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ECONOMIC AND SOCIAL EFFECTS OF RAILWAY ABANDONMENTS
WITH SPECIAL REFERENCE TO LAND USE AND TAXATION

DISSERTATION
Presented in Partial Fulfillment of the Requirements for the
Degree Doctor of Philosophy in the Graduate
School of The Ohio State University

By
Frederick R. E. Durr, A.B., M.A.

The Ohio State University
1961

Approved by

Arthur D. Lynne
Adviser
Department of Economics
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CHAPTER I
INTRODUCTION

Ever since their introduction in the United States in 1830, the railroads have been a major factor in the transportation of persons and goods. For one hundred and thirty years the railroads have provided the connecting links between the raw material suppliers and the manufacturing and processing centers, between the producing areas and the markets, between the outlying districts and the urban areas, and among the cities, towns, and villages of the nation. The overland rails were the first to provide the adequate east-west transport service that was unattainable with the earlier water transport methods. The railroad offered a flexibility of route that was not possible by waterways, except to a limited degree through the construction and utilization of canals. The demise of the canals was attributed, however, to the flexibility and economy of the rails.¹

Just as the flexibility of the rails was an influencing factor in causing the decline in importance of the canals, so was the saving realized by rail shipments a factor in the declining importance of the roadways. In 1853, after the railroads had moved into the middle west,

the freight rates on corn were 15.4 cents per ton-mile by wagon over the roads, and one and one-half cents per ton-mile by rail. 2

It is difficult to envision any community or area, or indeed any individual, that has not felt the impact of the presence or of the absence of the railroads. The rail net frequently has been cited as a major factor in the rapid expansion and dynamic nature of the American economy. 3

Much of the romance of railroading is history. It has been almost a century since the dramatic joining of the Union Pacific and the Central Pacific at Promontory Point, Utah. The colorful steam locomotive has given way, in large measure, to more efficient diesel power. The track gangs have been replaced in most instances by machines that perform the necessary operations more effectively and less expensively. It is not the purpose of this study to dwell upon the passing of the romantic era of the railroad from the American scene. Nevertheless, it appears possible that not only is the romanticism of the railroad a thing of the past, but also that the significant position of the railroads in the over-all transport complex may be a passing transport phenomena.

The history of the construction and boom periods of the railroad era is legend. As with most legends, the story accumulates color the more frequently it is related. Small men become giants, and insignifi-

2 J. L. Ringwald, Development of Transportation Systems in the United States (Philadelphia: Published by the Author, 1888), p. 166.

cant events become major contributions. These colorful periods have been treated adequately elsewhere. 4

There is, however, another facet of the railroad history that has not been explored in the same detail as that of the expansion era. This phase of railroad development concerns the abandonment of rail facilities. 5

In 1926, before competition from motor transport became a serious threat to the railroads, the rails carried 76.8 per cent of the inter-city commercial freight traffic, and 75.2 per cent of the intercity commercial passenger traffic. 6 By 1958 the rail portion of freight traffic had declined to 46.3 per cent while their share of the commercial passenger traffic fell to 31.5 per cent of the total commercial passenger miles for that year. 7 This downward trend in both freight and passenger traffic has caused increasing concern about the present condition of and the future prospects of the American railroad industry. The loss of traffic has placed many American railroads in a financial position where they are no longer able to operate efficiently. These lines have been attempting to adjust their operations in a manner that will once again make their operations profitable. One of the methods


of operational adjustment is the abandonment of uneconomic lines or portions of lines. Particular railroads have found themselves with an oversupply of facilities in relation to transport demand. This oversupply has resulted from several factors that have been in evidence since the inception of the railroad. Over-enthusiasm during the construction period, depletion of natural resources, and the services offered by competitive forms of transport have all contributed to the existence of an excess of rail facilities. These causative factors affecting rail abandonments will be analyzed in Chapter III.

The abandonment of rail facilities does not indicate that the railroads are no longer an important factor in the American transportation network. Neither should these abandonments cause major concern about the continued operation of the rail lines. The termination of certain facilities is, in fact, a healthy sign, in that it implies a desire to operate more effectively and economically. The railroads are in a state of flux; the present is a transitional period from one where the rails enjoyed a virtual monopoly in the movement of freight and passengers to the new era where the railroads will assume their competitive position in an efficient, economic, and well-co-ordinated American transport complex.

The shifting relative position of the railroads is not unique in transportation history. In fact, it was the inception of railroads that gave rise to concern over the future of the stage lines and the canals. It is interesting to note that many of the charges leveled against the railroads in the first years of their operation are not dissimilar to the charges that the rails now level against motor, air,
air, and inland water carriers. Among the most active opponents to the rails were turnpike and bridge companies and the stage lines.\(^8\)

Even where the several modes of transport were not in direct competition, there was a competition in the struggle for financial support. Any investment directed toward the railroads meant that much less investment available to plank roads, turnpikes, and canals.

In addition, the turnpike and canal interests claimed that the railroads were given unfair competitive advantages because of grants of powers of eminent domain and other public aids. The memories of the proponents of the canals and turnpikes were short, for they had risen to transportation prominence through the same aid devices. It is interesting to note that claims by the railroads that airlines, motor carriers, and water carriers are being subsidized by the public make no mention to the land grants and public aid enjoyed by the rails in their developmental years.

The necessity to make adjustments in existing rail facilities has prompted the lines to embark on several revision courses. Changes have been made in the routes of the lines, new tracks have been constructed, and obsolete or infrequently used lines have been abandoned in the interest of economy.

In connection with the adjustment policies of the railroads, the Interstate Commerce Commission received petitions for the abandonment of railroad facilities involving 10,614 miles of track during the

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\(^8\) Meyer, op. cit., n. 4, supra, p. 317.
ten-year period 1950-1959. Of this amount requested the Commission authorized abandonment of 9,848 miles of line. At the beginning of 1959, there were 364,353 miles of railway in the United States. Thus in the ten-year span, 2.7 per cent of the existing railroad mileage was abandoned. While this figure may appear initially to be rather insignificant, it becomes more meaningful when one considers that the United States railroad mileage has been accumulating since 1830. During this same period (1950-1959), petitions were submitted and certificates granted for the construction of 652 miles of line. The net reduction of track over the period was 9,196 miles. Table 1 shows the railroad mileage constructed and abandoned in the United States from 1950 through 1959.

Even though the existence of railroads does not appear to be seriously threatened because of abandonments, there are numerous indirect effects connected with these cessations of service. Abandonments of rail facilities cause serious economic and social dislocations in many areas, and in addition give rise to situations that call for long-range adjustments in the economic life of the area concerned. Two basic problems attend railroad abandonments. These

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10 Ibid.
12 Calculations by the author.
TABLE 1
RAILROAD MILEAGE CONSTRUCTED AND ABANDONED
UNITED STATES, ANNUALLY
1950-1959

<table>
<thead>
<tr>
<th>Year</th>
<th>Miles Abandoned</th>
<th>Miles Constructed</th>
<th>Net Abandonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950</td>
<td>954.618</td>
<td>43.041</td>
<td>911.577</td>
</tr>
<tr>
<td>1951</td>
<td>556.441</td>
<td>92.262</td>
<td>464.179</td>
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<tr>
<td>1952</td>
<td>1,305.753</td>
<td>32.547</td>
<td>1,273.206</td>
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<tr>
<td>1953</td>
<td>1,101.684</td>
<td>64.522</td>
<td>1,037.162</td>
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<tr>
<td>1954</td>
<td>999.743</td>
<td>86.885</td>
<td>912.858</td>
</tr>
<tr>
<td>1955</td>
<td>513.719</td>
<td>48.267</td>
<td>465.452</td>
</tr>
<tr>
<td>1956</td>
<td>822.710</td>
<td>89.297</td>
<td>733.413</td>
</tr>
<tr>
<td>1957</td>
<td>588.514</td>
<td>54.445</td>
<td>534.069</td>
</tr>
<tr>
<td>1958</td>
<td>1,825.361</td>
<td>77.916</td>
<td>1,747.445</td>
</tr>
<tr>
<td>1959</td>
<td>1,179.733</td>
<td>63.310</td>
<td>1,116.423</td>
</tr>
<tr>
<td>Total</td>
<td>9,848.276</td>
<td>652.492</td>
<td>9,195.784</td>
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</table>

problems are concerned with land use and taxation, and they will be considered at length in this dissertation.\textsuperscript{13}

The Problem

When one undertakes a comprehensive investigation of the phenomenon of railroad abandonments, one of the first problems that arises is that of discovering the rationale behind the regulation of these abandonments. The evolution of the present regulatory measures has been slow, and in many instances inadequate for the institutional setting. For many years the regulation of railroad abandonment was a part of the common law, and rested primarily on a seventeenth century treatise written in England.\textsuperscript{14} As abandonment problems accrued, state regulations were introduced in the latter part of the nineteenth century. Since there was a general lack of uniformity in the various state regulations, and further since rail transport had become more interstate in nature than it had been in the mid-nineteenth century, it became apparent that some form of Federal regulation over abandonments was necessary. This Federal regulation was accomplished by the enactment of the Transportation Act of 1920.\textsuperscript{15}

\begin{flushright}
\textsuperscript{13} In addition to total abandonment of a railroad line, the abandonment of a part of the service over a line, i.e., the reduction of the number of trains over a given route, results in problems similar to those resulting from total abandonment. However, since land use and taxation are two of the considerations of this investigation, the inquiry will be limited to total abandonments.
\end{flushright}

\begin{flushright}
\textsuperscript{14} Breck P. McAllister, "Lord Hale and Business Affected with a Public Interest," \textit{43 Harvard Law Review} 759 (1930).
\end{flushright}

\begin{flushright}
\textsuperscript{15} 49 U.S.C. 1(18) 147.
\end{flushright}
A detailed analysis of the evolution of the legal aspects of abandonments with relation to the institutional environment is essential to an understanding of the rationale behind abandonment controls. In addition, the policies of the various regulatory administrations are reflected in specific cases involving abandonments.

Several questions arise: Who has administrative control over the requests for cessation of service or dissolution of a line? Is a particular problem local, regional, or national in scope? What are the relevant criteria for jurisdictional determination? What are the reasons for abandonment that the regulatory commissions have found adequate, and for what reasons have abandonment petitions been disapproved? A thorough understanding of the legal framework is a prerequisite to analysis and understanding of the abandonment problem.

Ascertaining the legal background and framework within which abandonments are considered is a step in analyzing the abandonment problem, but this in only the initial phase of the total problem. In order for a rail line to obtain authorization for abandonment of all or a portion of its service, it is first necessary that the supporting petition contain a legitimate reason for this desire to curtail or cease service. Among the reasons offered in abandonment requests are those of excessive competition from alternative forms of transport, excessive competition from other railroads, the depletion of natural resources, internal changes in the operating procedures of the line, and legal changes in the status of the railroads. While all abandonment cases do not fall neatly into one of these categories, the broad groupings cover the majority of the cases. The depletion
of resources has, in the past, been one of the major factors contributing to the loss of revenue of the railroads and the subsequent petitions for permission to abandon the now useless lines. However, the records indicate that competition from alternative carriers may be increasing in importance as a causal factor. Legal changes in the status of the railroads is a category embracing such factors as abandonment of operating privileges by one carrier over the tracks of another carrier of a line seeking a certificate of total abandonment after abandonment of operation has taken place. Competition from other railroads is declining in importance as a causal factor as more and more duplicate routes are consolidated and rate structures are administered. Each of these reasons for abandonment merits examination in order to determine their relative importance and to ascertain if there has been a shift in the economic environment that has changed this relative importance.

Having identified the problems of the evolution of the control of abandonments and the reasons proffered for requesting permission to abandon, it becomes essential to ascertain and analyze the problems that arise after consummation of abandonment.

When tracks, buildings, switches, sidings, or spurs are physically removed, there is necessarily a disruption of the economy in the area of abandonment. Industries, markets, and entire communities have had their orientation geared to the existence of the railroad. Social habits frequently revolve about the transport system, and a change in this system necessitates a change in the habits of the persons involved.

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In addition to the direct labor connected with the rail line, there are many so-called rail oriented businesses and industries. Grist and flour mills were located near the railroads in order to minimize transport distances and costs. Entire communities had as their nucleus the watering and fueling stations so essential to the railroads. Other communities owe their existence to the repair shops built for and utilized by the railroads. The abandonment of the rail facility upon which the industry and community interests are so dependent causes disruptions that need be analyzed in any study of the effects of railroad abandonments.

When railroad facilities are removed in their entirety, a question arises as to the disposition of the former railroad property. Was the property owned by the railroad, or was it leased on a long-term agreement? Was there an easement provided for the right-of-way, and if so, what was the disposition of this land? Railroad trackage, and the abutting rights-of-way are normally narrow swaths cut through the countryside. The land returned to alternative uses through abandonment is thus limited to those enterprises, if any, that are able to utilize long, narrow strips of land. In addition, long use by the railroads with the continued repair and replacement of the roadbed and ballast make this land ill-suited for many uses. The land use problem is one that needs to be studied and analyzed in this dissertation.

Closely akin to, but significant for other reasons, is the tax problem that arises when a railroad is abandoned. Railroads, classified

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17 Enola, Pennsylvania, is an example of such a community.
generally as public utilities, are subject to taxes that normally exceed those of non-utility ventures. When a rail line is abandoned, and the land is put to some alternative use, the likelihood is great that the tax receipts of the local government unit in which the abandonment takes place will decline. For an area or local government that is "railroad oriented," i.e., has a relatively large amount of rail trackage and railroad property, the removal of a portion of these facilities may well cause significant reduction in property tax revenues. If this be the case, areas with relatively high rail abandonment records may have to reconsider the base of their tax system in order to insure a more stable and adequate tax income.

The problems to be investigated and analyzed in connection with railroad abandonments may be summarized as follows:

1. The rationale behind the regulation of railroad abandonments, and the evolution of the regulatory measures governing such discontinuances of service.

2. The reasons for abandonment proffered by the lines seeking to discontinue service.

3. The social and economic dislocations that accrue from abandonments.

4. The changes in land use that result from the physical removal of facilities.

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5. The changes in, and the importance of local tax revenues accruing from the shift in land use.

The major portion of the dissertation will consist of a thorough analysis of the railroad abandonments that have taken place in the state of Ohio during the period 1948-1960. Data available from the Ohio Public Utilities Commission and the Interstate Commerce Commission supply information about:

1. The name of the railroad company applying for abandonment.
2. The county or counties in which the proposed abandonment is located.
3. The number of miles of track involved in the abandonment.
4. The reasons given for the necessity to abandon.
5. The dissenting views of interested parties where such are available.
6. The expected salvage value of the abandoned line.

From these source statistics on abandonments, analysis will provide a basis for changes that have occurred during the period 1948-1960.

There were twenty-three successful petitions for abandonment in the state of Ohio during the period 1949-1959. Each of these cases, representing a total of 186 miles of track abandoned, has been treated as a case study. Pertinent data from each of the cases have been compiled and analyzed. Where abandonment was opposed the reasons for this opposition have been offered, and the rationales behind the decision of the administrative authority allowing the
abandonment has been examined. Ascertaining the location of the abandonment permitted further investigations into land use changes that resulted from abandonment. These data were obtained from the real estate departments of the railroads involved, and from the clerk and recorder of deeds of the county concerned. Where material relevant to the land use changes was not attainable by questionnaire, personal visits were made to the area of abandonment to ascertain the facts of the case. In addition, where land rights were relinquished by the railroads the tax receipts accruing to the county were compared prior to and after the abandonment. In this analysis it was possible to ascertain the tax savings accruing to the railroad by the abandonment of the line.

Data from the state of Ohio were chosen for analysis because of the availability of the material and the personal contact and knowledge of the local situation. Ohio, with a diversified economy revolving about manufacturing, agriculture and the service industries should not yield results that are atypical. The results of the research will provide information pertinent to the economic ramifications of railroad abandonments.

In addition to the intensive study of the recent Ohio abandonments, a chapter is devoted to the legal framework under which abandonments are authorized. This framework will be analyzed on both the national and the Ohio level. Data for this portion of the investigation are available from the Federal laws and cases relating to the subject, and from the Ohio statutes that are applicable. Court cases and findings
arising under the Ohio statutes will be presented and analyzed. A
discussion of questions involving jurisdiction over abandonments
will be presented.

Before there can be an abandonment of a rail line, permission
must be granted by a regulatory authority allowing for such cessation
of operation. Analysis of the legal framework governing abandonments
merits examination before considering the economic aspects of the
abandonment problem. This framework will be the subject of the
following chapter.
CHAPTER II

THE EVOLUTION OF RAILROAD ABANDONMENT REGULATION

In Chapter I the problems attending the abandonment of railroad facilities were enumerated and discussed briefly. Before one can proceed to a more detailed discussion and analysis of these problems and their economic ramifications, it is advisable to examine closely the rationale of control of abandonments by the several regulatory bodies having jurisdiction over such practices. In addition, a review of the relevant cases and findings will give an insight into the interpretations by regulatory agencies as they have evolved over the years.

The first attempts to regulate railroads were not concerned with abandonments. The early regulatory measures were aimed at controlling abuses or alleged abuses by the railroads in the form of excessive charges, discrimination between persons or commodities, and a disregard for the safety of persons and property.\textsuperscript{1} Basically, there was little need for abandonment regulations, for the years from the inception of the American railroads in 1830 to approximately 1900 were ones of great construction activity. Emphasis was placed on the construction and extension of lines rather than on abandonments. Railroads rapidly supplanted the natural waterways, canals, and crude highways as the major carriers of overland freight and passengers in the east-

\footnotesize{\textsuperscript{1} Charles R. Cherington, \textit{op. cit.}, p. 17.}
west traffic. The growth of railroads was impressive in the early years. From a total trackage of twenty-two miles of main line in 1830, railroad trackage reached a peak of 259,705 main track miles in 1916. Table 2 illustrates the growth of this mileage.

Even though abandonment regulation did not become necessary until approximately 1900, other railroad practices were controlled at earlier periods. These earlier regulatory measures laid the groundwork for the regulation of abandonments that was to follow. Common carriers are basically governed by the common law. Under this common law are the requisites to serve all persons who apply for service, and to charge rates for this service that are reasonable. There is little to question in the first of these two restrictions, but the question of reasonableness of rates is one not so easily handled. Indications are that rate discrimination was common in the early railroad years. Sharfman, in his comprehensive study of the Interstate Commerce Commission indicates that highly speculative railroad building

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### TABLE 2
MAIN TRACK RAILWAY MILEAGE
UNITED STATES, DECENNIALLY
1830-1960

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<th>Year</th>
<th>Miles</th>
<th>Year</th>
<th>Miles</th>
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<td>1830</td>
<td>22</td>
<td>1900</td>
<td>193,346</td>
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<tr>
<td>1840</td>
<td>2,818</td>
<td>1910</td>
<td>240,439</td>
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<tr>
<td>1850</td>
<td>9,021</td>
<td>1920</td>
<td>252,845</td>
</tr>
<tr>
<td>1860</td>
<td>30,635</td>
<td>1930</td>
<td>249,052</td>
</tr>
<tr>
<td>1870</td>
<td>52,922</td>
<td>1940</td>
<td>233,670</td>
</tr>
<tr>
<td>1880</td>
<td>93,267</td>
<td>1950</td>
<td>223,779</td>
</tr>
<tr>
<td>1890</td>
<td>163,597</td>
<td>1960</td>
<td>217,565</td>
</tr>
</tbody>
</table>

practices, irresponsible financial manipulation, destructive competition among railroads, overextension of monopoly power, and fluctuating and discriminating rate adjustments sped the need for more stringent regulation of the railroads.\(^7\) It is not the purpose of this study to examine completely the evolution of all railroad regulation,\(^8\) but rather to concentrate on the narrower subject of abandonment regulation.

