Supervisors of Chemung County, N. Y.; the Chemung County Council of Governments; the city of Elmira, N. Y.; the city of Scranton, Pa.; the State of New York; the New York Public Service Commission; railway labor interests; and several individual train riders. Briefs have been filed by the Parents Association, the State of New York, the New York P.S.C., certain rail labor organizations, and respondent railroad.

Appendix A hereto reflects the schedules of the considered trains between Buffalo and Hoboken, the population of the points served by them, the mileages between such points, and the trains' per-trip average on-and-off counts at each point for 1967. It also indicates the service performed over a portion of the same line by respondent's trains Nos. 5 and 6 operating between Chicago, Ill., and Hoboken and leaving and entering the considered line at Hornell, N. Y., some 90 miles southeast of Buffalo and 117 miles west of Binghamton.

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The trains operate daily except Sunday with a single diesel unit each and, eastbound, train No. 10 (leaving Buffalo at 5:15 p.m. and arriving Hoboken at 3:35 a.m.) consists of a through coach and four mail cars, two sealed (one for Elmira and one for Binghamton), a mail-and-baggage car, and a mail-work car, both of the latter going through to Hoboken. Westbound, train No. 15 leaves Hoboken at 12:15 a.m. (arriving Buffalo at 11:15 a.m.) with a coach, a mail-and-baggage car, a mail-work car, and a sealed mail car going through to Buffalo, the latter eventually moving to Detroit on the New York Central; at Scranton, it picks up a sealed mail car for Buffalo, and, formerly, for Binghamton, a sealed express car destined to St. Louis (discontinued in November 1967) and a sealed mail car to Chicago (moving piggyback in freight service beginning February 19, 1968), and, at Binghamton, a mail-work car. Formerly, too, it picked up at Scranton for movement to Binghamton a small amount of express destined to Chicago, but lost that traffic to piggyback, also on February 19, 1968. The coaches have picture windows, are heated and air conditioned, and have separate rest rooms; their 62 seats have adjustable reclining backs. No complaints concerning them have reached the road's general superintendent. A midweek fare, at about one-third off, is applicable for Monday through Friday travel.

Respondent regards, and its timetable described, the considered trains as being primarily mail trains which furnish incidental passenger service, pointing to their schedules set up for the expeditious movement of express and mail, and passenger patronage, a 1967 average of some 12 revenue passengers per trip each way. It has not advertised the trains' passenger service, nor has it considered a schedule change to make the trains more attractive to passengers, being of the opinion that there is no passenger potential in its area. For 1967, the ratio of head-end to passenger revenue was 10.4406 for train No. 10, 19.4422 for train No. 15, and 14.7947 for both trains; those ratios would have been even higher had it not been for the loss of certain mail revenues that year. Although mail revenue increased in 1966 over 1965, in April 1967, the Post Office Department (Department) discontinued the use of train No. 15, from Hoboken to Buffalo for the sealed-car mail destined to Cleveland via New York Central. Then, in July, New York-Binghamton-Elmira-Jamestown storage mail was moved to highway service. In October 1967, Railway Post Office (RPO) cars were removed from both trains. Respondent estimates that the amount of loose mail in train No. 15's

working mail car increased about 15 percent thereafter. Informed of the railroad's intention to discontinue the considered trains on January 22, 1968, the Department indicated that it would make other arrangements for the handling of the mail still transported on the trains, and solicited star route bids to be effective January 16, 1968. However, when our investigation required continued operation of the trains for an additional 4 months, the Department, at respondent's request, first agreed to keep the mail on the trains, and subsequently stated that the trains would be used for mail for 120 days from January 20, 1968, which roughly corresponds to the period during which the trains were required to be kept on.

Since the 1966 revenue (both trains) from the RPO service alone was \$224,411 (\$80,000 from the Cleveland sealed mail car), the loss thereof has a severe impact. Without it respondent estimates that, together, the trains would incur an annual deficit in excess of \$85,000. Loss of the remaining mail, if this occurred, would result in an annual out-of-pocket loss figured by respondent at approximately \$350,000, not including 1968 wage increases nor a factor reflecting declining passenger use. Respondent calls attention, too, to the employee-passenger ratio per trip of 10 to 12.5. The 10 employees per train are composed of 1 engineer and 1 fireman each between Hoboken and Scranton, Scranton and Hornell, and Hornell and Buffalo, and 1 conductor and brakeman, 1 each between Buffalo and Binghamton, and Binghamton and Hoboken. In a supplement to its brief, respondent advises that a labor action pending at the time of hearing, and referred to thereat, has terminated in the requirement for 3-man traincrews on these trains, making a total of 12 employees per train per trip, and increasing wage payments accordingly. In addition to the labor savings of the crews working on the trains themselves (\$690.37 per day based on actual 1967 wages for 312 trips for each train), other savings are computed by respondent as involving, for operating personnel, two yardcrews of five men each 2 days a week at Buffalo, an hour overtime daily for a five-man yard-enginecrew at Binghamton, and one four-man yardcrew 6 days a week at Hoboken. As for nonoperating personnel, there would be a saving of one baggage agent and four mail handlers daily at Buffalo, one mail handler daily at Binghamton, one mail handler 5 days a week at Scranton, one station cleaner-baggageman 6 days a week at Newark, and four mail handlers and one car inspector 6 days a week at Hoboken. Such estimates are regarded

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by respondent as conservative since, when made, they contemplated the continued operation of its trains Nos. 3 and 4, which were discontinued effective February 19, 1968, and without which additional labor expenses can be saved.

Respondent's balance sheet as of December 31, 1967, shows assets of \$652,943,334, including current assets of \$53,755,614. It had current liabilities of \$34,483,451, and long-term debt due in 1 year of \$10,935,581, and other long-term debt of \$340,583,516. Total shareholders' equity was \$243,751,071. In 1965, 1966, and 1967, it had net railway operating incomes of \$12,201,929, \$16,981,596, and a deficit of \$207,778, and net income transferred to retained income (unappropriated) of \$3,290,788, \$6,668,269, and a deficit of \$10,181,829. Respondent is the corporate result of the merger of The Delaware, Lackawanna and Western Railroad Company into Erie Railroad Company, effective October 17, 1960. As such it started with a combined deficit of \$20 million. It incurred successive deficits of approximately \$26.5 million, \$16.6 million, \$17.1 million and \$8.3 million, with attendant tax, working capital, and bond problems, before achieving profitability in 1964 despite employment-cost increases. It attributes its 1967 relapse to a general decline in business activity (aggravated by strikes in the railroad, auto, and trucking industries) and substantial increases in wage and material costs without the help of prompt rate increases, and, pointing to its 1961-67 accumulated deficit of some \$68.7 million, emphasizes that its inclusion into the Norfolk & Western System will be on a separate corporate basis with no changes in its outstanding debts and obligations, making it essential that it effect economies wherever possible.

For 1965, 1966, and 1967, train No. 10 carried an average of 20.68, 19.16, and 12.77 passengers per trip (a 1965-67 decrease of 38.25 percent) and train No. 15, 17.79, 17.01, and 11.93 (a decrease of 32.86 percent). For train No. 10, entrainments at Buffalo dropped from 11.61 in 1965 to 9.23 in 1966 and 6.00 in 1967, and, for train No. 15, at Hoboken, from 10.53 to 7.57 and 5.86. In all, train No. 10 transported 6,473 passengers in 1965, 5,998 in 1966, and 3,986 in 1967, while the corresponding figures for train No. 15 were 5,563, 5,328, and 3,723. Utilization of the coaches based on average maximum and minimum numbers of revenue passengers, runs from a low of 5.35 percent to a high of 12.66 percent for train No. 10, and, train No. 15, 8.19 percent and 11.21 percent; respondent estimates that, without mail revenue, passenger use of the respective trains would have to increase by 831 percent and 825 percent in order to have them break even.