In considering abandonments, two questions are presented:

1. Has a railroad company the right to take up and remove its permanent tracks, bridges, turnouts, switches, and fixtures attached to the right-of-way, and discontinue all operation as a common carrier on such line? May this abandonment take place without the consent of
(a) the state in which it operates and the federal government in cases where the line is used in interstate commerce, and (b) the adjacent landowners who are directly and financially affected by the abandonment of the line? (2) Upon what terms and conditions should such consent be given?\(^9\)

There are three basic doctrines on which the courts in the United States have determined that a railroad may or may not abandon all or a portion of its service:

1. The doctrine that the public interest is paramount

in abandonment proceedings and that the court has the

\(^7\) Sharfman, ibid., I, 14.

\(^8\) Interested readers see Sharfman supra.

right and duty to prevent loss to the individual and the community that would accrue from abandonment.

2. The doctrine that corporate charters or franchises do not contain the implicit right to abandon, and that charters and franchises are contracts that require the continued operation of the facility for the life of the contract.

3. The doctrine that public aid in the form of grants of the power of eminent domain, and public aid in the financing of the construction of the railroad place a burden on the railroad to continue operations. Each of these three doctrines will be studied in detail, and the relevant cases cited.

The Public Interest

When the period of the railroad boom tapered off, around 1900, a sufficient number of reductions of lines occurred to arouse interest in abandonments. The question arose as to the validity of regulations over these abandonments. If a farmer decided to retire a field from production, there was no regulation preventing his doing so. If a manufacturer was experiencing financial losses, there was no one to tell him he must continue his operations. Why then should the railroads be subjected to restrictions on the cessation of operations? The difference between the treatment of railroads and other industries lies in the concept of public interest. Railroads are vested with a public interest, and because of their position they are not permitted to take any action that might be construed as contrary to this public interest. The public interest concept was applied in the landmark
In this finding, the Supreme Court of the United States, speaking through Chief Justice Waite found that:

Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in this use, and must submit to be controlled by the public for the common good. ...  

Chief Justice Waite reached far back into legal history for his finding in this case.

In the seventeenth century, about 1670, Sir Matthew Hale, the Lord Chief Justice of the King's Bench of England, concluded an essay on the ports of the sea and put it away among his private papers. ... In 1876 the Supreme Court of the United States had before it legislation of the state of Illinois regulating grain elevators and, among other things, fixing the charges for the services rendered by them. Chief Justice Waite found: "This brings us to inquire as to the principle upon which this power of regulation rests. ... Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is affected with public interest, it ceases to be 
juris privati only. This was said by Lord Chief Justice Hale more than two hundred years ago in his treatise De Portibus Maris, I Harg. Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since.  

Since the findings of Lord Chief Justice Hale have been the basis for a significant portion of our regulatory measures, it is appropriate that the relevant sections be quoted here.

A man for his own private advantage may in a port town set up a wharf or crane, and may take what rates

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10 94 U.S. 113 (1887).
11 Ibid.
he and his customers can agree for cranage, wharfage, house-lage, pesage; for he doth no more than is lawful for anyone to do, viz., makes the most of his own. ...If the king or subject have a publick wharf, unto which all persons who come to that port must come and unload or lade their goods as for the purpose, because they are the wharves licensed by the queen, according to the statute of I, El. Cap. 11, or because there is no other wharf in that port, or it may fall out where a port is newly erected; in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, pesage, & c., neither can they be enhanced to an immoderate rate, but the duties must be reasonable and moderate, though settled by the king's license of charter. For now the wharf and crane and other conveniences are affected with a publick interest, and they cease to be juris privati only; as if a man set out a street in a new building on his own land, it is now no longer bare private interest, but is affected with a publick interest. But in that case the king may limit by his charter and license him to the reasonable tolls, though it be a new port or wharf, and made publick; because he is to be at the charge to maintain and repair it and find those conveniences that are fit for it, as cranes and weights.13

Returning now to the significance of Munn v. Illinois, Robert W. Harbeson, in his The Public Interest Concept in Law and Economics,14 indicates that:

All decisions in the legal treatment of this topic [public interest] must begin with the famous case of Munn v. Illinois. ...decided in 1877. The date is significant. It is at the height of the industrial revolution in this country, with its accompanying decline of competition. The case in question was one of the so-called Granger cases in which there was tested legislation designed to protect the public from the monopolistic rate policies of the railways, the first industry to show those characteristics which were in time to become dominant in many lines of activity.15

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13 Quoted in McAllister, ibid., p. 764.
15 Ibid., p. 189.
While Munn v. Illinois is not concerned with abandonments or even with railroads, the case is nevertheless significant in that it laid the foundation for future cases involving both railroads and their abandonments. Walton H. Hamilton points up this fact when he states:

But 'public interest' could hardly escape positive judicial use. Along with the Munn case came others which gave occasion to extend the concept and to narrow its meaning. The notorious instance of evils in the wake of uncontrolled price was the railways; the problem of the regulation of rates was imperative. In disposing of these cases the Chief Justice [Waite] threw a cloak of public interest about 'carriers for hire.' So like in his mind were railroads to grain elevators that a restatement of his argument [in Munn] was not demanded; it is enough to refer back to the Munn case. 16

Hamilton goes on to state that the disposition of the Munn case does not demand it; but it makes of that case a precedent which can be made to control the decisions in the railway cases. 17

While Munn v. Illinois is the landmark case of government control of utilities in the United States, there are several other cases that warrant mention here. The second important case involving the "affected with the public interest" concept was Wolff Packing Company v. Court of Industrial Relations. 18 In this case the Supreme Court of the United States through Mr. Chief Justice Taft stated that:

The power of a Legislature to compel continuity in a business can only arise where the objection of continued service by the owner and its employees is direct and is assured when the business is entered.


17 Ibid.

18 262 U.S. 522 (1923).
upon. A common carrier which accepts a railroad franchise is not free to withdraw the use of that which it has granted to the public. It is true that if operation is impossible without continuous loss...it may give up its franchise and enterprise, but short of this it must continue.19

It was in this same Wolff Packing Company case that Chief Justice Taft attempted to remove some of the doubt that existed as to the applicability of the "public interest" concept. The Chief Justice presented a classification of circumstances that he believed would clarify the issue. He resolved the groups affected with a public interest into three classes:

(1) Industries carried on under the authority of a public grant or privilege which imposes the affirmative duty of rendering a public service; (2) certain occupations regarded as exceptional, the public interest attaching to which has survived; and (3) businesses which although not public at their inception may be said to have risen to be such.20

Although Hamilton indicates that Chief Justice Taft fell short of accomplishing his goal of clarifying the issues, this grouping was, nevertheless, an attempt in the proper direction.21 From the two cases cited above, i.e., Munn v. Illinois and Wolff Packing Company, it is indicated that the basis for the extension of the public interest status was economic necessity and monopoly. Harbeson stated the following in connection with the public interest:


20 262 U.S. 538 (1923).

21 Hamilton, op. cit., p. 1100.
Consider first the economic basis for some sort of a 'public interest' doctrine. There would be no occasion for such a concept if (a) conditions permitted the functioning of an individualistic economic system according to its underlying assumptions, and (b) if we were ready to accept the results of such a system without addition or modification. The fundamental condition required for the satisfactory functioning of individualism is that competition should be pervasive enough to prevent any individual from over-reaching or exploiting his fellows and at the same time should stimulate individuals to make the most effective use of the factors of production. For competition, in turn, to function in this way it would be necessary not only that monopolistic influences be absent, but also that everyone should know and follow his interests and be able to protect them by bargaining on equal terms with his fellows. Since, obviously, these conditions have not been, and cannot be, fulfilled, and since we would not be prepared to accept without modification the results of individualism even if the conditions necessary for its satisfactory functioning were present, there is ground for 'public interest' and governmental interference in the conduct of business.\(^\text{22}\)

The Harbeson quote corroborates the findings of the courts in the Munn and Wolff cases with respect to monopoly being a controlling factor in the concept of public interest. In the subsequent case of Lebbin v. New York\(^\text{23}\) a different light is thrown on the public interest concept. This case involved the validity of a New York statute regarding the retail prices of fresh milk. In this case Mr. Justice Roberts said:

> The phrase 'affected with a public interest' can, in the nature of things, mean no more than that an industry, for adequate reason, is subject to control for the public good.\(^\text{24}\)


\(^{23}\) 291 U.S. 502-559 (1934).

\(^{24}\) Ibid., p. 502.
Justice Roberts states in a later section of the Nebbia case:

The touchstone of public interest in any business, its practices and charges, clearly is not the enjoyment of any franchise from the state, Munn v. Illinois, ... nor is it the enjoyment of a monopoly. ...

In an analysis of this decision, Thompson and Smith indicate that:

In the Nebbia case, the problem was that of excessive or cutthroat competition in the marketing of fresh milk within the state of New York. Thus Mr. Justice Roberts rightly discards monopoly as one of the touchstones of public interest, substituting by inference the principle of inadequate competition which covers both monopoly on one hand and excessive competition on the other. To repeat, the bases of public interest seem to be (1) necessity and (2) inadequate competition. If in the mind of the court both these conditions are present in any disputed situation, it will agree to a legislative designation of public utility status.

None of the cases cited above concern either railroads or abandonments. Railroads are constructed and operated by private corporations utilizing private capital. How, then, can one rationalize the public utility status that has been assigned to these carriers? In order to tie railroad legislation into the public interest rationale, several transitional moves must be accomplished. Walton Hamilton indicates that in his interpretations Chief Justice Waite "throws a cloak of public interest about carriers for hire." Mr. Justice Strong, speaking through the Supreme Court of the United States said:

That railroads, though constructed by private corporations and owned by them, are public highways,

25 Thompson and Smith, op. cit., p. 62.
26 Ibid., pp. 63-64.
27 Hamilton, op. cit.
has been the doctrine of nearly all the courts since such conveniences for passage and transportation have had any existence. ...It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is the agent the function performed is that of the state. Though the ownership is private, the use is public. ...That all persons may not put their own cars upon the road, and use their own motive power, has no bearing upon the question whether the road is a public highway. It bears only upon the mode of use, of which the legislature is the exclusive judge. 28

Further, in the case of Sharpless v. The Mayor of Philadelphia, 29

Chief Justice Black stated that:

A railroad is a public highway for the public benefit, and right of the corporation to exact a uniform, reasonable, stipulated toll from those who pass over it, does not make its main use a private one. The public have an interest in such a road when it belongs to a corporation as clearly as they would if it were free, or as if the tolls were payable to the state. 30

Railroads, then, are so constituted as to qualify as a public utility, and as such are subject to control by some regulatory agency. The cases cited above deal primarily with the basis for regulation, the question of rates, and the public interest. Regulation of the discontinuance or abandonment of service or facilities followed somewhat later, or in the early 1900s.

Charters and Franchises

Control over entry into a public utility venture was effectively

29 21 Pennsylvania State Reports 169 (1887).
accomplished through the issuance of franchises or charters. However, control of entry does not necessarily imply control of abandonment, but it is this concept of the franchise or charter that guided the policy toward the first abandonment cases.

Justice Brandeis summarized the essential characteristics of a franchise as follows:

It must be borne in mind that a franchise to operate a public utility is not like the general right to engage in a lawful business, part of the liberty of a citizen; that it is a special privilege that does not belong to citizens generally; that the State may, in the exercise of its public power, make that a franchise or special privilege which at common law was a business open to all; that a special privilege is conferred by the State upon selected persons; that it is of the essence of a special privilege that the franchise may be granted or withheld at the pleasure of the State; that it may be granted to corporations only, thus excluding all individuals; and that the Federal Constitution imposes no limits upon the State's discretion in this respect.

In the Dartmouth College case, decided in 1819, the validity of the franchise or corporate charter as a contract was upheld. Since the franchise is a valid contract, and further, since the railroads are vested with a public interest, any violation of the contract to provide service would result in a violation of the public trust. Does this mean then that a railroad, once it has accepted a corporate charter or a franchise must continue to operate its line regardless of the financial or economic problems

31 The scope of the present investigation does not necessitate a thorough perusal of the restrictive nature of corporate charters.

32 Thompson and Smith, op. cit., p. 156.

that may obtain? The railroad cannot, of its own volition, simply
discontinue service to the public. The right of the state and the
public in abandonments must be upheld. The 1894 case of Kansas v.
Dodge City, Montezuma, and Trinidad Railway Company34 clearly states
the rights of the state in abandonment cases. Justice Allen, speak­
ing through the Supreme Court of Kansas, stated:

Railroads, like all other public thoroughfares, are
public instrumentalities. The power to construct and
maintain railroads is granted to corporations for a pub­
lic purpose. ... The railway corporation takes its franchise
subject to the burden of a duty to the public to carry out
the purpose of the charter. The road, when constructed,
becomes a public instrumentality, and the railroad, super­
structure, and other permanent property of the corporation
are devoted to the public use. From this neither the
corporation itself, nor any persons, company or corporation
deriving its title by purchase, either at voluntary or
judicial sale can divert it without assent of the state.
It matters not whether the enterprise, as an investment, be
profitable or unprofitable, the property may not be
destroyed without the sanction of that authority which
brought it into existence.35 Without legislative sanction
railroads could not be constructed. When once constructed
they may only be destroyed with the sanction of the state.
The legislature unquestionably has the power to authorize
the abandonment of railroads when they cease to be of
public utility.36

Further, in speaking of the importance of franchises in connection
with the requirement to offer continuous service, Justice Campbell,
of the Supreme Court of the United States stated:

Important franchises were conferred upon the corpora­
tion to enable it to provide the facilities to commu­
ication and intercourse, required for the public convenience.

34 53 Kansas 377, 36 Pac. 747 (1894).
35 (Italics mine.)
36 See n. 34 supra.
Corporate management and control over these were prescribed, and corporate responsibility for their insufficiency provided, as a remuneration to the community for the grant. The corporation cannot absolve itself from the performance of its obligations, without the consent of the legislature.37

The cases in this section clearly indicate that once a corporation [railroad] has accepted the grant of special privileges as evidenced by the franchise or charter to construct and operate a line, it cannot arbitrarily relinquish that privilege. The franchise or charter is a contract between the corporation and the public, and any violation of this contract is a violation of the public trust. In order for a corporation to relieve itself of contractual obligations, it is necessary that it obtain the permission of the other party to the contract.

Public Aid

As indicated in the previous section the corporate charter or franchise was the basis of many decisions in the earlier abandonment cases. Even though most of these charters were not drawn in such a manner as specifically to require continued service of the railroads, the courts found little difficulty in interpreting the law so that this continuation of service could be required. One of the rationalizations that bolstered the attitude of the courts was based on the public aid that the railroads had received in the construction phase of their operation. With the right of eminent domain, the railroads were granted a special privilege not often afforded others. The

courts interpreted this privilege as requiring correlative obligations of the grantee to the state and the public. In addition to land grants and the privilege of eminent domain, many states had provided financial aid to the railroads in the early years of construction. With the railroads receiving the aids just described, the courts were sympathetic toward the continued service of the lines. The language of the court in Gates v. Boston and New York Airline Railroad Company aptly illustrates a typical judicial attitude.

It is true that the charter is permissive in its terms, and probably no obligation rests upon the corporation to build the railroad: the option to exercise the right of eminent domain and other public rights is granted. And when that option has been made, and when the corporation has located and constructed its line of track, exercising the power of the state in taking the property of others, and in so locating and constructing its road, has invited and obtained subscriptions upon the implied promise to construct and operate its road, has commenced to operate the road under the granted powers, thereby inducing the public to rely in their personal and business relations upon that state of affairs, by so accepting and acting upon the chartered powers, a contract exists to carry into full effect the objects of the charter, and the capital stock, franchises and property of the corporation stand primarily charged with this trust. ...Having exercised those powers, the corporation has no right against the will of the state to abandon the enterprise.

In addition, in the case of Town of Hinkley v. Kettle River Railroad Company, the Supreme Court of Minnesota said:

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38 Meyer, op. cit., p. 349.
39 53 Conn. 333, 5 Atl. 695 (1885).
40 (Italics mine.)
41 See n. 39 supra.
42 70 Minn. 105 (1897).
The consideration for giving municipal aid to the construction of a railroad is not the mere building of the road, which in and of itself is of little or no benefit, but the benefits to result from the operation of the road after it is built. The doctrine is not to be tolerated for a moment that a railroad company may accept municipal aid, and then the very next day after construction of the road is completed, abandon its operation and tear up the track, without becoming liable in some kind of action to those who furnished the aid.\footnote{Ibid.}

The three doctrines discussed above, i.e., public interest, the corporate charter or franchise contract, and public aid, provided the basis for the majority of the court decisions concerning railroad abandonments. While each case does not necessarily fall neatly into one category, the groupings cover the bulk of the cases.

The Question of Profitability

Many of the abandonment cases presented before the courts are decided on the basis of the financial position of the railroad in general, and the portion of the line to be abandoned in particular. It is in these financial decisions that the constitutional aspects of abandonments are considered. Total abandonment originally presented a constitutional question. If a carrier is operating its entire system at a loss, it has a constitutional right to discontinue in spite of a commission order to the contrary. Several landmark cases have the question of profitability as their central consideration. In City of Salina v. Salina Street Railway Company,\footnote{114 Kan. 734, 220 Pac. 203 (1923).} the Supreme Court of Kansas stated the opinion that:
The rule that Constitutional guarantees are injured by compelling a railway corporation to operate at a loss does not apply where operation is a positive requirement of the franchise.\textsuperscript{45}

The implication here is that if there is no positive requirement of the franchise to continue operations, the constitutional rights of the carrier would be violated if such operation were required. Also, the question of profitability of operation and compliance with the franchise requirements were issues in the Railway Commission of Texas v. Eastern Texas Railway Company.\textsuperscript{46} In this case there was a statutory requirement that the railroad would not abandon any part of the main track once it had been constructed. The railroad sought to find relief from that portion of the charter. The court was of the opinion that when the charter was granted, and accepted by the railroad, there was, in fact, a legal contract providing that main-line trackage would not be removed. The railroad had accepted the charter subject to the law, and by so doing, agreed to uphold the law.

The problem of profits and constitutionality hinges on the Fifth and Fourteenth Amendments to the United States Constitution. Under the Fourteenth Amendment, persons may not be deprived of property by the states without due process of law. The Fifth Amendment guarantees the same protection to persons by the Federal government. The railroads understandably were of the opinion that by being forced to operate their lines against their will, and sometimes at a loss, they

\textsuperscript{45} Ibid.

\textsuperscript{46} 264 U.S. 79, 44 Sup. Ct. 274 68 L, Ed. 569 (1924).
were being denied "due process" guarantees. In the Salina case cited above, the Kansas Supreme Court concluded that the constitutional guarantee is not applicable if the railroad has contracted away its constitutional rights.\textsuperscript{47} In its opinion in The Railroad Commission of Texas v. Eastern Texas Railroad Company previously cited,\textsuperscript{48} the United States Supreme Court concluded that:

The usual permissive charter of a railroad company does not obligate the company to operate its railroad at a loss; nor is such obligation to be implied from acceptance of the charter and operation under it. In the presence of a reasonable certainty that future operation will be at a loss, a railroad, in the absence of a specific contract, may cease operation, dismantle its road, and realize its salvage value. Were the railroad to be compelled by the state in such circumstances to continue at a loss, it would be deprived of its property without due process of law. The principle allowing a railroad company to withdraw its property from public use that can be kept up only at a loss, is consistent with the State's power to regulate while the company continues to exercise the privileges of its charter.\textsuperscript{49}

In most comprehensive studies the solution of one problem frequently leads to the presentation of another, and often more complex problem. The findings in the East Texas and Salina cases cited above indicate that forcing a railroad to operate its services at a loss, where rights have not been contracted away, is in violation of the United States Constitution. The problem now becomes one of defining a loss. Does a loss occur when a line fails to yield a reasonable

\textsuperscript{47} See n. 44 supra.

\textsuperscript{48} See n. 46 supra.

\textsuperscript{49} Ibid.
rate of return? According to the opinion of the Supreme Court of Iowa in *Smith v. Atlantic Southern Railway Company*, 50

We find no decision holding that a failure to yield a reasonable return constitutes a justification for the abandoning of a railroad.

If an entire railroad could be operated only at a loss, the courts refused to prevent its abandonment. 51 Continued operations under conditions producing losses would result in the line being denied its property rights without due process of law. The several state cases were climaxd by a decision of the United States Supreme Court in 1920. This was the historic case of *Brooks-Scanlon v. Railroad Commission of Louisiana*. 52 The following were the issues in this case. The Brooks-Scanlon Company, a Minnesota corporation organized to manufacture and deal in lumber and to carry on other incidental business, brought an action against the Railroad Commission of Louisiana. Order number 2228 of the Commission required the plaintiff, either directly or through arrangements made with the Kentwood and Eastern Railway Company, to operate its narrow gauge railroad (which was controlled by the lumber company) between Kentwood and Hackley in Louisiana upon a schedule and days to be approved by the Commission. Plaintiff alleged that the order could not be complied with except at a loss of $1,500 per month and that to compel the plaintiff to do so would deprive the plaintiff of its property

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50 PUR 1915 F 125 (Iowa).

51 Cherington, *op. cit.*., p. 20.

52 251 U.S. 396, 40 Sup. Ct. 183 (1920).
without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States. The defendant denied these allegations and sought an injunction against the abandonment of the road. The plaintiff lumber company owned the railroad, and the entire railroad-lumber operation showed a profit, but the railroad itself could only operate at a loss. The court agreed that over-all profit was not an issue, and so long as the railroad itself operated at a loss, and there were no prospects for a change in this loss situation in the future, the road would be within its rights to petition for abandonment of its facilities.

More complicated was the situation where a single branch line was being operated at a loss, but the system as a whole was able to show a profit. Here the older rule was that abandonment of the branch showing the loss would be disallowed. It was felt that losses on particular branches were one of the risks involved in the operation of the enterprise, and if these losses could be balanced by gains on the rest of the line, the entire operation was successful. Only if the losses on the branch line were of such magnitude as to threaten the financial structure of the entire operation would a petition for abandonment be considered favorably.53 According to Cherington:

The language of many of these early judicial decisions reflects the emergence of a conflict of economic and social interests which is the key to an understanding of this phase of railroad regulation. Abandonment of losing lines conserves the assets of railroad

53 Cherington, op. cit., p. 21.
investors, but it may cause economic and social loss to local railroad users. In the beginning, as long as the railroad as a whole could earn a fair return, the courts would protect the local communities. Usually the prospect of imminent bankruptcy was necessary before a court would shift the balance in favor of the investors.\(^\text{54}\)

The preceding section has been concerned with the constitutional aspects of railroad abandonments, and some of the cases that have arisen therefrom. Many states have codified the common law and the Constitution by enacting statutes relative to railroad abandonments. The statutory aspects of railroad abandonments will occupy the next portion of this study.

**State Regulations**

Historically, railroad legislation on the state level has preceeded federal regulation.\(^\text{55}\) This holds true in the matter of regulation of abandonments. Long before the passage of the Transportation Act of 1920 that set up federal regulatory measures for abandonments, the states had exercised varying degrees of control over the cessation of service by the railroads.\(^\text{56}\)

Railroads have historically been state-oriented industries. Charters for permission to operate are granted by the states. Grants of land were made by the states. In many instances, particularly during the period of encouragement of internal improvements, financial aid to the railroads was proffered by the states. It seems natural

\(^{54}\) Ibid.

\(^{55}\) Cherington, loc. cit.

\(^{56}\) Massachusetts, Acts of 1865, 175. Massachusetts enacted the first state law pertaining to abandonments in 1865.
then, that when regulation became necessary, the state should be the logical regulatory authority.

The regulation of railroads by the states is of two general types. Abandonments are controlled either by express legislation or by implication. Twenty states explicitly spell out the degree of control over abandonments that may be exercised by the railway or public utility commission of the state.\(^{57}\) Fifteen states base their abandonment control on a broader concept of a commission having the right to regulate rates and service.\(^{58}\) The remainder of the states have no regulation, either explicit or implied, over railroad abandonments.\(^{59}\) The scope of the present investigation does not necessitate a state-by-state analysis of statutory regulations over abandonments.

However, since, this study is primarily founded on Ohio data, it is appropriate to present the Ohio Statute pertaining to railroad abandonments. Senate Bill number 176, commonly known as the Miller Act, was enacted into law by the General Assembly of the State of Ohio in 1917.\(^{60}\) The wording of the Act is as follows:

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57 The states having this direct control are: Massachusetts, Rhode Island, New Jersey, Maryland, Georgia, Virginia, New York, Michigan, Ohio, Minnesota, West Virginia, Kentucky, Tennessee, Alabama, Arkansas, Texas, New Mexico, Nevada, South Dakota, and California.

58 Those states with implied rights are: Maine, Illinois, Florida, Louisiana, Oklahoma, Missouri, Kansas, Nebraska, Montana, Idaho, Utah, Colorado, Arizona, South Carolina, and Washington.

59 The states having no statutory control over abandonments either direct or implied are: Connecticut, Delaware, Iowa, Indiana, Mississippi, New Hampshire, North Dakota, North Carolina, Oregon, Pennsylvania, Wisconsin, Wyoming, and Vermont.

60 Senate Bill No. 176, 82nd. General Assembly, (1917) and Sections 4905.20 and 4905.21 of Revised Code of Ohio.
No railroad as defined in section 501 of the General Code, operating any railroad in the state of Ohio, shall abandon any main track or tracks or any portion thereof, or depot which has once been laid, opened and used for public business, nor shall be closed for traffic thereon except as provided in section 2. Any company violating the provisions of this section shall forfeit and pay into the state treasury not less than one hundred dollars nor more than one thousand dollars.

Section 2 of the Act contains the following wording:

Any such company desiring to abandon or close for traffic any part of its line, main track or tracks or depot, shall first make application to the Public Utilities Commission in writing, who shall thereupon cause reasonable notice thereof to be given, stating the time and place fixed by the Commission for the hearing of said application. Upon the hearing of said application said commissioners shall ascertain the facts and make its findings thereon, and if such facts satisfy the Commission that the proposed abandonment or closing for traffic is reasonable, having due regard for the welfare of the public and the cost of operating the service or facility, they may allow the same; otherwise it shall be denied, or if the facts warrant, the application may be granted in a modified form. Provided, however, that should the application ask for the abandonment of any main track in such manner as to result in the permanent abandonment of service between any two points, no application shall be granted unless the company shall have operated said track for a period of at least five years, and in such case notice shall be given by publication in a newspaper of general circulation throughout any county or municipality which may have granted a franchise to said company, under which said track is operated or in which the same is located, once a week for four consecutive weeks before the hearing of said application, and notice of said hearing shall be given such county or municipality in the manner provided for the service of orders of the Commission in section 614-71 of the General Code. The provisions of this section shall apply to all such service now rendered and facilities furnished or hereafter built and operated; and an order of the Commission authorizing the abandonment of any such service or facility shall not affect the rights or obligations of a railroad beyond the scope of said order, anything in its franchise to the contrary notwithstanding.
Several important cases evolved with relation to the Miller Act. Two years after the Act became law (1919) the Northern Ohio Traction and Light Company sought to abandon a line operating between Cleveland and several points in Summit County. The interurban line had constructed an alternate route that essentially paralleled the older line, but that eliminated some of the physical hazards of the older route. The village of Northfield, along with several other villages, objected to the abandonment of the old line because the new route was not so accessible as was the former one. The villages questioned the authority of the Public Utilities Commission to allow abandonment of the old line on the basis that the law required that the Commission "have due regard for the welfare of the public." It was found, however, that the new line was an adequate substitute for the older line, and that inconveniences to users were minor.61

The question of the cost of operating the service was raised in Cincinnati Northern Railroad Company et al. v. The Public Utilities Commission of Ohio. The over-all operations of the line showed a ten per cent return on capital investment, but a fourteen-mile portion of the road showed annual deficits of some $30,000. This segment of the road served approximately seven hundred persons with passenger and freight facilities. The Public Utilities Commission found that since the entire operation could be carried on with a reasonable rate of return on investment, the portion of the line experiencing losses should not be abandoned. In reviewing the case the court said:

61 Northfield v. PUCO 100 Ohio St. 424 (1919).
Under the circumstances here developed, when all things are considered, and having due regard both to the public welfare and the cost of service, we are of the opinion that the cost of providing the service imposes too large a pecuniary burden upon the railway companies; and that upon the whole the enjoyment of these facilities by the public is not commensurate with the cost necessary to supply them. The order of the Commission refusing the application for abandonment of service is unreasonable, and its order is reversed. 62

This case was decided on its merits as all cases should be. The fact of loss was only a portion of the basis for the decision. The benefits to the area served were also weighed.

In a subsequent case 63 the court found that:

The fact that such service is being furnished at a loss, while an important element to be considered with all the other facts bearing on the question, is not in and of itself sufficient to conclusively establish the unreasonableness of an order of the Public Utilities Commission.

One of the main differences between this last case and the Cincinnati Northern case cited above appears to lie in the welfare of the public. In this latter case the railroad provided the only mail, express, and passenger service to seventeen towns with an aggregate population of over 10,000 persons. The New York Central case was decided in 1935. A year later the village of Paulding sought to put aside the decision, but the Ohio Courts upheld the findings of the Commission. 64

In 1939 a suit was brought by the city of Toledo against the

62 119 Ohio St. 574 (1920).
63 New York Central Railroad Company v. PUCO, 129 Ohio St. 381 (1935).
64 132 Ohio St. 33 (1936).
Public Utilities Commission of Ohio concerning jurisdiction of the Commission. The construction of a super highway facility in the city necessitated the relocation or abandonment of spur tracks in the area. The Commission held that it had no jurisdiction over the abandonment of spur tracks, and thus could not control abandonment. In the ensuing litigation, the court held that the Commission was indeed without jurisdiction in the case. The original Miller Act had included reference to control of main-line track or tracks, sidings, and spurs. However, the amended bill, as enacted into law had all references to sidings and spurs deleted. The court decided that since the General Assembly had specifically omitted reference to sidings and spurs, the regulatory authority of the Commission did not, in fact, extend to those areas.

Federal Regulation of Abandonments

Several factors contributed to the need for some form of federal regulation of the railroads. The interest in the granger legislation drew attention to the inequities in rates and service as offered by the railroads. In addition, by the 1880s much of the rail traffic had become interstate in nature rather than the earlier intrastate pattern. The non-uniformity of the several state regulations contributed to the complex of problems attending railroad regulation.

65 Toledo v. PUCO, 135 Ohio St. 57 (1939).
66 Sharfman, op. cit., I, p. 17.
As early as 1872 President Grant had recommended that an investigation be made of the

Various enterprises for the more certain and cheaper transportation of the constantly increasing Western and Southern products to the Seaboard. 67

One result of the President's recommendation was the establishment of a Senate Committee headed by Senator Windom of Minnesota. This committee made its report in 1874, and among other things suggested that railroad inequities could best be curtailed through the fostering of competition. 68 The report recommended the further improvement of waterways and the construction or acquisition of control by the Federal government or the states of one or more lines between the middle west and the seaboard to compete with the then-existing carriers. 69 Although no legislation resulted from the Windom Committee Report, sufficient interest was aroused to warrant further investigation of the railroad situation.

Twelve years later, in 1886, a Senate Committee was formed with Senator Cullom of Illinois as chairman. 70 The investigation and report of the Cullom Committee was the direct basis for the entrance of the Federal Government into the field of railroad regulation. In submitting the bill which accompanied its report, and which served

67 Ibid.


69 Sharfman, op. cit.

70 U. S. Congress, Senate, Cullom Committee Report, 49th Cong., 1st Sess., 1886, Rept. 46.
as the groundwork of the Act to Regulate Commerce, the Cullom Committee said:

The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities, or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity, as to rates, financial operations, and methods of management of the carriers. 71

The main provisions of the 1887 legislation which set up the Interstate Commerce Commission, can be summed up as a regulatory measure applicable to common carriers engaged in the transport of persons or property by rails, or by a combination of rail and water where both are used under a common control.

The transportation subjected to the jurisdiction of the Act, and of the Interstate Commerce Commission created for its enforcement, comprehended traffic between the states and with foreign nations; intrastate traffic was expressly exempted from the operation of the statute. 72

The aim of the Act was designed to prevent excessive charges and discriminatory practices. Since there was no provision of the Act of 1887 dealing specifically with abandonments of railroad facilities of services, a thorough analysis of the 1887 Act will not be undertaken. 73

71 Ibid., p. 215.
72 Sharfman, op. cit., p. 21.
73 Interested readers may refer to the three volume work by Sharfman.
On the eve of the passage of the Esch-Cummins Act (the Transportation Act of 1920) the power to control railroad abandonments varied widely from state to state, and in general was in an unsatisfactory and inconsistent condition. Many states had no laws relating to the subject. In the states where there was statutory control over abandonments, there was no uniformity of the various regulations. The hodgepodge of state control might have continued indefinitely had the number of abandonment petitions remained small. However, around 1916 there was a rash of requests for abandonments and Cherington concludes that economic dislocations attending World War I probably were responsible for this increase.\(^7\) Despite the rise in the number of abandonment requests the regulation of discontinuance of service appears to have been something of an afterthought, or at least of secondary importance. In the Annual Report of the Interstate Commerce Commission for 1919, the Commission had requested additional regulatory powers in the form of regulation of construction.\(^7\) The desirability of the regulation of abandonments evolved only during the course of legislative hearings concerning the problems of extensions and new construction as a part of the proposed transportation act. If the legislative hearings had not resulted in a series of draft proposals being offered, among which was one including

\[^7\text{Cherington, op. cit., p. 24.}\]

reference to abandonments, there is no way of estimating when federal control of abandonments would have been accomplished. 76

Paragraph 18 of Section 1 of the Transportation Act of 1920 sets up the requirements for certificates of convenience and necessity in the event of construction of extensions or new lines. Then, in the last six lines of the section, the control of abandonments is covered as follows:

... and no carrier by railroad subject to this part shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience or necessity permit of such abandonment. 77

These few lines firmly establish control over abandonments by the Interstate Commerce Commission. Despite the fact that abandonments are frequently restricted by charter conditions or state laws, this new provision made it mandatory that carriers secure permission to discontinue service from the Commission.

In most instances of new legislation there is a rash of cases that test the meaning and coverage of the legislation. Such was the experience with the abandonment control provisions of the Act of 1920. Two weeks after the effective date of the Transportation Act of 1920, the Eastern Texas Railroad applied to the Interstate Commerce Commission for permission to abandon its entire property. 78

76 Cherington, op. cit., p. 27.
78 65 I.C.C. 436 (1920).
The Eastern was a single track short line located wholly within the state of Texas. The line had been constructed in early 1900 primarily as a timber carrier. With the depletion of timber resources the road had exhausted its funds and had fallen into a serious state of disrepair. Abandonment appeared to be the logical solution to the problem. There were, however, a few small and isolated settlements that had sprung up as a result of the logging operations, and it was from these areas that resistance to abandonment was most vigorous. The settlements provided little traffic for the line, and there was little hope for future contributions, yet the desire to have the line continued persisted. It was argued that the Interstate Commerce Commission had no jurisdiction over the line since it was purely intrastate in nature. This contention of lack of jurisdiction was seconded by the Texas Legislature when it instituted a later court action. Without considering further the question of jurisdiction the Commission authorized abandonment of the Eastern on December 2, 1920. The opponents to the abandonment brought suit to enjoin the action. The case was heard in a Federal District Court, and was dismissed on the ground that the federal certificate of public convenience and necessity was a complete answer. The state of Texas then brought a new action in another Federal District Court, arguing that the statute did not cover abandonment in intrastate commerce, and that if it did, it was unconstitutional. This action was also dismissed, and the state appealed to the Supreme Court of the United States. On this appeal, the issue was solely whether or not the Commission had authority to permit a railroad lying wholly
within one state to abandon its line in intrastate commerce. The record indicated that at least three-fourths of the business of the line was, in fact, interstate traffic, but the state contended that the Commission was without authority to authorize abandonment of the remaining one-fourth of the line that was entirely intrastate in nature. Mr. Justice Van Devanter, in writing the decision for the unanimous court stated:

The road lies entirely within a single state, is owned and operated by a corporation of that state, and is not part of another line. Its continued operation solely in intrastate commerce cannot be of more than local concern. . . . It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate or foreign commerce. 79

This decision amounted to saying that Congress had not intended giving the Interstate Commerce Commission power to regulate abandonment of intrastate commerce by an intrastate railroad. The court ruling, in effect, gave the state the right to require that the line operate and cover its expenses and overhead from the relatively small portion of intrastate line. A subsequent request for abandonment was granted by Justice Van Devanter, again speaking for a unanimous court when the Brooks-Scanlon rule mentioned earlier in this chapter was applied. 80 This single case involved more than four years of litigation before final abandonment was allowed.