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There is considerable alternate commercial passenger service between some of the points served by the trains, commercial airports being located at Buffalo, Elmira-Binghamton, Scranton, and New York (Newark, Kennedy, and LaGuardia). Three airlines provide numerous flights to New York, there being 12 daily from Buffalo (flight time about 1 1/4 hours), six from Elmira-Corning, six from Binghamton and five from Scranton; in addition, from Buffalo, there is one flight on Saturday only, two daily except Sunday, two on Sunday, one daily except Saturday and Sunday, and four daily except Saturday; from Elmira-Corning, one on Sunday only, one daily except Sunday, one on Saturday only, and one daily except Saturday; from Binghamton there are two daily except Sunday and one on Sunday only; and from Scranton there is one daily except Sunday and two daily except Saturday. As between the intermediate points, there is only one daily-except-Sunday flight shown, being from Elmira-Corning to Binghamton. Westbound from New York, there is similar service, with 6 daily flights to Scranton, 7 to Binghamton, 5 to Elmira-Corning, and 14 to Buffalo. A large airline whose schedules are not of record provides at least three flights daily between Buffalo and New York via Rochester.

By bus, Eastern Greyhound provides nine schedules daily from New York to Binghamton (most of them serving Newark, Stroudsburg, and Scranton), and eastbound, from Buffalo to New York, 12:35-11:45 a.m. and 4:45 p.m.-6:10 a.m. schedules with intermediate service at several western New York points as well. Between Buffalo and Binghamton, of particular interest here, the same company operates five westbound schedules daily via Rochester, N. Y., four with 15-minute stops there (to change buses), and one with 55 minutes overall times ranging from 4 hours 55 minutes to 6 hours 15 minutes. The 5:15 p.m. Friday bus leaves Buffalo at the same time as train No. 10 and arrives in Binghamton at 10:53, 28 minutes later; there is a 15-minute bus change at Rochester. One-way busfare is \$6.70 as against \$8 by rail and \$17.35 by air. A second carrier (Short-Line) operates a 9:30 a.m.-8:05 p.m. schedule from New York to Buffalo via Scranton, Binghamton, Endicott, Owego, Waverly, and Elmira, and two others (10:30 a.m.-5:35 p.m. and 2:30 p.m.-9:15 p.m.) to Addison (beyond Corning) via most of the same points, as well as a 10:15 a.m.-2:20 p.m. schedule to Scranton and an 8:30 a.m.-1:15 p.m. schedule to Binghamton, a 12:30-6:05 p.m. schedule to Owego via Binghamton and Endicott, a 6:30 p.m.-

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12:45 a.m. schedule to Elmira, via Binghamton, Owego, and Waverly, and a 10:30 p.m.-2:50 a.m. schedule to Binghamton. Similar service is available westbound, with two New York-to-Buffalo schedules (8:40 p.m.-9:55 a.m. and 12:55 a.m.-1 p.m.). A third bus company (Martz Trailways) provides numerous schedules between New York and Scranton via Newark, Dover, and Stroudsburg. A fourth (Capital Trailways) provides three schedules daily each way between Scranton and Buffalo, serving Waverly, Elmira, and Corning, one (additional) westbound and two eastbound between Scranton and Elmira, and one westbound and two eastbound between Buffalo and Binghamton, serving Corning, Elmira, Waverly, Owego, and Vistal. A fifth (Grand Island Transit) operates limited schedules between Buffalo and Hornell serving Warsaw as an intermediate point. A sixth (Empire State) operates four daily schedules westbound between Elmira and Buffalo, serving Corning, and two from Elmira to Corning, and eastbound, four from Buffalo to Elmira, serving Corning, and one from Corning to Elmira.

There is alternate train service by respondent between Hoboken and Hornell, its trains Nos. 5 and 6 to that extent serving many of the same points on their way to and from Chicago. Train No. 5 leaves Hoboken at 7:30 p.m. arriving Hornell at 2:40 a.m., and train No. 6 leaves Hornell at 2:02 a.m. and arrives Hoboken at 8:45 a.m. (see appendix A). Respondent's train No. 17, operating Saturday p.m.—Sunday a.m. only, leaves Hoboken at 11:45 p.m. and arrives Binghamton at 4:40 a.m., serving East Stroudsburg, and Scranton. Another road, the Penn Central, provides rail passenger service between Buffalo and the New York City area, but not over the same intermediate route, the former New York Central via Albany, Utica, Syracuse, and Rochester, N. Y., and the former Pennsylvania via Olean, N. Y., and Williamsport, Harrisburg, and Philadelphia, Pa. The Central, as of January 26, 1968, had five eastbound and five westbound trains daily between Buffalo and New York, the scheduled time between those points running between 7 hours and 30 minutes (3) and 9 hours 15 minutes (1) westbound and 7 hours 40 minutes (4) and 9 hours 10 minutes (1) eastbound. The Pennsylvania, effective January 28, 1968, had a daily schedule each way, 5:05 p.m.-8:15 a.m., westbound, and eastbound, 9 p.m.-9:20 a.m.

The area adjacent to respondent's tracks between Hoboken and Buffalo is interlaced with hard-surfaced highways, principally, portions of Interstate 80 and U.S. 46 from the Hoboken area to

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Stroudsburg; a portion of Interstate 80 and U.S. 611 (Interstate 81E under construction) between Stroudsburg and Scranton; Interstate 81 between Scranton and Binghamton; New York Highway 17 between Binghamton and Corning (the route of a proposed Interstate Highway); U.S. 15 and New York 70 between Corning and Hornell; a series of State highways between Hornell and Warsaw and alternate U.S. 20 between Warsaw and Buffalo. Other routes parallel those described, particularly, east of Binghamton, New Jersey and New York Highways 17 and, west thereof, U.S. Highways 15 and 20. There are auto rental agencies at all points regularly served by the trains except Warsaw, Addison, Waverly, and Owego.

The minimum travel times by bus, rail (respondent), and air from Hoboken to Buffalo are, respectively, 11 hours, 11 hours, and 61 minutes. Nonstop Thruway bus service is performed in 8 hours 15 minutes and Penn Central rail service in 7 hours 30 minutes. Minimum fares therefor are \$15.15, \$17.08, and \$19.95. Bus times from Hoboken to Scranton, Binghamton, and Elmira are 2 hours 35 minutes, 3 hours 50 minutes, and 6 hours, as against rail times of 3 hours 20 minutes, 4 hours 55 minutes, and 6 hours 45 minutes; the respective air times are 33 minutes, 41 minutes, and 63 minutes. Corresponding busfares are \$5.15, \$7.75, and \$9.35, as against rail fares of \$5.80, \$8.37, and \$10.87; the air fares are \$13.34, \$16.35, and \$20.70. Binghamton-Buffalo bus, rail, and air times are 5 hours 20 minutes, 5 hours 35 minutes, and 64 minutes, and, one-way fares, \$6.70, \$8.80, and \$17.35.

Although it earns less passenger revenue than train No. 10, train No. 15's overall revenues, principally because of its express and greater other-than-RPO mail revenue, have exceeded those of train No. 10. Thus, in 1965, train No. 10's total operating revenue was \$311,452 as against \$531,669 for train No. 15, in 1966, \$321,345 as against \$579,176, and in 1967, \$282,927 as against \$473,625. As indicated, revenues for the two trains rose, 1966 over 1965, and the average per trip (both trains) was \$2,877 in 1966 as against \$2,694 in 1965; in 1967, however, such revenue decreased to \$2,425. Excluding RPO revenue (removed in October 1967), the average revenues per trip for both trains (separated as to trains Nos. 10 and 15 in parentheses) in the successive periods were \$1,969 (\$633, \$1,336), \$2,160 (\$668, \$1,492) and \$1,873 (\$630, \$1,243).

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In 1965, train No. 10 operated at an out-of-pocket loss of \$1,718, and train No. 15 at a gain of \$233,813, the pair netting \$232,095. In 1966, all factors increased, train No. 10's losses running to \$5,557, train No. 15's gains to \$268,868, and the combined profit to \$263,311. For 1967, train No. 10's loss was \$39,709, train No. 15's gain was \$166,280, and, the overall gain, \$126,571 (see appendix B). In the successive periods, profit (or loss) per train-mile for train No. 10, train No. 15, and combined, were (\$0.01), \$1.87, and \$0.92; (\$0.05), \$2.14, and \$1.05; and (\$0.32), \$1.31, and \$0.50. Adjusted to reflect the loss of the RPO cars (discontinued October 6, 1967) and the Cleveland storage mail (discontinued April 29, 1967), in the first 9 months of 1967 train No. 10 would have lost \$102,525 and train No. 15 would have made \$27,298, resulting in an overall loss of \$74,597. On the same basis, respondent's projection for 1968 originally estimated a train No. 10 loss of \$125,341, a train No. 15 profit of \$57,080, and an overall loss of \$68,261 (see appendix C), changed at the hearing to \$85,061 to reflect an additional \$16,800 which could be saved by the elimination of two additional positions if the trains were discontinued.

In its determination of the avoidable (saveable) expenses attributable to the operation of trains Nos. 10 and 15, respondent based the labor portion of all accounts on the wage rates in effect for the particular accounting period, the projection for 1968 being on the assumption that, except for shopcraft rates, which on July 1, 1968, will be increased 5 percent, all wage rates will remain constant.

If all mail revenues were lost respondent estimates that the trains' annual operating losses would be, for train No. 10, \$181,298, for train No. 15, \$168,588, and, for both, \$349,886, based on operations as of May 20, 1968, again including only the above-described 5-percent wage increase for shopcraft employees, and allowing for the elimination of mail expenses (some \$213,407). See appendix D.

St. Mary's School (Buffalo) has about 20 children, aged 4-17, who, wearing identification tags, used the trains to and from their homes, primarily in the Binghamton-Elmira area, every 2 or 3 weeks. Because deafness in children sometimes results from German measles in pregnancy, it expects, as a result of the last epidemic, an increase in its enrollment in the next few years. Family ties are important, and the school encourages trips home at least every 3 weeks, preferably every 2 weeks, or

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even, finances permitting, every week. Although it operates its own schoolbus for local trips, and some older children (14 and over) successfully use commercial buses, it believes that for commercial intercity transportation trains are safer for the children, the conductors being aware of the children's handicaps and acting accordingly, whereas busdrivers must devote themselves to the operation of their vehicles. Most of the children using the trains are 7 and 8 years of age or under and, except for being in the company of the older children, travel unescorted, and the school believes that discontinuance here would cause a severe hardship to the students and their families, with physiological, social, and academic repercussions.

Eight parents in the Elmira-Binghamton area with children at St. Mary's oppose the discontinuance on behalf of the Parents Association For The Hearing Impaired, Inc., which has a membership of between 40 and 50; because of the existence of the considered trains, the association did not oppose respondent's discontinuance of the Phoebe Snow trains (330 I.C.C. 508). In all there are 13 area students, age 4 to 17, who ride the trains to and from the school; another one uses air transportation via Syracuse, N. Y. The parents, for the reasons given by the school and the uncertainties of winter weather, are unanimous in their opinion that trains constitute the best, safest, and most economical method of travel for deaf children. The children are required to visit their homes at least every 3 weeks and as of September 1968 will be required to do so every 2 weeks. In addition to the desire of both the school and parents that the children be home on weekends, there is added expense to the parents if they stay at the school, since board must be paid and there is a regular weekend fee.

The 11-year-old daughter of an association officer has been at the school for 8 years during which her father has seen trains, especially the Phoebe Snow, discontinued, schedules change, and service deteriorate. After one trip he was told by his daughter that the train's toilets had been without water. He deals with the nun in charge of transportation at the school, and knows of no student there who uses buses for intercity travel; the only airline serving the route will not accept responsibility for the children unless it can land at the scheduled airport, whereas the trains are confined to the track and the railroad conductors are helpful to the children. At the Binghamton station on January 2, 1968, he observed that the coach on train No. 15 was full and, on 333 I.C.C.

February 9, 1968, that train No. 10's coach contained some 32 people. (Respondent's records for train No. 15 on January 2, reflect the presence in the coach, capacity 62, of 8 nonrevenue passengers among 62 leaving Dover and Stroudsburg, 21 of 45 leaving Scranton, 7 of 43 leaving Binghamton, 10 of 40 leaving Elmira, and none of 45 leaving Hornell).

Other parents (five mothers and two fathers) testifying have children at St. Mary's there being one son aged 13 with 4 years attendance, two sons aged 11, each with 7 to 8 years attendance, and 8- and 5-year-old sons, each with 2 years attendance; two daughters, and one 12 and one 11, each have 8 years attendance. The latter's twin once attended the same school, and their father, with two children there, thoroughly reviewed other transport possibilities, but concluded that none could take the place of the train for his family's requirements. He believes the railroad is attempting to discourage use of the trains (after putting his daughter on a train last year, the conductor wouldn't let him off and he had to ride to Owego) but he will have his child use them as long as they run. The parents essentially adopt the detailed testimony of the association's officer, their problems being common ones, and do not know what they would do for their children's transportation if the trains were discontinued. Generally they are not familiar with the Buffalo bus schedules, and one is of the opinion that the bus company requires a parent in attendance.

The association submitted six letters in opposition to the proposal from parents having children at St. Mary's who were unable to attend the hearing, and called as a witness a reporter and business writer for a local newspaper who the week before the hearing rode train No. 10 to Hoboken in preparation for an article. The car was well heated, and the ride was comfortable; on the whole, he thought the trip pleasurable, although there were no pillows and the plumbing didn't work, the conductor telling him that the water apparently had frozen.

A Binghamton taxi company has an exclusive franchise to spot its cabs at respondent's Binghamton station (3 other local companies respond to specific calls); in 14 days over a 2-month period it averaged 10 calls daily for transportation to and from the considered trains. It also transports respondent's crews, on a charge account with respondent, west to Hornell and east to Susquehanna, Pa., the latter movement predominating. The witness noted that train No. 10's Binghamton departure time, 10:55 p.m., is almost 2 hours later than the last of nine flights to the New York

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area, and train No. 15's Hoboken departure time, 12:15 a.m., some 45 minutes after the last of nine New York flights to Binghamton.

Two outpatients at Buffalo's Roswell Cancer Clinic, one from Binghamton, the other from Endicott, N. Y., use the trains to and from Buffalo. One, in her 8th year of treatment, rides trains Nos. 10 and 15 every 4 weeks, traveling no other way if she can avoid it, finding train service the most economical and dependable. The other, in her first year of treatment, had made five trips prior to, and expected to make another 2 weeks after, the hearing; she expects to go every 4 months for checkups. She uses the trains because of their convenience, her husband driving her to and from the Endicott station but, because of his own health, he is not able to drive long distances. She finds air travel too expensive and does not believe that bus departures are early enough for her travel.