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The next important case before the Commission and the courts was Colorado v. U.S. The beginning of this case stemmed from an application filed by the Colorado and Southern Railway on June 15, 1922. In the petition a request was made for permission for the line to abandon its Buena Vista-Romley branch in a mining area of Colorado. The branch was not physically connected with the applicant's other lines, but was operated as a part of its general system which extended through several states. Local mining interests were the main opponents of the abandonment. At the onset of the petition hearings the state of Colorado contended that the Interstate Commerce Commission was without jurisdiction on the grounds that the line lay wholly within the boundaries of one state. The Commission found however that:

While the branch line lies entirely within the State of Colorado, it constitutes a part of the applicant's system, its operating results are reflected in the accounts of the applicant, and the latter would be required to bear or make good any deficits from its operation. We are therefore of the opinion that we have jurisdiction.

The application for abandonment was subsequently denied, but the Commission strongly urged that local interests promote an all-out effort to support the line, or if this was not feasible, to lease the line from the railroad. The cooperation of the local interests

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81 271 U.S. 153 (1926).

82 Abandonment of Branch Line by Colorado and Southern Railway Company, 72 I.C.C. 315 (1922).

83 Ibid., p. 316.
was not forthcoming and in a later petition, abandonment was allowed by the Commission. This permission granted by the Interstate Commerce Commission was challenged in the Supreme Court of the United States. Justice Brandeis upheld the finding of the Commission and abandonment was allowed.

The above cases indicate the attitude of the Interstate Commerce Commission in considering petitions for railroad abandonments. There are, of course, many more interesting and important cases that have come before the Commission, but the ones cited serve to illustrate the type of decision that has been forthcoming from the regulatory authority. However, some generalizations concerning the Commission policy in handling abandonment petitions are appropriate. Professor Locklin has evaluated the policy as follows:

1. The Commission will not hesitate to authorize abandonments when the railroad no longer serves any useful purpose and when its abandonment will work no great injury to the communities served. Often abandonment is caused by the exhaustion of natural resources upon which the railroad relied for traffic or by the out-migration of industries. Sometimes the construction of improved highways has made the abandonment of a railroad of little consequence to the communities.

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84 Proposed Abandonment of Branch Line by Colorado and Southern Railroad Company, 82 I.C.C. 310 (1923) and 86 I.C.C. 393 (1924).


86 See: Public-Convenience Certificate to Orangeburg Railway, 67 I.C.C. 798 (1921); Abandonment of St. Louis, El Reno and Western Railway, 79 I.C.C. 77 (1923); Public-Convenience Certificate to Ocean Shore Railroad, 67 I.C.C. 760 (1921); Baltimore and Ohio Railroad Company Abandonment, 166 I.C.C. 642 (1930); and Tampa Northern Railroad Company Abandonment, 166 I.C.C. 515 (1930).
once dependent upon it. In some instances the Commission has permitted the abandonment of a line on condition that motor carrier service be substituted.

2. The financial result of operation over the line proposed to be abandoned is an important matter for consideration in an abandonment case. In an early case before the Commission it was argued that the question of profitable or unprofitable operation was largely irrelevant and that the Commission was to pass upon the need for the service afforded by the carrier, regardless of financial results. This view the Commission rejected, holding that the very fact that a line does not pay implies that its services are not greatly needed.

3. The Commission recognized that a branch line can be continued in operation even if operated at a loss. It has held, however, that it is contrary to the purposes of the abandonment provisions and inconsistent with the purposes of the Act as a whole to require drains upon the revenue of an interstate carrier. These drains frequently accrue from the operation of an unprofitable or unnecessary branch.

4. The loss and inconvenience caused by railroad abandonment receives careful consideration by the Commission in abandonment cases. But inconvenience and declines in property values are not sufficient by themselves to require continued operation of a line. A balancing of the burden imposed on the railroad by continued operation of a line and the burden upon the public brought about by its abandonment must be made in each individual case. Because of the difficulty in balancing opposing factors, abandonment cases frequently give rise to differences of opinion within the Commission on whether a particular abandonment should be authorized or not.

Generally, the attitude of the Commission has been one of close scrutiny of all of the facts involved, and then a rational judgment on the findings. Two cases will tend to point up the thoroughness of

88 Locklin, op. cit., pp. 574-575.
the investigations undertaken. In authorizing the Chicago and Alton Railroad and its receivers to abandon the operation of the Rutland, Toluca and Northern, one of its leased lines in Illinois, the Commission summarized as follows the considerations supporting its conclusions:

We have considered as essential factors in reaching our finding the value and magnitude of the carrier's service, the financial results of its operation, the character and extent of the population and industries served, the probable effect of abandonment upon both the general community and the Alton system. 89

Two Ohio abandonment hearings also point up the depth of the investigations into the matter before decisions are made. In the case of the petition for abandonment of the Buckingham branch of the New York Central Railroad Company 90 the Commission found the following to be pertinent:

The only station on the segment is the nonagency station of Shawnee located at milepost 88.1. Shawnee has a population of 1,145. ...The principal industry served by the segment, a brick and tile manufacturer, is also located at this point. The company has its own side track and both applicant and the Baltimore and Ohio serve it. A hard surfaced road, Ohio Highway No. 155 parallels the segment and connects Shawnee with Drakes. Several motor carriers serve the area. No passenger service has been rendered during the past 5 years and freight service between Drakes and Shawnee has been provided only when necessary. ...The applicant shows that had abandonment of this portion of line been permitted, the system would have had savings of $246, in 1955, a loss of $634 in 1956 and a saving of $2,857 in 1957. The only freight traffic moving over the segment has been that forwarded by the brick and tile

89 Quoted in Sharfman, op. cit. III, p. 38.

company of Shawnee. That company will continue to be served directly by the Baltimore and Ohio and has offered no objection to the instant proposal. The amount of traffic moved for it does not warrant continued operation of the line, and there appears to be no prospect for an increase in traffic in the foreseeable future. Under the circumstances continued operation of the segment would impose an undue and unnecessary burden upon interstate commerce.

Similarly, in the petition for the abandonment of a portion of the Toledo branch of the Connecting Railway Company, the Commission conducted another thorough investigation of the facts prior to issuing permission to abandon the line. The following illustrates the extent of the inquiry:

Connecting's section of the line to be abandoned was constructed in 1873 and acquired by it in 1956. Pittsburgh's section was constructed in 1853 and acquired by that company in 1862. The line was operated by Pennsylvania for many years as the route for through traffic between points east of Toledo Junction and points on the Toledo branch north of Carrothers. Passenger and freight trains which formerly operated over the line are now routed over Pennsylvania's more convenient line to Bucyrus, thence north to Carrothers, and the line is no longer required for through traffic. The present maintenance of the line is adequate for its limited traffic, although continued operation would require an immediate expenditure of $159,168 for its rehabilitation. It is crossed at grade in twelve places by public highways. Only two of these crossings are equipped with automatic protective devices. Its net salvage value is estimated at $54,825. The line does not connect with any other railroad. The only stations thereon, both nonagency are Vernon, population 100, and Hines, population 0. The former is located five miles by highway from Toledo Junction and the latter is 6-1/2 miles from Crestline, both on the applicant's railroad. The territory tributary to the line is an agricultural region with a population of 440. The only industry is a power plant located on a private

siding at Vernon. The area is traversed by 6 State highways over which motor-carrier service is rendered by 7 trucklines. The local farmers utilize motor trucks and are not dependent upon the line. Regular freight service was discontinued in 1952 and all passenger service in April 1956. Only 4 carloads of freight (all in 1957) have been handled over the line since January 1, 1956. Operation of the line during the year 1957 resulted in a system deficit of $3,469. It is apparent that the line is no longer serving any useful purpose and is being operated at a deficit. Its abandonment will enable the applicants to avoid an expenditure of a substantial amount for its reconstruction and will eliminate several potentially hazardous grade crossings.

The above investigations indicate that the Commission exhausts all possible ramifications in gathering the data on which to base their findings on abandonment cases.

There appears to be no strict policy followed by the Interstate Commerce Commission in deciding the merits of abandonment petitions. Each case is weighed on its own merits, and decided on the basis of the facts at hand. All interested parties to the abandonment are encouraged to present the facts to the Commission so that a valid decision may be made. By using this case-by-case system of judgment, the Interstate Commerce Commission has avoided the stereotyped kind of decision, and has retained a degree of flexibility. In addition, the Commission has taken a realistic view of changing conditions in the transportation industry. Since the passage of the Transportation Act of 1920, technological advances have greatly affected the relative position of the various modes of transport. Competition has become more acute, and resource depletion has affected the role of the railroad in the over-all transport complex.92

92 Chapter III, infra.
At hearings before a Senate Committee in 1953 the railroads asked for, among other things, greater leeway in abandonment requests. With the passage of the Transportation Act of 1958,93 the Interstate Commerce Commission was empowered not only to permit the curtailment of interstate services, but also--where state commissions had acted adversely or had failed to act--to permit curtailment in intrastate services. The Act thus removed an obstacle to the discontinuance of services that had been carried on at a loss.94

Summary

Legislation concerning the abandonment of railroads evolve from the common law, and stemmed specifically from the pronouncements of Lord Chief Justice Hale. These pronouncements were made in about 1670 and were centered about the concept of public interest. Chief Justice Waite utilized the concept of public interest in the precedent-setting public utility case of Munn v. Illinois.95 Since railroads are considered as public utilities because of special government grants in the form of powers of eminent domain, the grant of charters and franchises, etc., the general public utility regulations have been applied. The earlier cases concerned with abandonments were constitutional in nature, i.e., the fundamental question in such cases was whether or not a person (corporation) was


95 See n. 12, supra.
being deprived of property without due process of law by being required to continue in an unprofitable or losing business. Several significant cases, in particular Brooks-Scanlon, were the basis for the findings on the constitutional issues.

In the late 1880s and early 1900s some states enacted legislation concerning railroad abandonments. Those states that codified abandonment rules had varying degrees of control, and divergent views on the abandonment question. The Ohio statute, the Miller Act, was enacted in 1917, and placed the control of abandonments of railroads under the jurisdiction of the Public Utilities Commission of Ohio.

A rash of abandonment petitions arising from the economic dislocations attending World War I made it evident that some form of federal regulation of discontinuance of services was necessary. By the enactment of the Transportation Act of 1920, regulatory authority over railroad abandonments was placed under the already existing Interstate Commerce Commission. Putting railroad abandonment decisions under the control of the Commission was designed to further the adequacy of railroad service in the interest of national needs. Several abandonment cases reached the Supreme Court of the United States because of the question of jurisdiction of the Commission over intrastate abandonments. Notable among these were the Eastern

96 See n. 40, 41, 44, 46, and 48, supra.
97 See n. 51, supra.
98 See n. 60, supra.
Texas and Colorado Southern cases. The jurisdictional questions were answered by the decisions in these cases. The Interstate Commerce Commission was given increased powers over railroad abandonments by the passage of the Transportation Act of 1958. By this Act the Commission was given greater latitude to act in cases of purely intrastate commerce.

The Interstate Commerce Commission has taken a realistic view of abandonment petitions, and has decided each case on its individual merits after exhaustive inquiry into the facts at issue. While the railroads appear to believe that the Commission policy should be more lenient, the regulatory body is performing the function of representing the public, and protecting the public interest in abandonment cases.

In order for a railroad to petition successfully for permission to discontinue service, it is necessary that valid reasons for such discontinuance be proffered. The majority of the cases at issue stem from the inability of the railroad to obtain satisfactory returns because of losses of traffic. The railroad industry has not always been in financial difficulty. In 1926 the railroads carried 76.8 per cent of the intercity commercial freight traffic and 75.2 per cent of the intercity commercial passenger traffic.99 The subsequent decline in the relative importance of the railroad in the over-all transportation complex has resulted from a variety of causes; these reasons will be analyzed in the following chapter.

CHAPTER III
ANALYSIS OF THE CAUSES OF RAILROAD ABANDONMENTS

The abandonment of a railway line, or a portion of a line may be of great economic and social significance. Not only are those persons affected who are directly connected with the facility, such as train and depot personnel, but frequently the ramifications of abandonment are quite far-reaching. Many communities, particularly in the West, were founded to perform the "rail-head" function.\(^1\) Even after other industry and service groups migrated to the areas, the rail operation continued to be an important factor in the community. The removal of the rail service is frequently a highly disruptive event. One need only examine the objections voiced in proposed abandonment hearings to verify the fact that industries and persons have a strong interest in the retention of the service. The social and economic interests will be treated fully in Chapter IV.

In view of the significant effects that may result from railroad abandonments, causes of abandonment warrant careful analysis in order to provide a basis for understanding and appraising the reasoning applied by regulatory commissions in considering abandonment petitions.

There are four basic reasons for abandonment of rail operations.\(^2\)

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\(^1\) Richard B. Sheridan, Economic Development in South Central Kansas, An Economic History 1500-1900 (Lawrence, Kansas: Bureau of Business Research, University of Kansas, 1956), p. 120.

The first of these reasons is competition. This competition may take the form of competition from other railroads, or competition from alternative carriers. The second reason for abandonment derives from readjustments in railroad operating practices in a given area. Third, railroad abandonments are sometimes a result of the depletion or exhaustion of natural resources or the closing of non-transportation facilities. Finally, the fourth category includes abandonments that result from legal changes in the status of the railroads or from miscellaneous unknown causes.3

This chapter will examine these suggested reasons and will ascertain, where possible, any apparent trends that would affect the rate of carrier applications for abandonment authorization by regulatory agencies, and the policies of such agencies.

**Competition**

Cherington, in his exhaustive examination of railroad abandonments during the period 1921-1940 found that 10,981 miles of track were abandoned because of competition.4 This mileage was greater than that attributed to any other cause for abandonment. Competition was cited as the controlling factor for forty-two per cent of the total miles abandoned over the twenty-year span of the investigation.5

Competition may take any of several forms, but may conveniently be

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5 Calculated from Table 4, *ibid.*
divided into five broad categories: (a) from other railroads, (b) from motor-carriers, (c) from pipelines, (d) from water carriers, and (e) from airways. Each of these categories will be examined.

**Competition from Other Railroads**

It was indicated in Chapter I that in the early construction period the railroads were overenthusiastic and as a result there were frequent overextensions and duplications of lines. As the railroad transport network took shape, it became apparent that these overextensions and duplications were a source of economic waste, and their elimination would strengthen the internal transportation system. One of the logical methods of eliminating duplication of routes and service is the consolidation of such duplicate facilities. Consolidation, however, was not easily accomplished in the United States prior to 1920. Before 1920, Federal government policy was predicated on free competition among carriers. Free and unrestricted competition, enforced by statutes, was viewed as the optimum regulator of the railroad economy and the best remedy against the abuses of monopolistic practices. The Federal attitude toward competition was reflected in the Act to Regulate Commerce in 1887. The Antitrust

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6 See p. 3, Chapter I.

7 U.S. Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, Preliminary Draft of a Report Prepared for the Committee on Interstate and Foreign Commerce, United States Senate, 87th Cong., 1st Sess., 1961, p. 231. Cited hereafter as Senate Committee on Interstate and Foreign Commerce, National Transportation Policy.

8 24 Stat. 379 (1887).
Act of 1890\textsuperscript{9} and the application of the policies expressed therein to railroad consolidations was clearly indicated in the Northern Securities case of 1904.\textsuperscript{10} However, neither of these two Acts specifically forbade mergers and consolidations as such. Pooling was expressly forbidden and upheld in the Trans-Missouri Freight Association cases of 1897 and 1898.\textsuperscript{11} According to Meyer,

> Both the Interstate Commerce Commission Law and the Antitrust Law have thus had the effect of discountenancing cooperation arrangements of every kind among railways other than closer cooperation under unified management in corporate form. Both have accelerated the natural tendency of railways toward consolidation, and both have signaly failed in accomplishing the purpose for which they were enacted.\textsuperscript{12}

The consolidation and merger movement gained momentum, and reached its peak during the sixteen months of late 1899 and early 1900 when one-sixth of the nation's total rail mileage was absorbed by other lines.\textsuperscript{13}

The application of the Antitrust laws to railroad mergers in 1904\textsuperscript{14} effectively put an end to these consolidations and mergers.\textsuperscript{15}

\textsuperscript{9} 26 Stat. 209 (1890).
\textsuperscript{10} 193 U.S. 197 (1904).
\textsuperscript{11} 166 U.S. 288 (1897) and 171 U.S. 505 (1898).
\textsuperscript{12} Balthazar H. Meyer, 
\textsuperscript{13} Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, op. cit., p. 233.
\textsuperscript{14} See n. 10, supra.
\textsuperscript{15} Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, op. cit., p. 233.
However, with the passage of the Transportation Act of 1920\(^{16}\) consolidation could once again be accomplished if such unification were sanctioned by the Interstate Commerce Commission. This move, in effect, granted exemptions from the Antitrust Act if the Interstate Commerce Commission considered such consolidations to be in the public interest. The consolidation provisions of the Act of 1920 were intended to aid in carrying out the basic purpose of establishing a stronger economy for the railroad industry by encouraging consolidations of rail carriers into a limited number of balanced systems under the supervision of the Interstate Commerce Commission. Mergers and unifications have continued under the sanction of the Interstate Commerce Commission, and in recent months there appears to be a new rash of movements toward consolidation.\(^{17}\)

According to the recently released Preliminary Draft of a National Transportation Policy submitted to the Committee on Interstate and Foreign Commerce,\(^{18}\) there are four basic advantages of general consolidation: (1) to facilitate regulations; (2) to reduce costs; (3) to improve service capability; and (4) to facilitate mobilization in the event of war.\(^{19}\) Of these four advantages, the reduction of costs is the most relevant to the discussion of

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\(^{16}\) See n. 77, Chapter II, supra.


\(^{18}\) See n. 7, supra.

\(^{19}\) Ibid., p. 242.
abandonments. As indicated earlier in this dissertation, the railroads have been attempting to readjust their operations in a manner that will improve their financial status. Railroads, with their track, terminal and rolling stock requirements are relatively high fixed cost industries. It is apparent that where duplicate services are offered duplicate costs are incurred. The consolidation of such duplications should lead to reduced fixed costs, and ultimately to more economic operating procedures. Fixed costs, however, can only be reduced if the consolidation results in the abandonment of one of the duplicate facilities.

Illustrative of the savings that are possible are the estimated savings of some of the most important consolidations. According to the estimate of a competent engineering firm the consolidation of the Mobile and Ohio and the Gulf, Mobile, and Northern, which had considerable mileage of parallel competing trackage, the savings would amount to approximately $700,000 a year. The merger of the Louisville and Nashville and the Nashville, Chattanooga and St. Louis, which more or less started the recent surge of consolidations, was estimated to result in a saving of $3.25 million a year. ...The estimated savings of the recent merger of the Norfolk and Western and the Virginian amount to $12 million a year before Federal income taxes. ...The merger of the Atlantic Coast Line and the Charleston and Western Carolina...was expected to reduce expenses $300,000 a year. The most recent merger of the Erie and the Delaware, Lackawana, and Western, according to a consulting engineer, might produce an increase of net income of as much as $13.5 million a year.

20 See Chapter I, p. 4.

21 John R. Mayer et al., The Economics of Competition in the Transportation Industries (Cambridge: Harvard University Press, 1959), pp. 48 and 49. For a thorough coverage of the cost structure of the railroad industry see especially Chapter III.