A Binghamton parent with a 13-year-old son who has for 8 years attended a Batavia, N. Y., school for the blind, coming home every 3 weeks by train, and returning to school by bus, finds train travel most convenient for her son. He used to go in both directions by train, on the Phoebe Snow, but now, returning, has to go by bus to Rochester (2:20-5:35 p.m.) where the school picks him up (homebound, it takes him to the train at Attica, some 5 to 10 miles from Batavia, after making arrangements for the train to stop there). An additional eight letters in opposition to the proposal were submitted from people who either have children at the Batavia school or who are outpatients at the Roswell Clinic.

The chairman of the Chemung County Board of Supervisors, speaking also for the Chemung County Council of Governments, believes the discontinuance premature for a "new" company, especially in the face of foreign developments and the advent of high-speed ground transport. One result of discontinuance here, from past experience, would probably be a need to increase service at the Chemung County (commercial) Airport. He calls attention to the omission of any request by respondent for tax abatement from local governments, which are "not abusive" to the railroad, but, rather, would cooperate with respondent in attempting to furnish needed service, and argues that such avenues should be investigated before discontinuance is proposed. He last rode the trains about 6 months prior to the hearing, since having used auto and air, and attended the hearing by auto after a 90-minute drive, although he would have preferred a 30-minute train ride had it been available. The mayor of Elmira, submitting a

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resolution by the city council, opposes the discontinuance, believing that Elmira needs both new transport developments and the better of the old ones, and that, with options available, people will use what is best for them. While recognizing the difficulties, he questions the wisdom of railroads generally and of respondent in particular in ceasing to hold out passenger service to the public.

A Binghamton businessman opposes the discontinuance on the ground that in winter there frequently is no other safe way out of town. He uses trains to Hoboken or Newark four or five times a year, his wife somewhat more often; if the schedules were better, both would ride more. Apparently he has never used train No. 10, his recollection of eastbound departure times being 1:30 and 4:30 a.m. (train No. 6), but not 10:55 p.m.

A Binghamton citizen associated with a New York advertising agency opposes discontinuance. Making an average of two New York round trips a month, he prefers train No. 6 to train No. 10, finding the latter uncomfortable; he usually uses train No. 15 to return to Binghamton. He formerly patronized the Phoebe Snow. He sometimes drives, but finds it inconvenient because he cannot work, as on the train; he finds buses uncomfortable and planes to involve excessive ancillary time and additional cost. The art director of his agency also travels to and from New York by train.

A Syracuse University student residing at Franklin, N. Y., uses the trains between Binghamton and Hornell three or four times a year to visit friends at the latter point, alternate transportation not being as convenient, bus transportation requiring a change of buslines at Elmira or buses at Bath, N. Y. He also uses the trains for trips to and from the New York area, and, for connections with the Pennsylvania to and from Washington, D. C., and Newark, N. J. In the year prior to the hearing, he twice traveled westbound on the trains and, eastbound, six times; on his last trip he was surprised to find an "old dirty Erie commuter car" for which the conductor apologized, but on some trips there was newer equipment from the Phoebe Snow. Respondent's Binghamton ticket office is open only in daylight hours and not when the train goes through (when the Phoebe Snow was running, the station was open 24 hours), and he was unable to get respondent's timetables at the station. He is of the opinion that the traveling public requires continuation of the trains.

The Honorable Howard W. Robinson, member of Congress from New York's 37th District (Broome, Chemung, Steuben, and Tioga Counties), asserts that although some short-haul passenger service may be looked at as more or less a local concern, the agree-

gation of individual discontinuances has resulted in a serious national problem. Believing that in 1958 there was some justification for establishment of the section 13a procedure, he is positive that Congress never intended it to be used to eliminate railway passenger service. He notes that proposed legislation, supported by him, which would impose a moratorium on further passenger train discontinuances as well as affecting the withdrawal of railway postal revenues, has not progressed. He doubts that he and his fellow protestants here can put on a case as strong as the one they made against the discontinuance of the Phoebe Snow (now pending in court), calling attention to the relationship between the cases and the considerably lesser degree of public service rendered by the considered trains, but, pointing to the even greater future need of the Nation for the expeditious transportation of people and the necessity of maintaining at least a skeletal framework of rail passenger service upon which the results of dramatic technological breakthroughs may be positioned, he sees this Commission as the one avenue through which wholesale discontinuances can be stopped until the necessary basic research has been completed and the Congress can be induced to act, an effort he believes to be within our authority and upon which basis he urges the decision herein be made.

Eastern Greyhound Lines operates, *inter alia*, between Binghamton and Buffalo, featuring approximately 5-hour bus schedules, and \$6.70, one-way, and \$12.10, round trip fares, with reduced fares for children under 12 years. To its witness' knowledge, weather caused no cancellations of service between those points in the 1967-68 winter period preceding the hearing, and although there were some delays therefrom, none were severe. Its equipment is late model, with air-conditioning, picture windows, and lavatories. For some time it has transported to and from Rochester, for weekend visits to their homes, children who attend a Rochester school for the deaf; in cooperation with the school, it makes special provisions therefor and it has had no complaints from parents concerning such service. It is also experienced in transporting blind children in the Ithaca, N. Y., and Rochester areas and sees no reason why it could not provide the service needed for handicapped children between Binghamton and Buffalo. Its 5:30 a.m. Binghamton departure (10 minutes before train No. 15) makes a Buffalo connection at Rochester, arriving Buffalo at 10:50 a.m., 25 minutes before the train. Its Friday through coach from Buffalo to Binghamton, departing at the same time as train No. 10 (5:15 p.m.), is scheduled for Binghamton arrival

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at 10:53, some 28 minutes after the train. A daily direct bus departs Buffalo at 8:15 p.m., arriving Binghamton at 1:35 a.m. Schedules are changed and equipment added or deleted as seasons or traffic change. It points out that those witnesses who are outpatients at the Buffalo clinic could use its 5:30 a.m. departure via Rochester, and that its Binghamton station is open 24 hours a day. For children moving between the Binghamton area and the Batavia school for the blind (for whom these trains stop at Attica under special arrangements), it could make schoolbus connections at Rochester, but, in lieu thereof, would recommend a competitor's direct Batavia-Binghamton service. In addition to being open 24 hours a day with working personnel present and others coming and going, its Rochester terminal has full-time supervision, two supervisors being present for 18 hours. The patronage of the handicapped children would be desirable from both monetary and service standpoints, and would be personally rewarding to its personnel as well. In addition to its regular operations, it provides charter service, for which it makes mileage or hourly charges, but doesn't normally use it for the schools in the area; it can accommodate its schedules for the convenience of the schools when necessary, but generally quotes and provides service under its regular schedules, usually providing a separate-bus addition thereto, on which it leaves vacant seats for those expected along the route.

The former president of the Scranton City Council (at the time the notice herein was filed), the only citizen-at-large member of the Mayors' Northeastern Pennsylvania Transportation Committee finds respondent generally not unreasonable, and does not question the detail of its figures relating to the considered operation, but he expresses shock at the railroad's urging passengers to use the service of other transport modes, finding it an obvious indication that respondent does not want to provide passenger service, ironically, at a time when public recognition is finally being given to the need therefor. He believes that the area needs a modal balance of passenger service and urges that the considered trains be continued at least until an alternate plan proposed by a city councilman has been given an opportunity. That plan, as described by the councilman, contemplates a Budd car operation in the general area, including many points not serviced by the considered trains, and between Scranton and Hoboken; he views its relevance here as indicating continuation of the considered trains in order "to keep the fires of passenger service burning," the continuation

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by respondent of its other remaining trains being regarded as having the fire turned down "to the pilot light."

The general chairman for the Brotherhood of Railroad Trainmen, Eastern District (Brotherhood), construes the April 15, 1950, contract between respondent and the Brotherhood as requiring respondent to pay the full mileage rate for the service in which the employee is engaged and, with the discontinuance of the considered trains, he believes it would be necessary for traincrews (whose working movement is overbalanced eastbound about 3 1/2 to 2) to have to deadhead on freight trains, at a pay-rate cost to respondent double that of deadheading on passenger trains; the Brotherhood estimates, on the basis of respondent's reports to it as to the number of traincrews deadheaded, that respondent's additional cost resulting from deadheading those same crews on freights, buses, and taxis (all of which, it believes, take double the passenger train basis) would amount to \$50,000 annually. The railroad has a similar agreement with the Brotherhood of Locomotive Firemen and Engineers (there are approximately half as many engineers and firemen as conductors and brakemen). The Brotherhood found, when the RPO cars were discontinued, that there was an increase in working mail on the railroad (acknowledged by respondent as about 15 percent on train No. 15), and respondent had trouble filling the position of baggageman because there was so much (mail) work. On the strength of that experience and on the basis of respondent's retention of some mail revenue from mail once carried on the considered trains but diverted to piggy-back movement, the Brotherhood does not accept respondent's loss figures at face value. Recognizing the proposal for Budd car service, the witness views it as a future possibility as against the service in being of the considered trains.

Several rosters of the Brotherhood of Railroad Trainmen would be affected by the discontinuance, but normal attrition would reduce the effect on employees, as would the present need for "doubling" or "working through," terms used to describe the practice of an employee's working beyond his normal 8-hour shift, at time-and-a-half pay.

Respondent acknowledges the necessity to transport crews by bus from Susquehanna to Binghamton (at a cost of \$25 a trip) for movement to Hornell on trains Nos. 5 and 15, the former carrying 83 percent and the latter the balance; it is experimenting with bus service for direct Susquehanna-Hornell movement at a cost of \$142 per trip. Based on one such movement a week (Monday), it

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figures on an added annual cost of \$6,084 (\$7,384 less the \$1,300 cost of the Susquehanna-Binghamton bus). The flexibility of the bus is such that respondent claims that considerable "terminal overtime" (at 1 1/2 times the regular pay rates) can be eliminated. From Hornell to Buffalo, there may not be sufficient movement to justify a bus operation, and it estimates the net increased cost of deadheading on freight trains as \$7,964 annually (some \$7,004 above the Brotherhood's estimate for the increased cost in both directions between those points). It thus acknowledges an annual increased deadheading cost of some \$14,000 (without inclusion of Scranton-Hornell and Scranton-Hoboken deadheading, which it characterizes as de minimus) but claims that these expenses can be offset by a saving in terminal overtime expense incurred while employees are waiting for trains on which to deadhead. However, the record is without details to substantiate these claims.

Respondent and the Brotherhoods disagree on the effect of the agreements between them concerning the deadheading rates of pay, respondent insisting that pay during taxi and bus movement does not take the freight train rate and that it is not paying that rate therefor although there may have been some early claims based thereon and denied or withdrawn; the Brotherhood, on the other hand, insists on its interpretation in the absence of a special board of adjustment ruling to the contrary. Obviously, it is not our function to interpret the agreement and without such an interpretation, the rate of pay is unknown.

The New York State Public Service Commission, based on an analysis of reports received from respondent on a prescribed form, shown, by month, the performance records of the considered trains for 1966 and 1967 at the farthest terminals in the State, Binghamton for train No. 10 and Buffalo for train No. 15, "on time" including arrivals up to 5 minutes late. In 1966, train No. 10 was on time at Binghamton 187 days and late 126 days, a 59.7-percent on-time record; the total minutes late (including the first 5 when in excess thereof) was 4,064, the monthly total minutes running between 47 (August) and 1,126 (November). Corresponding figures for train No. 15 in 1966 were 197 days on time, 116 days late, 62.9 percent, 3,669 minutes late, the monthly minutes running from 35 in March to 915 in October. In 1967, train No. 10 was on time 229 days, late 82 days, 73.6 percent, 2,279 minutes late, ranging from 31 in July to 455 in May; train No. 15 was on time 178 days, late 132 days, 57.4 percent, 7,179 minutes late, ranging from 100 in November to 2,860 in August.

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Based on respondent's same reports to the New York Commission, but using the Post Office Department's 15-minute grace period rather than New York's 5, train No. 10 in 1966 was on time 243 days, late 70 days, 77.64 percent, late minutes totaling 3,507 and ranging from none in August and 56 in July to 1,091 in November; train No. 15 was on time 257 days, late 56 days, 82.11 percent, and late a total of 2,894 minutes, ranging from 35 in March to 840 in October. In 1967, train No. 10 was on time 270 days, late 41 days, 86.82 percent, and late a total of 1,871 minutes, ranging from 41 in June to 444 in May; train No. 15 was on time 239 days, late 71 days, 77.19 percent, and late a total of 6,437 minutes, ranging from 50 in November to 2,845 in August. For train No. 10 in 1966, 620 of its 3,507 late minutes were caused by a wreck or wrecks, as were 484 of its late minutes in 1967; for train No. 15, there were 410 late minutes in 1966 and 500 in 1967 from the same cause. For train No. 15 in 1967, 4,191 late minutes (or 6,437) were caused by the laying of welded rail between Hornell and Buffalo; only the train was that much late, however, as the passengers (and mail) were bused from Hornell and arrived at Buffalo "within a reasonable time of the schedule time." Passengers were also bused on several occasions involving delays to the trains caused by wrecks on the line. The reports made to the New York Commission showed train, rather than passenger, arrival time.

The New York Commission, joined by the State and certain rail labor organizations, moves for dismissal of the notice giving rise to the proceeding and vitiation of the latter on the ground that a copy of said notice was not posted at respondent's Attica station. The act requires such notice to be posted at stations "served" by the trains intended to be discontinued and our rules require that the notice be posted "in a conspicuous place in each station, depot, or other facility involved \*\*\*." The failure to make such a complete posting would invalidate the notice and our jurisdiction and require another beginning by the carrier, *Chicago M., St. P. & P.R. Co. Discontinuance of Trains*, 317 I.C.C. 761, 772 (1963). The nub of the question, of course, is whether Attica is a station "served" by the considered trains. Attica is not listed on respondent's timetable as a service point for the trains, and it is not a regular stop therefor, and, although respondent renders service to and from the Attica (freight) station by means of the considered trains, it is solely for the convenience of a nearby school for blind children at Batavia, and only pursuant to previous arrangements

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made by the school authorities with respondent's chief dispatcher at Buffalo. In the circumstances, we are constrained to find that Attica is not served by the trains in their normal operation and thus, is not a point "served" by them within the meaning of the statute. In the circumstances, the motion to strike the notice is denied and the proceeding will be determined on its merits.

On brief, the Parents Association argues the need of its members' families and other Buffalo travelers for the sole remaining Buffalo trains. It requests investigations into the cause of the removal of the mail from the trains and into respondent's accounting practices to determine whether there is a proper allocation of passenger expenses. And it asks that if discontinuance is permitted, a condition be imposed requiring rerouting of trains Nos. 5 and 6 (Chicago-Hoboken via Hornell—see appendix A) so that they would move via Buffalo on Mondays, Wednesdays, and Fridays.