22 If abandonment did not follow, the fixed cost of maintaining the unused facilities would continue.

23 Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, op. cit., pp. 243 and 244.
The consolidations cited are extreme cases, and mergers of less importance could not be expected to yield similar savings. Nevertheless, some lowering of costs can be expected to accrue through unification of service.

Where two lines merge and use only one of a pair of parallel or duplicate tracks, the removal or abandonment of the unused track will lower costs. Abandonment may be the result of such a move to achieve operating economies. Thus, competition from other railroads, coupled with a desire to reduce costs and increase revenues, is one reason for abandoning rail lines. The reduction of the relatively high fixed costs through elimination of duplicate operations allows for more efficient and less costly operating practices.

In addition to the interindustry competition, the railroads have been faced with a growing challenge for freight and passenger traffic from other modes of transport. One of the more important challenges has come from the motor carrier.

**Highway Competition**

Competition for the railroads from highway carriers was insignificant prior to 1920. During the nineteen-twenties this competition was limited almost exclusively to local and short-haul movements. The railroads up to 1930 had a virtual monopoly in both passenger and freight overland transportation. One need only recall the state of

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25 Ibid.
the automotive industry between 1920 and 1930, when the most popular motor transport vehicle was the Model "T" Ford, to realize that long-haul highway transport was not practical. The growth of highway transport since 1930 has been little short of phenomenal. Table 3 indicates the developing importance of this competitive factor since 1937 (the first year such data were available).

While the data in Table 3 show the importance of the motor carriers as a competitive factor, they do not explain the reasons for this growth. For a comparatively new mode of transportation to enter a market so completely dominated by the railroads for nearly a hundred years, and in a few short years unseat the giant as the leading factor in the field required more than merely a desire for an increased portion of the total traffic. It was necessary that the demand for the services of a new entrant in the overland transportation field be present.

Highway transport promised improvement of service over the existing rail service in several general areas. First, motor transport offered advantages in speed. Speed is essential in the transport of some goods, e.g., perishable foodstuffs. Moreover, the flexibility of the motor carrier allows for a rather significant reduction in delivery time over that offered by the competing rail carriers. Smaller and more diversified loads, plus the lack of the need to make transport connections frequently permitted the motor

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### TABLE 3

**TOTAL INTERCITY FREIGHT TRAFFIC, INTERCITY FREIGHT TRAFFIC BY MOTOR CARRIER, AND MOTOR SHARE OF TOTAL INTERCITY TRAFFIC, UNITED STATES, ANNUALLY 1937-1959**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Intercity Ton-Miles</th>
<th>Intercity Ton-Miles by Motor Carriers</th>
<th>Motor Ton-Miles as a percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1937</td>
<td>588,150</td>
<td>44,000</td>
<td>7.48</td>
</tr>
<tr>
<td>1938</td>
<td>465,666</td>
<td>40,000</td>
<td>8.59</td>
</tr>
<tr>
<td>1939</td>
<td>540,375</td>
<td>43,000</td>
<td>7.96</td>
</tr>
<tr>
<td>1940</td>
<td>611,980</td>
<td>51,003</td>
<td>8.33</td>
</tr>
<tr>
<td>1941</td>
<td>757,159</td>
<td>57,123</td>
<td>7.55</td>
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<td>1942</td>
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<td>4.72</td>
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<tr>
<td>1944</td>
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<td>1959</td>
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<td>288,519</td>
<td>21.98</td>
</tr>
</tbody>
</table>

*Source: Interstate Commerce Commission, Annual Reports, 1938-1960.*
carrier to move the goods more rapidly than the railroad.27 A second advantage resulted from economies made possible by motor carrier transport. These economies resulted from speed of operation, minimized handling and rehandling of the cargo, and lower labor handling costs.28 Third, truck transport has attained a high degree of reliability. Schedules have become more dependable, and prompt pick-up and delivery have strengthened the position of the motor carrier.29 Finally, transport by truck is convenient. If a shipper had a particular problem or emergency shipment, truck transport proved sufficiently flexible to cope with the situation. Pick-up from the door of the shipper, and delivery to the door of the consignee made motor transport one of the more convenient methods of haulage.30 Taff, in a somewhat enthusiastic vein indicates that:

> The advantages of motor transportation are unparalleled by any other mode of transportation, and the increased reliance placed upon it by shippers is largely a reflection of its ability to meet any transportation requirement.31

Although motor transportation has increased in significance, it is doubtful that the accolades voiced by Taff are fully warranted. It is possible that the trucking industry can meet any transportation requirement, but the question arises as to whether they can meet these

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27 Ibid.
28 Ibid., p. 10.
29 Ibid.
30 Ibid., p. 11.
31 Ibid.
requirements in the most economic manner. Petroleum products move
more economically by pipeline and waterway than they do over the high-
ways, and certain manufactured steel products are transported
primarily by rail because the rails provide the most economic service
for these goods. Agricultural products have mainly been diverted
to the trucking industry, but rails and water carriers continue to
have an advantage in hauling products of mines.

Highway competition has made substantial inroads upon rail
passenger traffic. The influence of the private passenger car has
been most important, but intercity buses also have contributed to
the decline in railway passenger traffic. The loss of rail passenger
miles is of great concern not only to the railroads, but also to the
entire nation. The Interstate Commerce Commission in 1959 found that
a serious situation existed as a result of the decrease in rail
passenger traffic. The Commission concluded that efficient rail
passenger service is an integral part of the national transportation
system, and an essential factor in the national defense. Consistent
with this opinion the Commission recommended several policies aimed at
alleviating the rail passenger deficit. Among the more important
of these recommendations was the repeal of the ten-per cent Federal

32 Nelson, op. cit., p. 43.
33 Ibid., p. 49.
34 Ibid.
36 This entire proposal is completely described in 306 ICC 417.
excise tax on passenger fares, the establishment of a more "realistic" system of the taxation of railroads by the state and local governments, community participation in the form of subsidies to help maintain essential commuter services, and a complete review of the situation by the railroad industry with a view to effecting economies and bettering service.38

The justification of maintaining rail passenger facilities because of the possible contribution to the national defense may be debated. Despite the pronouncements of the Interstate Commerce Commission cited above, it is difficult to rationalize the fact that the railroads would be a significant factor in moving persons in the event of an emergency. Much would depend on the severity and duration of the emergency. Should the United States be involved in a nuclear conflict of short duration, it is doubtful whether the rails could perform a valuable service in the nature of troop movements. General I. Sewell Morris, testifying before the Kilday Committee39 late in 1959 stated:

Our conclusions based on our analysis are that the most significant impacts of military requirements will be for pullman and air-passenger service. ...There is

37 The taxation of railroads will be discussed in Chapter IV.

38 See n. 35, supra.

an extremely large reserve bus capacity which is a potential cushion for use in emergency.\textsuperscript{40}

The railroad would undoubtedly have a role in the movements of personnel in major conflicts, but to retain unprofitable passenger service with this contingency in mind constitutes a burden on the railroads.

Table 11 on page 99 shows the number of intercity passenger miles accomplished by motor and rail carriers from 1948 through 1959. During this twelve-year period passenger miles by rail declined by forty-four per cent, bus passenger miles fell by twelve per cent, and passenger miles in private automobiles increased by almost one hundred and thirty-one per cent. In addition, in 1959 the private passenger car accounted for almost ninety per cent of the total intercity passenger miles accomplished by all types of carriers.

The reasons for the decline in rail-passenger miles are not dissimilar to those relating to the decline in freight ton-miles. Of primary importance is the convenience offered by alternative forms of transport. First, commercial motor passenger carriers serve many communities not reached by rail. The intercity bus has the flexibility of the highway at its command. Its route is limited only by passenger demands and regulatory measures. In addition, the relatively small carrying capacity of the bus adds flexibility since schedules may be more easily adjusted to meet the needs of the traffic.\textsuperscript{41}

\textsuperscript{40} Ibid., pp. 153 and 154.
\textsuperscript{41} Taff, op. cit., p. 581.
Another major advantage of passage by bus rather than by rail is the economy that can be realized by motor transport. In 1948, for example, average bus fares were sixty-four per cent of the corresponding rail fares. In 1959 the average passenger fare per mile was 3.01 cents by Class 1 railroad, and 2.59 cents per mile on the Class 1 motor bus.

Most of the newer "super buses" have accommodations equal to those offered by rail coach service. Moreover, flexibility, convenience, and economy combine to make this type of passenger carriage more attractive than the rail services in many instances. However, motorbus operators have been unable to compete with the railroad in speed of transport, and have little to offer in the way of services to compete with the luxury of first-class rail passage.

Despite the several inherent advantages of the bus passenger services, this mode of transport has experienced declines in passenger demands similar to, but not so drastic as those of the rails. Studies undertaken in Michigan, Iowa, and New York verify the fact that the local and intercity divisions of the common carrier bus industry are in serious financial difficulty due to the lack of passenger demand.

Neither the railroad nor the bus can compete effectively with the private automobile in transporting passengers. Convenience in

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42 Ibid., p. 583.
43 Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, op. cit., p. 285.
44 Ibid., p. 355.
operating or riding in a passenger car far surpasses that offered by the common carriers. Service is from door to door, and the routes are flexible in that if one desires to travel the scenic rather than the short route, there are no restraining factors.

Economy is also a factor in the popularity of the private motor carrier. The high average cost of operating a private automobile is five cents per mile. For one person, this rate exceeds the three cents for rail and two and one-half cents by bus. However, when one considers that five or six persons may occupy the private automobile with little or no increase in total cost, the passenger mile "fare" is less than either rail or bus fares. Railroads and airlines have attempted to combat this inherent advantage of the passenger car by offering family rates, but the other advantages of the private automobile, i.e., flexibility and convenience, have negated, to a great degree this attempt on the part of the other carriers to compete.

The increase in the popularity of the private passenger car has given rise to an entirely new segment of the United States economy. It is not the purpose of this dissertation to investigate the varied economic and social implications that have attended the popularization of private passenger travel. However, the existence of what may be termed the "filling station-drive in theater-motel" complex is evidence of the impact of this mode of transport.

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46 Ibid.
In addition to the competitive problems in intercity passenger traffic discussed above, there has been a noticeable decline in rail commuter traffic. According to the Magnuson Report,47

There are three groups of basic causes acting to produce the present acute situation in railroad commutation. These are: (a) Fundamental changes in public habits and desires; (b) Competition has so seriously reduced rail freight revenue, especially in the eastern district, as to eliminate net earnings from rail operations; and (c) The long-time unfavorable price-cost relationships in suburban service are worsening.

Concerning the changes in public habits and desires, one need only consider the highway and parking problems experienced by the major municipalities in recent years to realize that the automobile has supplanted the rail commutation service in urban and suburban transport. Total rail commutation declined from 345 million passengers in 1947 to 221 million in 1957.48 Using New York as an example, the Jersey Central had a decrease in the number of commuter passengers carried of about forty-four per cent between 1949 and 1959. During the same period the Lackawana had a decrease of over forty-five per cent, and the Erie fifty-five per cent. The New York Central experienced decreases of more than forty-seven per cent in commuter passenger traffic over the ten-year span 1949-1959.49 Similar trends were observed in Philadelphia and Boston.

47 The Honorable Warren G. Magnuson is Chairman of the Senate Committee on Interstate and Foreign Commerce for whom the Preliminary Draft of National Transportation Policy was accomplished.

48 Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, op. cit., p. 555.

49 Ibid.
In Chicago, the Chicago North Shore, an electric line, is presently operating under an Interstate Commerce Commission order requiring a trial one-year operation before further consideration of a complete abandonment request.50

A more thorough study of commutation problems in Chicago points up the fact that competition from the passenger car is a significant factor in the decline of rail commuter traffic. While the Rock Island and the Illinois Central experienced declines in commuter passenger traffic similar to those in New York, Boston, and Philadelphia, the Burlington had increases in this commuter traffic of fifty-two per cent between 1949 and 1959.51 The North Western had a decrease in passengers of almost three per cent between 1947 and 1954, but an increase of over twenty-six per cent between 1954 and 1959.52 Similarly, the Milwaukee had a decrease in passengers between 1949 and 1954 of almost three per cent, but an increase of over thirteen per cent between 1954 and 1959.53 This intracity paradox may be reconciled by consideration of the nonrail factors. The Illinois Central and the North Western are the two largest carriers of commuters in the Chicago area. As stated above, the Illinois Central experienced significant declines in commuter traffic, while the North Western had an increase in this same traffic between

50 Ibid.
51 Ibid.
52 Ibid.
53 Ibid.
1954 and 1959. According to the results of a study of the two lines, the major difference is to be found in the nonrail factors surrounding the case.

There is a markedly greater development in multi-lane and expressway facilities on the south side of Chicago than in the western and northwestern area. The Calumet Expressway was completed during the period (1949-1959) whereas neither the Congress Street nor the Northwest Expressways are yet completed. There appear to be higher average family incomes in much of the North Western's area as compared with the south side of Chicago. This difference is reflected in the increasing number of persons in the Illinois Central's territory who are said to work in the Calumet industrial area and in the larger employment centers to the west and southwest of the central business district. These people cannot conveniently reach their destinations by rail or transit, and since they do not have to enter the central business district they don't suffer from the worst street congestion. Therefore they drive to work, and their patronage has been lost to the Central.54

While the Chicago case does not present conclusive evidence that the private motor carrier has diverted business from the commuter trains, the implications point to such a conclusion.

There is no valid method of evaluating the competitive impact of motor transport on rail transport. It is possible, however, to review the facts concerning the competition and to draw conclusions from the performance of the two modes of transport. A review of Table 2 reveals that rail freight traffic has declined both absolutely and percentagewise since 1943. On the other hand, motor freight haulage has gained significant volume, and in 1959 constituted about twenty-two per cent of the total intercity freight traffic moved by

54 Ibid., p. 556.
all modes of transport. This figure is more significant when one realizes that in 1947 the motor carriers accounted for only ten per cent of the total freight traffic. The record of the motor freight carriers compared with that of the rail carriers may be explained, at least in part, by the following three factors: (1) the convenience, economy, and flexibility of the motor carriers; (2) the speed of delivery of certain perishable commodities; and (3) the fixed-variable cost relationships of the two industries. Motor carriers have been able, through vehicle adaptations, to attract freight traffic that formerly moved exclusively by rail. Insofar as the motor carrier has been successful in diverting freight traffic from the railroads, it has reduced the revenue of the rail carriers, and has thus contributed to the desire or necessity to abandon rail property.

By 1959 the rail portion of the total intercity passenger traffic had declined to slightly over three per cent. In 1948 the rails carried over eleven per cent of the intercity passengers. The increased utilization of the private automobile has been a phenomenon of the last half century, and certainly has been the major contributing factor in the decline of rail passenger service. The urban and commuter passenger movements by rail have also suffered losses. Most commuter lines are experiencing deficits in their operations, and these losses, coupled with the losses in rail freight traffic

55 Examples include automobile carriers, grain carriers, and tank trucks.
described earlier in this chapter have contributed to the increase in rail abandonments.

In Chapter V an analysis of the Ohio abandonments over the period 1948-1960 will point out the significance of competition from motor carriers as a contributory cause for railroad abandonments.

**Competition from Pipelines**

Competition for the railroads from pipelines is another factor contributing to the decline in rail traffic and the increase in rail abandonments. Once considered as insignificant by the then existing modes of transport, traffic by pipeline has grown to a point where it must be counted as a strongly competitive force in the transport of products adaptable to movement by the pipeline method.

The first pipeline was laid in western Pennsylvania in 1865.\(^{56}\) This two-inch four mile long line, designed to transport crude oil, was merely the beginning of an era wherein the pipeline would become a significant carrier of intercity traffic.

Since these early days of pipeline operations, the industry has grown to the point where in 1959 it carried over seventeen per cent of the total volume of intercity freight traffic.\(^{57}\) This figure is all the more meaningful when one considers that pipeline traffic is limited to petroleum and petroleum products and a few commodities that can be placed in solution and carried in liquefied form through the

\(^{56}\) Locklin, *op. cit.*, p. 599.

lines. No other form of transport is so limited in its adaptability. It will be shown later in this chapter, however, that there is a strong possibility of greater diversification of cargoes that may be transported through pipelines.

The main advantage of the transport of fuels through pipelines lies in the relatively low cost of carriage by this method. According to a study made in 1959,58

Comparison of rail and pipeline line-haul costs indicate a marked cost advantage in favor of pipeline transportation. Railway line-haul long-run marginal costs are at least 4.1 and 3.9 mills per revenue ton mile with loads per car of 60,000 pounds and 70,000 pounds respectively and no empty backhauls. This is about seven or eight times the most efficient pipeline line-haul costs of 0.513 mills per revenue ton mile.59

It will be indicated later in this chapter that water carrier costs for transporting petroleum and petroleum products approximate those of the pipelines, and hence, these two carriers enjoy a substantial cost advantage over the rails.60

Lower costs for pipeline operations are also evident in the growing utilization of this mode of transport for moving products other than those of petroleum.

An eight-inch pipeline one hundred and eight miles long from Cadiz to Cleveland, Ohio, built in 1957, to transport slurry (pulverized coal suspended in water)

58 John R. Meyer, et al., op. cit., p. 149.

59 Ibid.

60 The interested reader will find an exhaustive discussion of pipeline costs in Leslie Cookenbooo, Jr., Crude Oil Pipelines and Competition in the Oil Industry (Cambridge: Harvard University Press, 1955).
was put in operation in the middle of 1953. Transportation costs were estimated at one dollar a ton less than railway freight rates.\(^{61}\)

In addition to the cost disadvantages experienced by the rails as compared with the pipelines, consumption habits have caused further declines in certain rail traffic. Because of a general shift from coal to oil as a heating and power source, the railroads have experienced declines in the once-lucrative coal traffic. The fact that they cannot effectively compete with the pipelines and water carriers for the petroleum traffic causes a decline in overall rail traffic.\(^{62}\)

The lower costs enjoyed by the pipeline companies are reflected in lower rates charged. Pipeline rates for crude petroleum were a little less than half the corresponding rail rates in 1932, and in 1938 rates averaged about thirty-six per cent of the corresponding rail rates.\(^{63}\) Later studies indicate that there has been little change in the rate disparity between rail and pipeline carriers of petroleum and petroleum products. Latest available estimates indicate that rates for carrying petroleum by rail are 8.3 mills per ton

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62 Interstate Commerce Commission, Bureau of Transport Economics, *Statement No. 562*, op. cit., p. 38. The following is applicable: "The general picture is one of decline of railroad participation in the transportation of petroleum products. ...and of the minor part railroads play in the transportation of crude petroleum. Where the competition is that of pipelines, loss of the traffic is inevitable and irretrievable."

mile while comparable rates by pipeline were 3.2 mills per ton mile. 64

As late as 1960 James C. Nelson stated that

In comparison with the railroads, tankers and pipelines transport oil at far less cost... 65

It appears, however, that certain cost increases in pipeline operations may remove some of the disparity in rates, and thus bring the rail and pipeline costs more into competitive balance.