The other protestants, in addition to arguing the public need for the trains and pressing the motion to strike the notice of discontinuance, question whether the remaining mail would be removed from the trains if they were kept operating. But protestants' main argument is that respondent's figures are misleading and unreliable; that revenues are understated and expenses overstated; that the trains are currently operating at a profit and that continued operation would not unduly burden interstate commerce. The Brotherhoods, for instance, assert that:

(T)he constantly changing conditions on the Erie Lackawanna, both with regard the handling of mail on the trains operated and \*\*\* the actual number of trains being operated, make impossible any reasonably accurate determination as to the amount of revenue which trains Nos. 10 and 15 are handling and could be expected to handle in the future. No one knows and no one even attempted to determine how much of the mail formerly handled in the RPO cars was transferred to other cars on the trains, nor can anyone tell from the present record how much the newspaper and mail revenues for the two trains \*\*\* increased after the discontinuance of trains Nos. 3 and 4 on February 19, 1968.

Similarly, the Erie Lackawanna made no attempt to calculate feeder revenues and made no attempt to ascertain the value to the company derived from its being able to handle "deadheading" traincrews on the trains in question.

They also contend that although respondent indicates that \$395,061 in wages would be saved to it (and lost to employees) this would not happen because of attrition provisions resulting from the entry of respondent into the N&W system. (This argument appears to misconstrue respondent's purpose in showing the saving. The

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fact is that labor is in short supply on the road, with many jobs unfilled. While the saving would not necessarily be absolute in terms of dollars removed from wages, it would take the form of other necessary work accomplished. As such it would be entitled to the same treatment as actual savings. And all of this would not cause any economic hardship to respondent's employees.) Finally, they point to the unsatisfactory state of the record (which we have discussed above) concerning the possibility of removal of the remainder of the mail from the trains.

Protestants also argue that the trains could be continued profitably, or at least without undue burden to interstate commerce, if the Commission ordered such continuance. They consider it unlikely that the Department will remove the mail if the trains are required to be kept on. Even if the Department insisted on removing the mail, the trains would not become an undue burden, according to protestants, if they were rescheduled and made attractive for passenger travel. Charging that in the last few years respondent has been engaged in "a determined but foolhardy program aimed at discontinuing all of its long-haul passenger service," New York State lists the trains discontinued<sup>2</sup> under section 13a and stresses that although it has been respondent's practice in each case to rely on its remaining trains as a part of its adequacy-of-alternate-service showing, if trains Nos. 10 and 15 go, only trains Nos. 5 and 6 will be left, and the pattern of prior discontinuances has actually enhanced the candidacy of the remaining trains for discontinuance.

New York State suggests that respondent, in furtherance of a step-by-step program to eliminate its long-haul passenger service, has, in the past, either diverted traffic or manipulated its allocations of head-end traffic between trains in a manner which decreased the actual or apparent revenues on trains marked for discontinuance. The State gives some examples of questionable revenue figures and allocations from the past. It then argues (again giving examples) that respondent has continued the alleged

<sup>2</sup>324 I.C.C. 795 (1963), trains Nos. 40 and 43 between Elmira and Binghamton; train No. 41 from Denville, N. J., to Scranton; train No. 25 from Port Jervis, N. Y., to Binghamton, and train No. 26 from Binghamton to Hoboken.

330 I.C.C. 531 (1965), trains Nos. 40, 42, and 43 between Hoboken and Scranton.

330 I.C.C. 234 (1965), trains Nos. 7 and 8 between Hoboken and Chicago; redesignated as mail-and-express trains Nos. 3 and 4 (no passengers), they operated until February 19, 1968.

330 I.C.C. 400 (1965), trains Nos. 31 and 32 between Buffalo and Hornell.

330 I.C.C. 508 (1966), trains Nos. 1 and 2 (Phoebe Snow) between Chicago and Hoboken and trains Nos. 21 and 22 between Binghamton and Hoboken.

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practices in this proceeding and has thus diverted and understated the revenues of trains Nos. 10 and 15. New York also charges that certain expense items have been overstated. On the revenue side, feeder revenues estimated by New York at \$85,500 per year were omitted from 1965, 1966, and 1967 figures; newspaper revenues were substantially understated; and savings being realized from extensive free use of trains Nos. 10 and 15 for deadheading of crews<sup>3</sup> were at first ignored by respondent and later when questioned, were dismissed without benefit of understandable calculations.

New York State argues that by not showing the number of its nonrevenue riders, respondent avoids "showing the savings to it resulting from 'deadheading' \* \* \* crews on passenger trains and paying only half their wages, instead of the full wages they would be paid if 'deadheaded' on freight trains."

Respondent, of course, is expected to make a full and complete showing of the results of its operating and not operating the trains, *Great Northern Ry. Co. Discontinuance of Service*, 307 I.C.C. 59, and the issue of the cost to respondent of deadheading personnel for its own purposes was raised at the hearing, as it has been raised before (330 I.C.C. at page 537), but respondent does not meet the issue except (1) to concede that bus and freight-train deadheading in the absence of the considered trains would make for an additional cost of some \$14,000, (2) to argue that such cost might be offset by a consequent saving in terminal overtime pay, and (3) to suggest that the excess of coach, over train, miles revealed by its figures, results from equipment, rather than crew, deadheading.

Concerning mail revenues, New York State criticizes respondent for its previous general claims in other proceedings that mail from discontinued trains would be handled on the remaining trains. Respondent points out the \$74,929 increase in respondent's mail revenue in the first 9 months of 1966 over the corresponding 1965 period (\$5,238,176 to \$5,313,105) and the subsequent \$343,490 drop in the fourth quarter (\$2,141,839 to \$1,798,349) following the discontinuance of trains Nos. 1, 2, 21, and 22 in November 1966,

<sup>3</sup> Respondent did not reveal the number of nonrevenue riders on trains Nos. 10 and 15. The figures of record show many more coach miles than train miles for these trains. In 1965, 1966, and 1967, total annual train miles for each train approximated 126,000; coach miles, however, were, for train No. 10, 206,325, 159,300, and 139,497, and, for train No. 15, 173,700, 153,608 and 137,058. Many of these extra coaches may have been deadhead equipment, but respondent's witnesses could not tell how many were deadheads.

and its \$1,455,373 drop in 1967 from 1965 (\$7,380,015 to \$5,924,642), "primarily as a result of the discontinuance" of those trains. It cites also the lack of feeder revenues in the figures for train No. 15's Scranton to Binghamton movement of train No. 3's Chicago sealed mail and sealed express cars in respondent's showing of 1965, 1966, and 1967 mail revenues.

New York State concludes that "by focusing attention on the trains proposed for discontinuance, diverting traffic or allocating revenues to other trains, and failing to show commuter revenues and the number of employees using the trains, (respondent) has managed to present as unfavorable a picture as possible as to the trains whose discontinuance was under investigation by the Commission at that particular time." (The reference to commuter revenues relates to respondent's failure to ascertain the number, if any, of commuter riders, they using flash tickets which do not show up in the passenger counts derived from tickets lifted by conductors. Respondent, reasonably, relies on the unlikelihood of use of the trains by commuters in view of the trains' schedules.)

Charging that respondent's estimate of avoidable operating expenses is clearly overstated, but contenting itself with emphasizing but a few instances "in view of the fact that the operation of the two trains has been and is profitable even accepting E-L's expense estimates," New York State especially criticizes respondent (1) for including both material and labor savings in account No. 400 (enginehouse expenses), although only material savings were included in account No. 311 (locomotive repairs); (2) for showing the elimination of certain 7-day jobs although the trains operate only 6 days a week, and elimination of mail handlers at Buffalo and Hoboken who spend much of their time in cleaning work that would have to be continued even in the absence of the trains; (3) for using system average passenger locomotive unit-mile fuel costs despite the considered trains' admittedly having fewer cars than respondent's other passenger trains; and (4) for using average system costs per passenger train-mile for account No. 420 (injuries to persons) and allocating to that account for 1967, \$24,432, or more than half the trains' total passenger revenues, although actual claims paid in 1965, 1966, and the first 10 months of 1967 were only \$11,430, \$715 and \$2,225.

We agree with protestants that the present record will not permit the conclusion urged by respondent that whether or not

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the trains are continued, the remaining mail will be removed from trains Nos. 10 and 15. Accordingly, we have not adopted any calculations based upon loss of the mail traffic.

Turning now to the question of whether or not continued operation of the trains would unduly burden interstate or foreign commerce, we are immediately faced by the uncertainty caused by respondent's financial presentation.

As has been brought out so clearly by protestants in their attacks upon respondent's figures, the projected losses claimed by respondent for these trains have not been substantiated by reliable, or even complete figures. For example, beginning with respondent's initial calculations in arriving at its estimated \$85,000 projected annual loss, we find that we must subtract from the \$85,000, a substantial but not a precisely determinable amount in order to correct for the highly questionable calculations of amounts for personal injury claims and head-end traffic. We also conclude that respondent has not adequately covered the matter of crew deadheading expense, and we are unable to construct a figure for this important item from the information of record.

Moreover, in view of what has unfolded in this proceeding respecting the accuracy of so many of respondent's figures, great doubt also attaches to the \$85,000 figure itself.

In *Great Northern Ry. Co. Discontinuance of Service*, 307 I.C.C. 59, it was said:

Regardless of where the burden of proof lies, a carrier subject to our regulation is expected to aid in the disposition of proceedings to which it is a party by making available all pertinent facts within its knowledge.

Respondent has not discharged this obligation. Indeed, so many essential figures were either missing or inaccurate that respondent's figures have been largely discredited.

Obviously, any attempt to reconstruct a correct estimate of savings based in part upon such unreliable figures, and in part upon items now left in the record as complete unknowns, is utterly futile. If we were left with no other source of information to turn to, we would be forced to conclude that the existing burden of these trains (if, indeed, there is a burden at all) is not an *undue* burden for a carrier in respondent's financial situation. But there is one other source.

In another connection, respondent admitted that the *actual* (not estimated or projected) results from operation of these trains in

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all of 1967, was a profit of \$126,571. Respondent also showed a profit of \$116,995 for the first 9 months of 1967. This indicates a fourth quarter profit of \$9,576, or, based on removal of the RPO cars for the entire quarter (\$3,700 was earned by them before their removal in October), a profit of \$5,876, which would more closely represent the actual result of operation under current operating conditions than any other *available* figures. However, even the \$5,876 figure does not take into account any feeder revenues or deadhead savings, and does not make allowance for the probable under-allocation of newspaper revenues, and the probability that the trains are handling at least some of the working mail (and newspapers) from trains Nos. 3 and 4. These latter factors would further enhance the profit or reduce the burden of these trains. We conclude that continued operation would not unduly burden interstate or foreign commerce.

As indicated by the discussion of the evidence, there is little general use of the considered trains for passenger service, but there is a relatively heavy use by a small but handicapped portion of the public who have come to depend on the trains over the years, especially since the discontinuance of respondent's other Buffalo service. While the record shows the availability of bus service, it also reflects that these are the last of respondent's Buffalo passenger trains and that their discontinuance would leave New York's Southern Tier without a rail passenger connection with the largest point in western New York and the Niagara Frontier. That, coupled with the fact that respondent has made no effort to encourage passenger patronage on these, the last of its Buffalo trains, is persuasive that operation of the trains is required by the public convenience and necessity.

We find that operation by the Erie-Lackawanna Railroad Company or its successor, the Erie Lackawanna Railway Company, of its passenger trains Nos. 10 and 15 between Buffalo, N. Y., and Hoboken, N. J., is required by the public convenience and necessity, and that continued operation thereof will not unduly burden interstate or foreign commerce.

An appropriate order will be entered.

COMMISSIONER TUGGLE concurs in the result.

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APPENDIX A

*Erie Lackawanna trains Nos. 10, 15, 5, and 6, points served, populations, mileages, and average per trip on-and-off counts for trains Nos. 10 and 15 in 1967*

Train No. 15 (down)	On	Off	Train No. 5	Miles	Station	1965 population	Train No. 10 (up)	On	Off	Train No. 6
12:15 a.m.	5.86	.01	7:30 p.m.		Lv -- Hoboken	48,441	3:35 a.m.		3.34	8:45 p.m.
	.10		*7:45 p.m.	7.8	-- Newark	405,220	3:21 a.m.		.63	*8:32 p.m.
			*7:53 p.m.	10.6	-- Brick Church				.02	*8:23 p.m.
		.01			-- (Mountain Station)					
	.01	.02		20.1	-- Summit				.03	
	.03	.01	*8:07 p.m.	40.8	-- Dover	13,034	2:38 a.m.	.10	.35	*8:09 p.m.
			*8:35 p.m.	67.5	-- Blairstown			.01		*7:42 p.m.
2:25 a.m.	.17	.30	#9:05 p.m.	84.2	-- East Stroudsburg	7,674	1:48 a.m.	.10	.14	#7:10 p.m.
		.01	#9:33 p.m.	97.3	-- Cresco				.02	#6:51 p.m.
			#9:51 p.m.	105.3	-- Pocono Summit					#6:29 p.m.
3:35 a.m.		1.11	#10:05 p.m.		Ar -- Pocono Summit		2:20 a.m.	.75		5:39 p.m.
			10:45 p.m.	135.8	-- Scranton	111,443				
4:00 a.m.	1.48		11:00 p.m.		Lv -- Scranton		12:00 p.m.		2.25	5:32 p.m.
	.01	.27			-- (New Milford)					
5:10 a.m.		.61	12:01 a.m.		Ar -- (New Milford)		10:55 p.m.	1.13	.01	4:30 p.m.
				194.4	-- Binghamton	75,941				
5:40 a.m.	1.23		12:15 a.m.		Lv -- Binghamton		10:25 p.m.		2.00	4:10 p.m.
5:54 a.m.	.54	.13		203.0	-- Endicott (Vestal)	18,775	10:12 p.m.	.14	.82	
6:13 a.m.	.12	.26		216.4	-- Owego	5,417	9:55 p.m.	.14	.18	
6:40 a.m.	.29	.23	@#12:55 a.m.	235.5	-- Waverly (Sayre, Pa.)	5,950	9:34 p.m.	.32	.50	#3:28 p.m.
7:00 a.m.		1.23	1:15 a.m.		Ar -- Waverly (Sayre, Pa.)		9:10 p.m.	1.29		3:10 p.m.
				253.1	-- Elmira	46,517				
7:25 a.m.	.96		1:30 a.m.		Lv -- Elmira		8:55 p.m.		1.29	3:02 p.m.
7:58 a.m.	.69	.60	1:55 a.m.	271.1	-- Corning	17,085	8:35 p.m.	.43	.68	2:44 p.m.
8:10 a.m.	.01	.25		281.6	-- Addison	2,185		.00		
8:45 a.m.		1.68	2:40 a.m.		Ar -- Addison		7:35 p.m.	1.86		2:02 p.m.
				311.6	-- Hornell	13,907				
9:05 a.m.	.42		3:21 a.m.		Lv -- Hornell		7:20 p.m.		.50	1:50 a.m.
10:10 a.m.	.01	.11		355.7	-- Warsaw	3,653	6:25 p.m.	.20	.01	
		.01		401.9	-- (Attica)			.30		
11:15 a.m.		5.08	4:15 p.m.		-- Buffalo	481,543	5:15 p.m.	6.00		
					-- Chicago					10:50 a.m.