Increased costs of acquiring rights-of-way are particularly pressing in the construction of products lines in metropolitan areas or highly developed suburbs, and construction of the new interstate highway system is expected to pose difficult problems in relocation of affected lines. 66

Perhaps no other mode of transport holds such promise for the future as does the pipeline. The growing importance of petroleum and its products, in addition to successful experimentation in the movement of products in solution through pipelines makes these facilities a formidable carrier of the future. In addition to the transport of coal in slurry mentioned earlier in this chapter, several other products are being "piped-in" to manufacturers and processors. A six-inch pipeline, seven miles long, has been constructed to transport molten sulphur at 320° Fahrenheit from an off-shore sulphur dome in the Gulf of Mexico to Grand Isle, Louisiana. 67 From Grand Isle to

64 Calculated by dividing ton miles carried into revenue received for such carriage.


67 Ibid., 1959, p. 102.
Port Sulphur, on the Mississippi River below New Orleans, is only a short distance, and Port Sulphur is one of the major sulphur processing centers in the country.

A six-inch pipeline, seventy-two miles long was built in 1957 to transport gilsonite from mines in Bonanza, Utah to a refinery near Grand Junction, Colorado. The pipeline carries 700 tons of gilsonite a day at an out-of-pocket expense of 2.5 cents per ton-mile. 68

Other products such as wood pulp in solution, also hold promise of adapting to pipeline transport. The 1956 Annual Report of the Interstate Commerce Commission sums up the position of the pipelines as a competitor for freight traffic as follows:

A 90-per cent increase, 1946 to 1955, in the consumption of the gasoline, distillate-oil, and kerosene group of petroleum products involved a marked expansion of both crude oil and products pipelines. In the current year, however, the need for added facilities was greater in the case of products lines. Growing consumption and the desire to lower costs were met by the construction of lines to additional points, the laying of loop or parallel lines, the replacement of old lines with lines of greater capacity, the addition of pumping stations, and in other ways. The spread of products lines includes relatively short extensions to additional marketing areas. In 1946, 27 States and the District of Columbia had such lines regulated by us, whereas in 1955 the number was 37. In addition, a considerable number of lines are not regulated by us. These lines are principally in California, but are also found in Atlantic seaboard and other States.

Rail and motor carriers have had to adjust their service to more limited hauls as pipelines have spread; water carriers have also had to reckon with pipeline competition. The small number of commodities carried, one-way hauls, and the continuing shifting of gathering and some crude-oil trunklines to the changing needs of individual producers or groups of producers, make

68 Ibid., 1958, p. 82.
pipelines a most specialized form of transportation. The strategic importance of petroleum in war emergencies continued to receive attention.69

This statement indicates the growth in traffic through pipelines. Table 4 shows how the pipelines have fared compared with the rail transport of petroleum and petroleum products. In order to make the data more meaningful, Table 4 also includes an index based on the amounts of petroleum and petroleum products carried by the two competing modes of transport. Using 1948 as the base year, (1948 = 100.0), rail haulage of petroleum and petroleum products declined to 51.7 in 1959, while carriage by pipeline stood at 171.6 in 1959. It is not only the present competitive position of pipelines vis-à-vis rail that creates problems in the railroad industry, but the prospects for increases in pipeline utilization loom as a significant factor. If, for instance, the transport of coal in slurry or any of the other commodity movements should become more popular, the railroads could be denied some of the traffic that has been so basic in their past operations.

It should be noted here, however, that pipelines are not now regulated in the same manner as are the railroads, and should pipeline regulatory policy change in the future, the competitive role of the pipelines may well be altered. For instance, the majority of the pipeline mileage is owned or controlled by twenty major integrated oil companies.70 This ownership or control sets up a situation which

69 Ibid., 1956, pp. 37 and 38.
70 Locklin, op. cit., p. 599.
TABLE 4

PETROLEUM AND PETROLEUM PRODUCTS TRANSPORT BY RAIL AND PIPELINE WITH AN INDEX OF TRAFFIC BY BOTH MODES OF TRANSPORT, UNITED STATES, ANNUALLY 1948-1959

(Rail data in thousands of tons)
(Pipeline data in thousands of barrels)

<table>
<thead>
<tr>
<th>Year</th>
<th>Rail</th>
<th>Pipeline</th>
<th>Rail</th>
<th>Pipeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>58,805</td>
<td>2,719</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>1949</td>
<td>42,663</td>
<td>2,461</td>
<td>73.7</td>
<td>101.7</td>
</tr>
<tr>
<td>1950</td>
<td>43,358</td>
<td>2,766</td>
<td>75.3</td>
<td>118.3</td>
</tr>
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<td>3,216</td>
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<td>141.1</td>
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<td>3,838</td>
<td>69.2</td>
<td>133.8</td>
</tr>
<tr>
<td>1953</td>
<td>40,717</td>
<td>3,638</td>
<td>65.4</td>
<td>138.6</td>
</tr>
<tr>
<td>1954</td>
<td>38,445</td>
<td>3,703</td>
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<td>149.2</td>
</tr>
<tr>
<td>1955</td>
<td>37,556</td>
<td>4,058</td>
<td>60.7</td>
<td>164.0</td>
</tr>
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<td>1956</td>
<td>35,681</td>
<td>4,459</td>
<td>56.4</td>
<td>164.9</td>
</tr>
<tr>
<td>1957</td>
<td>33,149</td>
<td>4,485</td>
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</tr>
<tr>
<td>1958</td>
<td>30,144</td>
<td>4,318</td>
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<td>171.6</td>
</tr>
<tr>
<td>1959</td>
<td>30,400</td>
<td>4,665</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Index - 1948 = 100.0

Source: Interstate Commerce Commission, Annual Reports, 1949-1960, and index calculated from these data.
the railroads might well consider as discriminatory. The Commodities Clause of the Interstate Commerce Act\textsuperscript{71} prohibits railroads from transporting commodities in interstate commerce which they have produced or in which they have a vested interest.

The commodities clause made it unlawful, after May 1, 1908, for a railroad to transport in interstate commerce any commodity, other than timber or the products manufactured therefrom, which was mined or produced by itself or under its authority, or which it may own in whole or in part, or in which it may have any direct or indirect interest, except such commodities as may be necessary and intended for its own use in the operation of its business as a common carrier.\textsuperscript{72}

This commodity clause does not apply to pipelines, and one can readily see the problems that would evolve if such an application of the Act were made. In addition, there is no regulation of the construction of new lines, or the addition to existing lines; nor are the pipelines required, as are the railroads, to seek permission to abandon lines.\textsuperscript{73} The fact that permission to abandon is not required does not indicate that abandonments do not take place. In 1959, for example, 826 miles of pipeline were abandoned and sold for scrap in Ohio because of oil depletion.\textsuperscript{74}

Were restrictions to be placed on pipelines similar to those imposed on the railroads it is probable that the competitive advantage of pipelines over rails would be reduced. It would be purely

\textsuperscript{71} 34 Stat. 584.

\textsuperscript{72} Sharfman, \textit{op. cit.}, p. 42.

\textsuperscript{73} The Commodities Clause applies specifically to railroads, and other carriers are implicitly exempt from the regulation under the present interpretation of the law.

\textsuperscript{74} Interstate Commerce Commission, \textit{Annual Report}, 1960, p. 118.
conjecture to estimate how greater regulation of the pipelines would affect their competitive position, but it is difficult to see how the competitive advantage would not be lessened.

The foregoing paragraphs show that the pipeline mode of transport of certain commodities is a significant competitive factor for the railroads. Pipelines have made substantial gains in the transport of petroleum and petroleum products, while the railroads have suffered losses in such traffic. In addition, the haulage of commodities other than petroleum hold great promise for the pipeline method of transport. Coal, gilsonite, sulphur, and other products that lend themselves to transport in solution open wide areas of new business to the pipelines. An increase in this type of traffic need not necessarily be accomplished at the expense of the rails, but it is difficult to rationalize that all business in such lines would be new business. The pipelines, then, present another formidable competitive factor for the rails, and insofar as increases in pipeline transport are at the expense of rail transport, rail revenues are decreased, and a basis for abandonment is present.

**Competition from Waterways**

Carriers utilizing the inland waterways (including the Great Lakes) of the United States provide still another form of competition for the railroads. Tables 5 and 6 and Figure 1 indicate that the transport of freight by waterway approximately held its own during the period 1948-1959. During the same period rail freight traffic was declining significantly. At one time (1951) waterway and highway
### TABLE 5

**VOLUME OF INTERCITY FREIGHT TRAFFIC BY MODE OF TRANSPORTATION**

**UNITED STATES, ANNUALLY**

1948-1959

(Millions of Ton-Miles)

<table>
<thead>
<tr>
<th>Year</th>
<th>Rail</th>
<th>Highway</th>
<th>Waterway</th>
<th>Pipeline</th>
<th>Airway</th>
<th>Total</th>
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<tr>
<td>1948</td>
<td>647,267</td>
<td>87,640</td>
<td>150,530</td>
<td>119,597</td>
<td>223</td>
<td>1,005,257</td>
</tr>
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<td>1949</td>
<td>534,694</td>
<td>93,653</td>
<td>139,396</td>
<td>114,916</td>
<td>235</td>
<td>882,894</td>
</tr>
<tr>
<td>1950</td>
<td>596,940</td>
<td>125,995</td>
<td>163,344</td>
<td>129,174</td>
<td>308</td>
<td>1,015,761</td>
</tr>
<tr>
<td>1951</td>
<td>655,353</td>
<td>182,467</td>
<td>182,216</td>
<td>152,115</td>
<td>372</td>
<td>1,172,523</td>
</tr>
<tr>
<td>1952</td>
<td>623,373</td>
<td>184,106</td>
<td>168,367</td>
<td>157,502</td>
<td>415</td>
<td>1,133,763</td>
</tr>
<tr>
<td>1953</td>
<td>614,199</td>
<td>217,163</td>
<td>202,439</td>
<td>202,439</td>
<td>413</td>
<td>1,204,098</td>
</tr>
<tr>
<td>1954</td>
<td>556,557</td>
<td>214,626</td>
<td>173,679</td>
<td>179,203</td>
<td>397</td>
<td>1,124,462</td>
</tr>
<tr>
<td>1955</td>
<td>631,385</td>
<td>226,188</td>
<td>216,508</td>
<td>203,244</td>
<td>481</td>
<td>1,277,806</td>
</tr>
<tr>
<td>1956</td>
<td>655,891</td>
<td>253,751</td>
<td>219,978</td>
<td>229,959</td>
<td>563</td>
<td>1,360,142</td>
</tr>
<tr>
<td>1957</td>
<td>626,222</td>
<td>244,895</td>
<td>231,792</td>
<td>222,728</td>
<td>572</td>
<td>1,326,209</td>
</tr>
<tr>
<td>1958</td>
<td>558,738</td>
<td>246,984</td>
<td>189,016</td>
<td>211,289</td>
<td>579</td>
<td>1,216,166</td>
</tr>
<tr>
<td>1959</td>
<td>596,393</td>
<td>288,519</td>
<td>200,000</td>
<td>226,991</td>
<td>646</td>
<td>1,312,549</td>
</tr>
</tbody>
</table>

TABLE 6

PERCENTAGE DISTRIBUTION OF TOTAL INTERCITY FREIGHT
TRAFFIC BY MODE OF TRANSPORTATION
UNITED STATES, ANNUALLY
1948-1959
(To nearest hundredth of one per cent)

<table>
<thead>
<tr>
<th>Year</th>
<th>Rail</th>
<th>Highway</th>
<th>Waterway</th>
<th>Pipeline</th>
<th>Airway</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>64.39</td>
<td>8.72</td>
<td>14.97</td>
<td>11.90</td>
<td>0.02</td>
<td>100.00</td>
</tr>
<tr>
<td>1949</td>
<td>60.56</td>
<td>10.61</td>
<td>15.79</td>
<td>13.02</td>
<td>0.02</td>
<td>100.00</td>
</tr>
<tr>
<td>1950</td>
<td>58.77</td>
<td>12.40</td>
<td>16.08</td>
<td>12.72</td>
<td>0.03</td>
<td>100.00</td>
</tr>
<tr>
<td>1951</td>
<td>55.89</td>
<td>15.56</td>
<td>15.54</td>
<td>12.97</td>
<td>0.03</td>
<td>100.00</td>
</tr>
<tr>
<td>1952</td>
<td>54.98</td>
<td>16.24</td>
<td>14.85</td>
<td>13.89</td>
<td>0.04</td>
<td>100.00</td>
</tr>
<tr>
<td>1953</td>
<td>51.01</td>
<td>18.04</td>
<td>16.81</td>
<td>14.11</td>
<td>0.03</td>
<td>100.00</td>
</tr>
<tr>
<td>1954</td>
<td>49.50</td>
<td>19.09</td>
<td>15.45</td>
<td>15.94</td>
<td>0.03</td>
<td>100.00</td>
</tr>
<tr>
<td>1955</td>
<td>49.41</td>
<td>17.70</td>
<td>16.94</td>
<td>15.91</td>
<td>0.04</td>
<td>100.00</td>
</tr>
<tr>
<td>1956</td>
<td>48.22</td>
<td>18.66</td>
<td>16.17</td>
<td>16.91</td>
<td>0.04</td>
<td>100.00</td>
</tr>
<tr>
<td>1957</td>
<td>47.22</td>
<td>18.47</td>
<td>17.48</td>
<td>16.79</td>
<td>0.04</td>
<td>100.00</td>
</tr>
<tr>
<td>1958</td>
<td>46.31</td>
<td>20.47</td>
<td>15.66</td>
<td>17.51</td>
<td>0.05</td>
<td>100.00</td>
</tr>
<tr>
<td>1959</td>
<td>45.44</td>
<td>21.98</td>
<td>15.24</td>
<td>17.29</td>
<td>0.05</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Table 6.
freight traffic were approximately equal (15.5 per cent of the total
intercity freight traffic) while rail traffic at this same time
accounted for 55.9 per cent of the total freight moved in intercity
traffic. During the next eight years (1952-1959), however, waterway
traffic remained constant while rail traffic dropped to 45.4 per
cent of the total. During the same eight year period highway freight
traffic came to command 22 per cent of the grand total of intercity
freight movements. There are several reasons for the relative
stability of the waterway traffic and the decline of rail traffic.
Perhaps the most important is that of costs.

Water transportation, like highway transportation, but unlike railway transportation, is a mode of trans­
port in which the "way" is provided and maintained at public expense. ...The building and maintaining of
waterways by governments also means that part of the water transportation is borne by the taxpayer. ...75

There is, however, one major fallacy in the thinking expressed above.
True, there is a similarity between transport by truck and by ship or
water vessel in that costs are mainly associated with the operating
unit. The fallacy lies in comparing truck costs with vessel costs.
Unlike the trucking industry, water transportation requires a large
input of capital per unit of output. This fact creates costs that
need not be covered currently by revenue. Hence there is a marked
difference between long-run and short-run costs of water transporta­
tion.76

75 Locklin, op. cit., pp. 717 and 718.
A recent study of transportation costs by integrated tow indicates that the ton-mile cost of transporting crude oil by water was 2.13 mills. 77 As stated earlier in this chapter, the ton-mile cost of transporting crude oil through pipelines is 3.2 mills. 78 Hence, integrated tow costs are lower than those of the pipelines, and significantly lower than those by rail.

Although lower costs provide advantages for the water carriers, there is a distinct speed disadvantage associated with this mode of transport.

For example, a typical movement from New Orleans to Chicago takes about 500 hours on a barge as compared with a 60-hour rail movement. 79 If speed of transport is not a factor, the advantages of costs give water carriers an inherent advantage over similar movements by rail.

One other factor should be mentioned in the comparison of transport by rail and water. This factor is the dependability of the service. In many of the water movements, there is an element of seasonality involved. This factor is extremely important on the Great Lakes where the normal operating season is limited to approximately two hundred and thirty days during the year because of ice and other conditions that make navigation impossible. 80

77 Ibid., p. 121.
78 See n. 64, supra.
80 Ibid., p. 113.
Nelson, evaluating the importance of waterborne freight traffic, indicated that:

For long-distance shipment of petroleum water carriers were found to have a cost advantage over motor and rail carriers. Low handling costs of mechanical loading and unloading also influence large-lot movements of coal and sulphur. Some commodities such as sugar, molasses, lumber, iron and steel, pig lead and new automobiles also move in large quantities by water.\(^{81}\)

The author further indicates that:

The most significant water-carrier development has been the great postwar increase in barge traffic. It expanded by approximately 70 billion ton-miles between 1947 and 1956, or more than tripled, while the barge share of total freight traffic more than doubled in that interval. The postwar gain of the barges was about one-ninth of the postwar average annual level of rail ton-miles, and represents chiefly diversion from the railroads. Barge lines haul primarily bulk and heavy-loading commodities, which in volume shipment can also move efficiently by rail. Such traffic, which does not demand high-quality service, seeks the lowest rates. Port-to-port rates, generally well below rail rates, no doubt have influenced many shippers to switch to barge transport.\(^{82}\)

Recent data do not appear to bear out the findings reported in the two statements cited above. Tables 7 and 8 show that water transport of petroleum and petroleum products is significantly greater than transport of similar products by rail. However, instead of water transport growing at the expense of rail traffic, both have been losing ground to truck and pipeline transport of these products. In addition Table 9, covering the transport of several commodities that

\(^{81}\) Nelson, *op. cit.*, p. 182 n.