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\*Stops to receive westbound, to discharge eastbound.

#No baggage checked to or from these stations.

@Stops on advance notice, westbound to discharge passengers from Blairstown and east and to receive for Jamestown, N.Y., and west, and, eastbound, vice versa.

( )Indicates stations not regularly served, but for which respondent's data includes passenger counts.

APPENDIX B

*Erie-Lackawanna Railroad Company, statement of revenue and expense, trains Nos. 10 and 15, for the year ending December 31, 1967*

Line no.		Train No. 10	Train No. 15	Total
Operating revenue:				
1	a/c 102-Passenger -----	\$24,730	\$23,169	\$47,899
2	106-Mail (RPO)-----	86,219	85,849	172,068
3	(Other)-----	171,978	350,018	521,996
4	107-Express -----	-----	3,071	3,071
5	108-Other -----	-----	11,518	11,518
6	109-Milk -----	-----	-----	-----
7	Total revenue-----	282,927	473,625	756,552
Operating expense:				
8	a/c 311-Locomotive repairs--	25,425	25,651	51,076
9	317-Car repairs-----	9,978	11,381	21,359
10	331-Depreciation -----	1,404	1,404	2,808
11	335-Employee H&W -----	599	605	1,204
12	Total M of E -----	37,406	39,041	76,447
13	a/c 373-Station employees---	59,356	45,797	105,153
14	392-Train enginemen ---	63,546	63,176	126,722
15	394-Train fuel-----	27,890	28,137	56,027
16	397-Water-----	112	113	225
17	398-Lube -----	2,025	2,043	4,068
18	399-Other supplies-----	487	491	978
19	400-Enginehouse -----	8,199	8,271	16,470
20	401-Trainmen -----	45,247	43,419	88,666
21	402-Train supplies -----	6,173	6,413	12,586
22	409-Employee H&W -----	7,380	6,802	14,182
23	420-Injuries -----	12,162	12,270	24,432
24	Yard-----	32,668	32,667	65,335
25	Total transportation ---	265,245	249,599	514,844
26	a/c 532-Railway tax accruals	19,985	18,705	38,690
27	Total expense -----	322,636	307,345	629,981
28	Profit or (loss) -----	(39,709)	166,280	126,571
29	Train-miles -----	125,476	126,588	252,064
30	Revenue per train-mile --	2.25	3.74	3.00
31	Expense per train-mile --	2.57	2.43	2.50
32	Profit or (loss) per train-mile -----	(0.32)	1.31	0.50

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## APPENDIX C

*Erie-Lackawanna Railroad Company, pro forma statement of revenue and expense<sup>1</sup> trains Nos. 10 and 15, for the year ending December 31, 1968*

Line no.		Train No. 10	Train No. 15	Total
Operating revenue:				
1	a/c 102-Passenger -----	\$25,044	\$23,755	\$48,799
2	106-Mail (RPO)-----			
3	(Other)-----	171,255	322,578	493,833
4	107-Express -----		3,351	3,351
5	108-Other -----		11,537	11,537
6	109-Milk -----			
7	Total revenue-----	196,299	361,221	557,520
Operating expense:				
8	a/c 311-Locomotive repairs----	26,412	26,770	53,182
9	317-Car repairs-----	8,809	9,373	18,182
10	331-Depreciation -----	1,404	1,404	2,808
11	335-Employee H&W -----	626	634	1,260
12	Total M of E-----	37,251	38,181	75,432
13	a/c 373-Station employees ----	59,804	45,749	105,553
14	392-Train enginemen-----	63,828	62,791	126,619
15	394-Train fuel-----	27,984	28,364	56,348
16	397-Water -----	112	114	226
17	398-Lube -----	2,032	2,060	4,092
18	399-Other supplies-----	488	495	983
19	400-Enginehouse -----	8,343	8,457	16,800
20	401-Trainmen -----	45,580	43,463	89,043
21	402-Train supplies-----	5,718	5,814	11,532
22	409-Employee H&W -----	7,354	6,731	14,085
23	420-Injuries-----	12,203	12,369	24,572
24	-Yard -----	30,973	30,972	61,945
25	Total transportation -----	264,419	247,379	511,798
26	a/c 532-Railway tax accruals --	19,970	18,581	38,551
27	Total expense -----	321,640	304,141	625,781
28	Profit or (loss)-----	(125,341)	57,080	<sup>2</sup> (68,261)
29	Train-miles -----	125,901	127,610	253,511
30	Revenue per train-mile -----	1.56	2.83	2.20
31	Expense per train-mile -----	2.55	2.38	2.47
32	Profit or (loss) per train-mile---	(0.99)	0.45	(0.27)

<sup>1</sup>The estimated revenues are based on the relationship of the first 9 months of 1965 and 1966 to the total 2-year revenues less mail traffic which has been discontinued. The estimate of train-miles and car-miles is based on the same procedure.

<sup>2</sup>Changed at the hearing to reflect an additional saving of \$16,800, and a total possible saving of \$85,061 on discontinuance.

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APPENDIX D

*Erie-Lackawanna Railroad Company, pro forma statement of revenue and expense<sup>1</sup>, trains Nos. 10 and 15, for the year ending December 31, 1968 based upon loss of all remaining mail traffic*

Line no.		Train No. 10	Train No. 15	Total
<b>Operating revenue:</b>				
1	a/c 102-Passenger -----	\$24,730	\$23,169	\$47,899
2	106-Mail (RPO)-----			
3	(Other)-----			
4	107-Express -----		3,071	3,071
5	108-Other -----		11,518	11,518
6	109-Milk -----			
7	Total revenue-----	24,730	37,758	62,488
<b>Operating expense:</b>				
8	a/c 311-Locomotive repairs---	25,790	26,018	51,808
9	317-Car repairs-----	3,153	4,772	7,925
10	331-Depreciation -----	1,404	1,404	2,808
11	335-Employee H&W -----	614	620	1,234
12	Total M of E-----	30,961	32,814	63,775
13	a/c 373-Station employees-----			
14	392-Train Enginemen-----	63,546	63,176	126,722
15	394-Train fuel-----	27,890	28,137	56,027
16	397-Water-----	112	113	225
17	398-Lube -----	2,025	2,043	4,068
18	399-Other supplies-----	487	491	978
19	400-Enginehouse -----	8,199	8,271	16,470
20	401-Trainmen -----	45,074	43,245	88,319
21	402-Train supplies-----	540	816	1,356
22	409-Employee H&W -----	3,669	3,650	7,319
23	420-Injuries -----	12,162	12,270	24,432
24	-Yard -----			
25	Total transportation ----	163,704	162,212	325,916
26	a/c 532-Railway tax accruals-	11,363	11,320	22,683
27	Total expense -----	206,028	206,346	412,374
28	Profit or (loss)-----	(181,298)	(168,588)	(349,886)
29	Train-miles -----	125,476	126,588	252,064
30	Revenue per train-mile -----	0.20	0.30	0.25
31	Expense per train-mile -----	1.64	1.63	1.64
32	Profit or (loss) per train-mile--	(1.44)	(1.33)	(1.39)

<sup>1</sup>All remaining mail traffic will be lost May 20, 1968.

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