### TABLE 7

**DOMESTIC TRAFFIC IN PETROLEUM AND PETROLEUM PRODUCTS BY MODE OF TRANSPORT, UNITED STATES, SELECTED YEARS**

(Thousands of tons)

<table>
<thead>
<tr>
<th>Mode of Transport</th>
<th>1948</th>
<th>1950</th>
<th>1953</th>
<th>1954</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Crude</td>
<td>Petroleum</td>
<td>Total</td>
<td>Crude</td>
</tr>
<tr>
<td>Pipeline</td>
<td>221,198</td>
<td>41,254</td>
<td>262,452</td>
<td>231,198</td>
</tr>
<tr>
<td>Water</td>
<td>75,126</td>
<td>162,390</td>
<td>237,516</td>
<td>67,551</td>
</tr>
<tr>
<td>Highway</td>
<td>12,450</td>
<td>108,448</td>
<td>120,898</td>
<td>15,012</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>322,991</strong></td>
<td><strong>363,282</strong></td>
<td><strong>686,273</strong></td>
<td><strong>318,280</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mode of Transport</th>
<th>1948</th>
<th>1950</th>
<th>1953</th>
<th>1954</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Crude Petroleum</td>
<td>Petroleum Products</td>
<td>Total</td>
<td>Crude Petroleum</td>
</tr>
<tr>
<td>Pipeline</td>
<td>68.5</td>
<td>11.4</td>
<td>38.2</td>
<td>72.7</td>
</tr>
<tr>
<td>Water</td>
<td>23.2</td>
<td>44.7</td>
<td>34.6</td>
<td>21.2</td>
</tr>
<tr>
<td>Highway</td>
<td>3.9</td>
<td>29.8</td>
<td>17.6</td>
<td>4.7</td>
</tr>
<tr>
<td>Rail</td>
<td>4.4</td>
<td>14.1</td>
<td>9.6</td>
<td>1.4</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: Table 7.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bituminous Coal</td>
<td>113,782</td>
<td>126,688</td>
<td>+11.3</td>
<td>279,723</td>
<td>307,492</td>
<td>+9.9</td>
</tr>
<tr>
<td>Wheat</td>
<td>4,178</td>
<td>4,502</td>
<td>+7.8</td>
<td>33,750</td>
<td>38,081</td>
<td>+12.8</td>
</tr>
<tr>
<td>Automobiles and parts</td>
<td>1,059</td>
<td>763</td>
<td>-28.0</td>
<td>12,063</td>
<td>9,658</td>
<td>-19.1</td>
</tr>
<tr>
<td>Iron Ore</td>
<td>62,665</td>
<td>55,114</td>
<td>-12.0</td>
<td>88,272</td>
<td>77,132</td>
<td>-12.6</td>
</tr>
<tr>
<td>Pig Iron</td>
<td>1,509</td>
<td>761</td>
<td>-28.3</td>
<td>4,085</td>
<td>3,254</td>
<td>-21.3</td>
</tr>
<tr>
<td>Cement</td>
<td>3,817</td>
<td>5,141</td>
<td>+34.7</td>
<td>31,604</td>
<td>33,487</td>
<td>+6.0</td>
</tr>
<tr>
<td>Anthracite Coal</td>
<td>1,606</td>
<td>847</td>
<td>-47.3</td>
<td>21,983</td>
<td>13,183</td>
<td>-40.0</td>
</tr>
<tr>
<td>Lumber, Shingles and Lath</td>
<td>3,879</td>
<td>3,930</td>
<td>+1.3</td>
<td>22,486</td>
<td>16,481</td>
<td>-26.7</td>
</tr>
<tr>
<td>Sugar</td>
<td>2,810</td>
<td>2,272</td>
<td>-19.3</td>
<td>5,200</td>
<td>5,162</td>
<td>-0.7</td>
</tr>
</tbody>
</table>

move primarily in bulk shipments indicates that there are very few instances where waterborne traffic has grown at the expense of rail traffic. Bituminous coal, cement, and lumber, lath and shingles are the commodities that show a relative gain by water carriage. On the other hand, water carriers experienced a loss in traffic relative to the rails in wheat, automobiles and parts, pig iron, anthracite coal, and sugar, while the relative position of transport of iron ore remained approximately constant.

From the evidence it is difficult to conclude that the waterways present a formidable competitive force for the railroads. The relatively low costs enjoyed by the waterway carriers are, to some extent, cancelled or negated by the time of delivery factor, and the seasonality of the transport. While the existence of the water mode of transport undoubtedly denies the rails some traffic that they might otherwise obtain, both carriers are losing competitive ground to other means of transport.

Air Carrier Competition

While competition for the railroads for freight traffic in the form of airway transport is not presently great, the air freight industry holds prospects of becoming a significant competitor of the future. In 1959 the air carriers handled only .049 per cent of the total intercity freight traffic, but the type of traffic carried is more significant than the volume of traffic. The materials that

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lend themselves to economic haulage by air have a relatively high value in proportion to their weight, and diversion of this traffic from rails deprives the land carrier of revenues. Table 10 indicates the commodities that are carried by air in substantial amounts.

Nelson has the following to say concerning the role of air freight in the total transportation picture:

Air freight accounts for an almost infinitesimal share of total intercity ton-miles. Its volume was not significant until postwar years and still is only a small fraction of one per cent of total traffic. Hence, diversion of freight to airlines has not greatly influenced the rail situation, except as air transport of mail has adversely affected the profitability and maintenance of passenger services. Nevertheless, air freight cannot be disregarded as a competitive factor since it has grown rapidly and, like truck freight, involves highly-rated commodities. Large-scale research and development on military aviation and atomic power may some day increase the competitiveness of air freight by lowering unit costs.84

Although it is too early to make dogmatic predictions as to the future of air freight, the utilization of the jet airliner for cargo haulage holds promise of allowing a reduction in costs and rates. When the CL-44D jet cargo plane goes into operation sometime in the summer of 1961, it is estimated that direct operating costs of transport in this carrier will be four cents per ton-mile.85 The present rates for commodities moving by air are in the 20-26 cent range.86 By the reduction of costs realized by the utilization of the all-jet

84 Nelson, op. cit., p. 17.
86 Ibid.
**TABLE 10**

**COMMODITIES MOST FREQUENTLY SHIPPED BY AIR FREIGHT, RANKED ACCORDING TO VOLUME FROM LOWEST TO HIGHEST, UNITED STATES, 1955**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Commodity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Automobile parts and accessories</td>
</tr>
<tr>
<td>2.</td>
<td>Machinery</td>
</tr>
<tr>
<td>3.</td>
<td>Electrical equipment</td>
</tr>
<tr>
<td>4.</td>
<td>Cut flowers</td>
</tr>
<tr>
<td>5.</td>
<td>Wearing apparel</td>
</tr>
<tr>
<td>6.</td>
<td>Machine parts</td>
</tr>
<tr>
<td>7.</td>
<td>Printed matter</td>
</tr>
<tr>
<td>8.</td>
<td>Films</td>
</tr>
<tr>
<td>9.</td>
<td>Aircraft parts and accessories</td>
</tr>
<tr>
<td>10.</td>
<td>Drugs and biologicals</td>
</tr>
</tbody>
</table>

Source: Howard T. Lewis, The Role of Air Freight in Physical Distribution, (Boston: Division of Research, Graduate School of Business, Harvard University, 1955), p. 27.
carrier, it is hoped that rates can be lowered so that the average is in the 12-13 cent range.\textsuperscript{87} It is estimated that a reduction of average rates to 12.5 cents would make an additional ten billion ton-miles of freight traffic available to the airlines. At ten cents per ton-mile some 25 billion ton-miles would be moved by air.\textsuperscript{88} A diversion of traffic from other modes of transport certainly would follow such a growth in air cargo traffic.

At the present time air freight movements are a small segment of total intercity freight traffic. However, the amount of traffic controlled by the airlines is constantly increasing, while rail freight movements have moved in the opposite direction. Tables 5 and 6 indicate that air freight traffic is increasing while rail freight haulage is in a decline.

Passenger traffic by air is an entirely different matter than the freight traffic. It should be recalled that passenger automobiles account for almost ninety per cent of the total intercity passenger miles, and of the remaining ten per cent air passenger miles account for over four per cent. (See Tables 11 and 12 and Figure 2.) From 1948 through 1955 passenger transport by air lagged behind both rail and bus. In 1956 air passenger traffic moved ahead of bus traffic, and in 1957 air also surpassed rail. Since 1957 intercity passenger traffic by air has led all other commercial passenger carriers. Air transport of passengers ranks second only to the passenger carriage by private passenger automobiles.

\textsuperscript{87} Ibid.
\textsuperscript{88} Ibid.
<table>
<thead>
<tr>
<th>Year</th>
<th>Airways</th>
<th>Railways</th>
<th>Bus</th>
<th>Passenger Car</th>
<th>Waterways</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>5,941</td>
<td>41,894</td>
<td>23,529</td>
<td>287,423</td>
<td>1,670</td>
<td>360,457</td>
</tr>
<tr>
<td>1949</td>
<td>6,770</td>
<td>35,975</td>
<td>22,411</td>
<td>316,774</td>
<td>1,402</td>
<td>383,332</td>
</tr>
<tr>
<td>1950</td>
<td>8,030</td>
<td>32,481</td>
<td>21,254</td>
<td>337,339</td>
<td>1,190</td>
<td>400,294</td>
</tr>
<tr>
<td>1951</td>
<td>10,600</td>
<td>35,306</td>
<td>22,299</td>
<td>379,324</td>
<td>1,333</td>
<td>448,862</td>
</tr>
<tr>
<td>1952</td>
<td>14,222</td>
<td>34,710</td>
<td>30,063</td>
<td>475,946</td>
<td>1,396</td>
<td>556,337</td>
</tr>
<tr>
<td>1953</td>
<td>17,430</td>
<td>32,261</td>
<td>28,397</td>
<td>529,194</td>
<td>1,487</td>
<td>608,769</td>
</tr>
<tr>
<td>1954</td>
<td>19,568</td>
<td>29,467</td>
<td>25,614</td>
<td>548,763</td>
<td>1,701</td>
<td>625,113</td>
</tr>
<tr>
<td>1955</td>
<td>22,741</td>
<td>28,695</td>
<td>25,519</td>
<td>585,817</td>
<td>1,738</td>
<td>664,510</td>
</tr>
<tr>
<td>1956</td>
<td>25,523</td>
<td>28,610</td>
<td>25,189</td>
<td>617,713</td>
<td>1,860</td>
<td>698,895</td>
</tr>
<tr>
<td>1957</td>
<td>28,128</td>
<td>26,251</td>
<td>21,455</td>
<td>644,837</td>
<td>1,930</td>
<td>722,601</td>
</tr>
<tr>
<td>1958</td>
<td>28,522</td>
<td>23,604</td>
<td>20,756</td>
<td>629,496</td>
<td>2,073</td>
<td>704,452</td>
</tr>
<tr>
<td>1959</td>
<td>32,366</td>
<td>22,373</td>
<td>20,364</td>
<td>659,435</td>
<td>2,026</td>
<td>736,564</td>
</tr>
</tbody>
</table>

TABLE 12

PERCENTAGE DISTRIBUTION OF TOTAL INTERCITY PASSENGER TRAFFIC BY MODE OF TRANSPORTATION
UNITED STATES, ANNUALLY
1948-1959

<table>
<thead>
<tr>
<th>Year</th>
<th>Airways</th>
<th>Railways</th>
<th>Bus</th>
<th>Passenger Car</th>
<th>Waterways</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>1.65</td>
<td>11.62</td>
<td>6.53</td>
<td>79.74</td>
<td>0.46</td>
<td>100.00</td>
</tr>
<tr>
<td>1949</td>
<td>1.77</td>
<td>9.38</td>
<td>5.85</td>
<td>82.63</td>
<td>0.37</td>
<td>100.00</td>
</tr>
<tr>
<td>1950</td>
<td>2.01</td>
<td>8.11</td>
<td>5.31</td>
<td>84.27</td>
<td>0.30</td>
<td>100.00</td>
</tr>
<tr>
<td>1951</td>
<td>2.36</td>
<td>7.87</td>
<td>4.97</td>
<td>84.51</td>
<td>0.30</td>
<td>100.00</td>
</tr>
<tr>
<td>1952</td>
<td>2.56</td>
<td>6.24</td>
<td>5.40</td>
<td>85.55</td>
<td>0.25</td>
<td>100.00</td>
</tr>
<tr>
<td>1953</td>
<td>2.86</td>
<td>5.30</td>
<td>4.66</td>
<td>86.93</td>
<td>0.24</td>
<td>100.00</td>
</tr>
<tr>
<td>1954</td>
<td>3.13</td>
<td>4.71</td>
<td>4.10</td>
<td>87.79</td>
<td>0.27</td>
<td>100.00</td>
</tr>
<tr>
<td>1955</td>
<td>3.42</td>
<td>4.32</td>
<td>3.84</td>
<td>88.16</td>
<td>0.26</td>
<td>100.00</td>
</tr>
<tr>
<td>1956</td>
<td>3.65</td>
<td>4.09</td>
<td>3.60</td>
<td>88.38</td>
<td>0.27</td>
<td>100.00</td>
</tr>
<tr>
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<td>3.89</td>
<td>3.63</td>
<td>2.97</td>
<td>89.24</td>
<td>0.27</td>
<td>100.00</td>
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<tr>
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<td>3.35</td>
<td>2.95</td>
<td>89.36</td>
<td>0.29</td>
<td>100.00</td>
</tr>
<tr>
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<td>4.39</td>
<td>3.04</td>
<td>2.76</td>
<td>89.53</td>
<td>0.28</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Table 11.
There are several factors that have led to the rapid growth of air passenger service. Low-cost coach fares on larger airlines, speed of travel, and effective routing and scheduling are all factors that have led to the increase of utilization of the airways as passenger carriers. Nelson indicates that:

As in the case of the passenger car, the unique service of the airlines has undoubtedly created a large amount of new traffic. However, the reality of competition between air and rail lines is indicated by the close relation of air fares to rail fares over a long period. It is also evidenced by an airline gain of 17 billion passenger-miles since 1949, while rail travel fell almost 7.5 billion passenger-miles. Hence, much air travel represents actual diversion from the railroads. Also the airlines have cut rail travel in transcontinental and long-distance markets, in which the rails had retained a considerable advantage over automobiles and buses. In addition they have diverted great volumes of luxury travel and thus have contributed materially to rail difficulties in maintaining the first-class service. 89

Air transport poses a threat to the railroads not only in the passenger field, but as pointed out earlier in this section, also in the freight haulage field. While air freight is presently not great in volume, the commodities hauled, and the prospects for further improvements in air carriage make this mode of transport a formidable competitor of the near future.

Competition-A Summary

The preceding sections of this chapter have indicated that the railroads have suffered losses of traffic because of competition from alternative modes of transport. In the area of freight movements,

89 Nelson, op. cit., p. 23.
great inroads into former railroad haulage have been made by the highway carriers, the pipelines, and the water carriers. In the area of passenger movements, the private automobile, and more recently the air passenger carrier have all but eliminated the railroad as a significant factor in the movement of passengers. Loss of traffic means loss of revenue, and loss of revenue leads to practices designed to increase efficiency. One of the means of increasing efficiency is the abandonment of unprofitable lines or portions of lines. Abandonment, then, at least in part, may be attributed to the competitive transport conditions that face the railroads.

The Subsidy Question

The railroads do not object to competition from other modes of transport per se, but what they do find fault with is competition from carriers that are subsidized by the public. The charges by the railroads that the competitive carriers are recipients of direct and indirect subsidies merits treatment at this point. While extensive evaluation of the charges and countercharges concerning the existence or absence of subsidies is not contemplated, the writer wishes to note the situation as it exists.90

The ability of highway freighters successfully to compete with the railroads for the more attractive traffic and divert a large part of it from the rails

90 For a discussion of government assistance to transportation see Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, Chapter 2.
to the highways is attributable to a number of underlying factors. By no means the least of these factors is the fact that highway freighters have at their disposal a public roadbed provided in substantial measure at the expense of private passenger cars, small and medium sized trucks, and the general taxpayers. Railroads, on the other hand, must provide and maintain their own roadway facilities at an expense that represents one of the principal items of their cost of operation.91

While there is a modicum of truth in the statement issued by the Association of American Railroads, it should not be allowed to go unchallenged. It is doubtful that any tax-supported venture can ever be accomplished to the satisfaction of all persons concerned. Whenever it is decided by the public to embark on a policy of collective consumption there are those that receive more benefits than they pay for, and conversely, many persons receive less in the way of benefits than they are assessed. However, the concept of collective consumption is not based on an equal benefit for an assessment. The public benefit is of more importance than the individual benefit.

The encouraging fact in highway financing is that the governments are attempting to arrive at more equitable methods of obtaining and distributing revenues. On the state level, twenty-seven states have approved constitutional amendments which prohibit the diversion of highway user taxes collected therein for non-highway purposes.92

91 David I. Mackie, The Highway Freighters Problem, Report No. 4 of a Series of Statements on Transportation Conditions and National Transportation Policy, Submitted on Behalf of the Railroad Industry at Hearings Before the Subcommittee on Domestic Land and Water Transportation of the Senate Interstate and Foreign Commerce Committee, Held Pursuant to Senate Resolution 50, Released by the Association of American Railroads (Washington: 1950), p. 52.

92 Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, op. cit., p. 186.
On the Federal level, the government levies taxes on new automobiles, trucks, buses, and trailers, tires and tubes, automotive parts, accessories, and automotive fuels. As far back as 1934 the idea was expressed in congressional debates on the highway program that the amounts then authorized would be returned to the Treasury from taxes levied directly upon the road user and indirectly through sales taxes.

The Federal Aid Highway Act of 1956 called for increased Federal expenditures on highways. Among other things the Act created a Federal Highway Trust Fund from which all Federal Aid expenditures were to be made. Appropriations to this trust fund accrue from certain highway user taxes, and thus, Federal Aid highway funds were effectively placed on a pay-as-you-go basis. In addition, it was felt that an across-the-board tax structure provided an unfair advantage in favor of the heavier vehicles, and the Highway Act of 1956 imposed a special tax of $1.50 per 1,000 pounds on all vehicles having a gross weight in excess of 26,000 pounds. Moreover, a recent proposal by President Kennedy would further increase the share of highway costs paid by the trucking industry. No action has been taken on this proposal to date, but indications are that the move will be strongly opposed by trucking interests.

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93 Ibid. 94 Ibid., p. 187.
Since the railroads are required to maintain their own roadway, and since highway freighters pay only a portion of the costs of construction and maintenance of the roadways, there is room for some criticism concerning the subsidies to highway carriers. However, the writer feels that the present situation is a result of the inability to arrive immediately at an equitable method of taxation in support of highways. Studies currently in progress may materially alter this tax situation and prescribe equitable tax measures that will assess the highway carriers in relation to benefits and use of the public ways.98

The railway industry also points out that the users of the waterways obtain an unfair competitive advantage because of the granting of subsidies. Waterway transport has made gains in the total transport traffic, some of which may be considered as occurring at the expense of the railroads. The Association of American Railroads indicated that:

The railroads would have no rightful basis for complaint if these inroads were the result of inherent advantages of inland waterway transport, but they do have a rightful basis when, as here, they are due to artificial advantages resulting from subsidies to inland waterway transportation.99

98 Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, op. cit., pp. 186-193.

Historically, American waterways have been considered "free highways."\textsuperscript{100} It is not this basic freedom to which the railroads object, but rather that the maintenance of the navigable waterways is accomplished at public expense, and the waterway users are thus able to operate at costs lower than would be possible if maintenance were on a user-charge basis. The corps of Engineers, the U.S. Coast Guard, and the Coast and Geodetic Survey spent, in 1960, some $587 million in maintaining the United States waterways in a safe navigable condition.\textsuperscript{101} Operations consisted of dredging and clearing channels, charting routes, establishing and maintaining aids to navigation, and marine safety enforcement and inspection. All of these services were financed by the taxpayers. No such service is available to the railroads.

The inequities that exist between waterway and rail costs have not gone unnoticed by those interested in the United States transportation system. A recent investigation recommends the adoption of the user-charge concept for waterway carriers.\textsuperscript{102} The investigators favor a charge commensurate with the use of the waterways as related to the amount of Federal expenditures necessary to maintain the waterway.\textsuperscript{103} Another investigation on the subject of

\textsuperscript{100} Senate Committee on Interstate and Foreign Commerce, \textit{National Transportation Policy}, op. cit., p. 197.

\textsuperscript{101} Ibid., pp. 175, 177, and 178.

\textsuperscript{102} Ibid., p. 207.

\textsuperscript{103} Ibid.
waterway user charges suggests that a waterway trust fund account, similar to the highway trust fund, be established. This fund would be financed from marine fuel taxes, excise taxes on vessels, accessories and parts, registration fees, lockage fees, etc.  

Subsidies to waterway users are more inequitable than subsidies to highway users. In the area of highway user taxation, some success has been evidenced by the levying of incremental taxes on highway freighters. No such practice has been adopted for the waterway users. This inequity will exist until there is some form of user levy imposed that forces the water carriers to pay a share of the costs of maintaining the way.  

Finally, considering the claims of subsidies to airlines, the allegations of the Association of American Railroads were as follows:

Thus it will be seen that commercial airlines handling passengers, mail, express and freight in competition with the railroads are not only subsidized--as are also water carriers and motor carriers, but not the railroads--but the air carriers are the only agencies of transportation in the United States which are virtually guaranteed by the government against loss. This is the way that the subsidies and the guaranty work:

(1) Commercial airlines get the free use of, and are the principal users of, the beacons, radio beams, special weather services, radio and radar control towers at airports, and other special facilities for air navigation—all of which are provided, maintained, operated and paid for by the taxpayers.

(2) They get the use of publicly-provided airports at charges which, on the average, do not even begin to meet the cost to the public of providing the facilities used.

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104 Ibid., pp. 208 and 209.
105 Ibid.
(3) They get twice as much mail-pay for carrying 1/10th of the poundage of domestic, first-class, inter-city mail (plus air parcel post) as the railroads get for handling the other 9/10ths of this mail.

(4) But if, even with the federal and municipal governments meeting so large a part of their costs, any particular commercial airline which carries mail still suffers a loss and hence "needs" more money, it will receive additional payments in the guise of mail-pay to make up its loss and supply its "need," unless it is affirmatively found that the line is dishonestly, uneconomically and inefficiently operated.

It is evident that such subsidized and guaranteed competition cannot be fairly met by the unsubsidized railroads.106

Federal aid to aviation has grown from less than $1 million in 1927 to $658 million in 1960.107 Estimates are that this sum will reach one billion dollars in 1963, and by 1975 the federal outlay will exceed one and one-half billion dollars.108 The railroads are the recipients of no such Federal funds.

As in the case of the other carriers, the answer to the airline subsidy program appears to lie in some form of equitable user charges. A recent report on National Transportation Policy

106 Sidney S. Alderman, The Competition of Subsidized Commercial Air Transport, Report No. 3 of a Series of Statements on Transportation Conditions and National Transportation Policy, Submitted on Behalf of the Railroad Industry at Hearings Before the Subcommittee on Domestic Land and Water Transportation of the Senate Interstate and Foreign Commerce Committee, Held Pursuant to Senate Resolution 50, Released by the Association of American Railroads (Washington: 1950), p. 34.


108 Ibid., p. 183.
recommended the following measures to alleviate the airline subsidy situation:

(a) An Airway Trust Fund should be established, similar in purpose to the Highway Trust Fund established by the Congress in 1956.

(b) All sums heretofore paid into the Highway Trust Fund through aviation fuel taxes should be transferred into the Airway Trust Fund. The $58 million involved will not materially affect Highway Trust Fund finance. It will, however, clearly reflect the intention of the Congress that revenues from aviation fuel taxes should be earmarked for aviation purposes.

(c) The 2-cent-per-gallon tax on aviation gasoline should be extended to include jet fuel without delay. It is believed that the Department of the Treasury already possesses adequate authority for this action without additional legislation; in fact, a proposed regulation has been published. Legislation should speedily provide a trust fund as a repository for these revenues.

(d) The concept of Government sharing the costs of public programs, which are financed entirely or in part by user charges, in proportion to Government use of the facility should be firmed up without delay. Initially, an arbitrary determination should be made of the Government share of airway costs and that sum budgeted by the appropriate departments. As rapidly as possible a more refined determination of Government share should be made as part of the detailed study recommended in subparagraph (e) below. It is suggested that a sum determined by an estimate of Government consumption of aviation fuel while engaged in airway flying, utilizing airway communication and control facilities could be the starting point. In any event, the question appears to be only one of degree. There can be little question of the principle that the general fund should pay a fair proportion of cost of a program financed by user charges when Government uses the resulting facilities and service.

(e) Congress should direct the executive branch to conduct a detailed evaluation of the proper share the several users of the airway system (commercial
aviation, private aviation, and Government aviation) should bear of the total costs of the airway program. 109

It should be noted that the above are merely recommendations, and no action has been taken toward creating a set of workable user charges for the airlines.

Dearing and Owen, in their National Transportation Policy summed up the subsidy problem as follows:

It is obvious that traffic will not be allocated among competing agencies in accordance with relative economy unless the rates under question reflect true economic costs and unless both agencies apply uniform standards of evaluating service factors. But we have observed that neither of these conditions obtains. The existence of preferential government subsidies renders futile much of the regulatory effort to use minimum rate regulation in order to achieve an equality of "competitive opportunity" among the various transport agencies. The main difficulty is that the "costs" with which the commissions deal are not comparable, since the rates of some agencies must in the long run cover total economic costs while the rates of other carriers reflect varying portions of such costs. The rate structure of the privately financed railroads and pipelines must, of course, produce sufficient net operating revenue to pay all operating expenses plus sufficient income to meet interest charges and provide for new capital requirements. Other carriers, notably water operators and airlines, by virtue of their use of publicly financed facilities are able competitively to offer service at rates which cover only a portion of total costs.

When several agencies are competing for a given volume of traffic under such circumstances, the one striving to recoup total costs will inevitably suffer an erosion of its rate structure. For obviously the shippers' concern is with comparative rates rather than with total economic costs. If the quality of service is comparable, the shipper will give his business to subsidized and therefore low-rate carriers

109 Ibid., p. 195.
even though the total real cost, including that paid by the general taxpayer, exceeds the rates charged by the self-supporting carrier.

A self-supporting enterprise such as the railroads can cope with this situation only by reducing rates or improving service. In the effort to prevent traffic diversion, rates on the commodities that are most vulnerable to competition will tend toward the level of out-of-pocket costs. Revenue required to obtain the level of earnings needed to induce new capital into the industry can then only be secured by increasing rates on less vulnerable traffic. This, in turn, will further expose such traffic to competition and the process of erosion will continue.110

The counter arguments frequently offered to the subsidy claims by the railroads revolve about the fact that the railroads, in the early years of their development, were the recipients of huge grants of land and mail subsidies that gave them an advantage over the then extant forms of transportation.111 In rebuttal, the railroads claim that they do not object to subsidies to infant industries, but once an industry has attained a competitive position, the subsidies should be removed.112

If the railroads are to be considered as a factor in the future national transport complex, and indications are that this is the case, cognizance must be taken of the declining relative position of the rails. There is certainly a modicum of truth to the railroad claims that subsidies to competitive forms of transport allow the


111 Taylor, op. cit., pp. 94-96.

112 Alderman, op. cit., p. 35.
recipients of these subsidies to adopt different pricing policies than are available to the non-subsidized portions of the industry. One answer to the dilemma appears to lie in the adoption of user charges for the waterways, highway and airways. Another possible remedy may lie in the granting of subsidies to the railroads to place them in a more competitive position. A third alternative would be the nationalization of the railroads, and complete control by the government. It is not within the scope of this study to examine each of these alternatives, and there are undoubtedly other methods that could be employed to accomplish the desired end of a coordinated, efficient national transport network. Of the alternatives available, the most acceptable method would appear to the writer to be the adoption of user charges for the presently subsidized modes of transport. This approach is shared by the drafters of the Report on Natural Transportation Policy. Only by the utilization of the user-charge concept will all methods of transportation be placed on an economically competitive basis. For a national transportation policy to be effective, the economically competitive

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113 For a complete discussion of the user charge concept as applied to motor, water, and air carriers, see: Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, op. cit., Chapter 2.

114 For a complete coverage of nationalization of the railroad industry see: Ralph L. Devey, Government Ownership and Operation of Railroads (Washington: National Resources Planning Board, 1942), Part 1, Section 8.
factor is essential. Subsidies must necessarily be arbitrary, and will result in higher over-all costs of transport. In addition, the adoption of user costs will make the users of the various transport methods fully aware of the costs involved in transporting goods.

Readjustments in Railroad Operating Practices

Readjustments in railroad operating practices have their basis in attempts to effect economies in the industry, or in relocations of facilities for reasons other than economy of operations. By 1920, the major portion of railway construction was completed, and since that time, changes in facilities have come primarily through abandonments of obsolete or excess trackage.

Railroad mileage reached a peak of 254,037 miles of first main track in 1916, and continuous abandonments since that time have reduced the present mileage to 217,565 (1959). Some of this thirty-six and one-half thousand mile reduction has been accomplished through readjustments by the railroads. These readjustments may be conveniently divided into seven rather broad groups.

\footnote{For a discussion of how subsidies result in higher costs of transport see: Senate Committee on Interstate and Foreign Commerce, National Transportation Policy, op. cit., p. 207.}

\footnote{Interstate Commerce Commission, Annual Reports, 1930, 1940, 1950, and 1960.}

\footnote{Ibid., 1930.}

\footnote{Ibid., 1960.}

\footnote{Cherlington, op. cit., pp. 112 and 113.}
(1) Joint operations where more than one carrier utilizes the road facilities constructed by a single carrier.

(2) Abandonment of one of two or more lines, and traffic rerouted over the remaining line or lines.

(3) Abandonment of unneeded interchange and connecting links.

(4) Relocation of main lines.

(5) Relocation within terminals.

(6) Elimination of grade crossings.

(7) Other public construction enterprises, such as flood control, dams, levees, reservoirs, etc.

The first three of these readjustments give the impression of striving for economy within the industry. Since the major portion of the total costs of railroad operations are fixed, it is not difficult to see that the first three readjustment processes would reduce costs effectively. All three have as their basis the more efficient utilization of a portion of the existing rail facilities and the abandonment of the remainder of the facilities. Total abandonment precludes the need for maintaining unused tracks and buildings, and reduces the state and local taxes on the property. In addition, it is usually possible for the railroad abandoning a portion or all of its line to realize substantial salvage value on the materials removed.

The relocation of rail lines has as its main purpose long-run economies. In the short run, however, these relocations may appear quite costly. For instance, the relocation of a line to avoid possible flood damage may, in the immediate time period, be a very costly operation. However, the savings that accrue from not having
to renew roadbeds, replace ballast, etc. periodically may well, in
the longer run, overshadow the original outlay.

The last two categories of adjustments effected by railroads
are primarily the result of decisions made by persons not directly
connected with the railroads. The elimination of grade crossings,
and the relocation of lines to conform to public construction enter-
prises are accomplished for reasons of safety or expediency. The
rapid growth of private automobile transport has made many formerly
adequate grade crossings unsafe. The public pressures to eliminate
these hazards cannot be ignored by the railroads. Urban renewal
programs, the construction of dams, levees, reservoirs, etc. are the
result of mandates from the public for such construction. Where the
existing railroads interfere with the progress of such ventures,
the rails are forced to relocate their lines. Relocations of this
nature are usually quite costly. Abandonments due to relocations
are usually accompanied by petitions for new construction that is
frequently more expensive than the original construction. Higher
present costs for labor and materials in addition to new right-of-
way acquisition cost may make this type of relocation a significant
burden to the railroads. However, public pressures for abandonments
of this nature are great, and the railroads are placed in a posi-
tion where they can hardly avoid conforming to the public demands.

Decline in the Source of Traffic

Many railroad lines were originally constructed to serve specific
industries in this country. Timber, coal, agriculture, and iron ore
mines provide examples. When these industries decline for one reason or another, there is a concomitant decline in the demand for the railroad services that formerly accommodated the industries. It is difficult, however, to consider depletion of resources as the sole cause for abandonment proceedings. With the decline in importance and/or utilization of a given supply source, there is frequently a shift in the mode of transport utilized for hauling these products. For instance, considering the example of the decline in timber resources, as logging operations decline, it may be uneconomic to operate rail service to the area for small loads, while, on the other hand, motor carriers, with their greater flexibility, may be able to supply the haulage needs of the now-depleted resource. In one sense, then, the rails suffer because of the depletion of resources, but they also suffer because of the rigidity of route inherent in the industry, uneconomic less-than-carload freight, and their inability to compete effectively with the highway carrier for the decreased business.120

The two notable examples of resource depletion in the United States are timber, as mentioned above, and more recently, coal. Prior to 1929, the depletion of timber was the cause of approximately one-third of the total rail mileage abandoned.121 A study

120 The relatively high fixed cost structure of the railroad industry contributes to the rigidity of operating practices.

covering the period 1920-1932 indicated that over one-third of the cases heard in abandonment proceedings had as their basis the exhaustion of natural resources. A more recent study encompassing the period 1921-1940 shows that more than forty-three per cent of the cases were resource oriented, and that these cases involved more than thirty-five per cent of the total mileage abandoned over the period. The decline in the fields of coal and timber continues, and in addition, there is evidence that agricultural products no longer play as significant a role in our economy as they once did. These factors may cause further declines in demand for the services of railroads that were constructed primarily to serve these industries.

It appears, however, that resource depletion as a reason for abandonment may be overemphasized. In order to illustrate this point the writer has constructed an index of production of the major resources and the car loadings of these resources. A review of these indexes makes it difficult to state unequivocally that abandonments have occurred because of depletion of resources. Tables 13 and 14 indicate resource production and the index of production, and Tables 15 and 16 show car loadings and the index of loadings. For instance,


123 Cherington, op. cit., pp. 110 and 111.

124 J. D. Morgan, Some Controlling Forces in Agricultural Output (Lawrence, Kansas: Bureau of Business Research, University of Kansas, 1954), p. 34.
TABLE 13

PHYSICAL PRODUCTION OF SELECTED COMMODITIES
UNITED STATES, ANNUALLY
1949-1959

(Coal and Coke data in thousands of short tons.)
(Iron Ore data in thousands of long tons.)
(Lumber data in millions of board feet.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Coal</th>
<th>Coke</th>
<th>Iron Ore</th>
<th>Lumber</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949</td>
<td>480,570</td>
<td>63,637</td>
<td>84,937</td>
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</tr>
<tr>
<td>1950</td>
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</tr>
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<td>576,335</td>
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<td>1959</td>
<td>499,063</td>
<td>55,864</td>
<td>60,276</td>
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</table>

# Table 14

## Index of Physical Production of Selected Commodities

**United States, Annually**

1949-1959

(1949=100.0)

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<thead>
<tr>
<th>Year</th>
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<th>Lumber</th>
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<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
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<td>137.2</td>
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<td>1952</td>
<td>105.6</td>
<td>107.3</td>
<td>115.3</td>
<td>116.4</td>
</tr>
<tr>
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<td>101.6</td>
<td>123.9</td>
<td>138.9</td>
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</table>

*Source: Table 13.*
# TABLE 15

**RAIL CAR LOADINGS OF REVENUE FREIGHT SELECTED COMMODITIES**  
**UNITED STATES, ANNUALLY**  
1949-1959

<table>
<thead>
<tr>
<th>Year</th>
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<th>Coke</th>
<th>Iron Ore</th>
<th>Forest Products</th>
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<td>6,719</td>
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<td>2,653</td>
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<td>6,137</td>
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<td>2,085</td>
</tr>
<tr>
<td>1955</td>
<td>6,508</td>
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<td>2,846</td>
<td>2,275</td>
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<td>2,749</td>
<td>2,317</td>
</tr>
<tr>
<td>1957</td>
<td>6,749</td>
<td>575</td>
<td>2,863</td>
<td>1,995</td>
</tr>
<tr>
<td>1958</td>
<td>5,522</td>
<td>342</td>
<td>1,754</td>
<td>1,856</td>
</tr>
<tr>
<td>1959</td>
<td>5,432</td>
<td>410</td>
<td>1,655</td>
<td>2,049</td>
</tr>
</tbody>
</table>

TABLE 16
INDEX OF RAIL CAR LOADINGS OF REVENUE FREIGHT
SELECTED COMMODITIES
UNITED STATES, ANNUALLY
1949-1959
(1949=100.0)

<table>
<thead>
<tr>
<th>Year</th>
<th>Coal</th>
<th>Coke</th>
<th>Iron Ore</th>
<th>Forest Products</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>1950</td>
<td>116.4</td>
<td>123.6</td>
<td>114.4</td>
<td>114.0</td>
</tr>
<tr>
<td>1951</td>
<td>120.7</td>
<td>142.3</td>
<td>135.9</td>
<td>121.1</td>
</tr>
<tr>
<td>1952</td>
<td>108.1</td>
<td>114.4</td>
<td>120.0</td>
<td>116.3</td>
</tr>
<tr>
<td>1953</td>
<td>102.5</td>
<td>117.0</td>
<td>142.2</td>
<td>115.5</td>
</tr>
<tr>
<td>1954</td>
<td>91.2</td>
<td>71.8</td>
<td>95.7</td>
<td>106.8</td>
</tr>
<tr>
<td>1955</td>
<td>104.7</td>
<td>104.8</td>
<td>128.8</td>
<td>116.5</td>
</tr>
<tr>
<td>1956</td>
<td>112.7</td>
<td>104.8</td>
<td>124.4</td>
<td>118.7</td>
</tr>
<tr>
<td>1957</td>
<td>108.5</td>
<td>97.8</td>
<td>129.5</td>
<td>102.2</td>
</tr>
<tr>
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<td>88.8</td>
<td>58.2</td>
<td>79.4</td>
<td>95.1</td>
</tr>
<tr>
<td>1959</td>
<td>87.4</td>
<td>69.7</td>
<td>74.9</td>
<td>105.0</td>
</tr>
</tbody>
</table>

Source: Table 15.
the index of coal production in 1959 stood at 103.8 (1949=100), and the index of car loadings of coal for the same year was 87.4. The coke production index was 87.8 in 1959, but the index of car loadings of coke for the same year was down to 69.7. Lumber products showed a similar trend, with the index of loadings being lower than the index of production. The only basis for the claim of the railroads that resource depletion is responsible for abandonments was found in the analysis of the iron ore production and car-loading data. Here the production index was slightly lower than the car-loading index.

It appears then that the diversion of particular categories of traffic to other modes of transport is more significant than depletion of resources as a cause for abandonment of rail operations. It must be recognized that resource depletion may have significant ramifications for the railroads in certain areas of the country, but this fact appears to attest to the rigidity of the railroads as compared with the alternative forms of transport. In the national picture there is little to indicate that there is significant resource depletion. The inability of the railroads to shift to new resources or new areas appears to be the major cause for abandonment in these cases. The inflexibility of the rails is due, in large measure, to the cost structure of the industry. In order for the railroads to service new resources or areas, a relatively large capital outlay would be required. This capital outlay would not be

125 The reader should note the difference between resource depletion and the declining accessibility of some of our resources. The iron ore deposits of the Mesabi Range illustrate the latter case.
necessary for, say, the highway carrier, and thus the rails suffer from an inflexibility that is inherent because of the cost structure of the industry.

Legal Changes in Railroad Status and Miscellaneous Causes

Finally, abandonments occasionally occur because of a change in the legal status of the railroad. If, for instance, a railroad has successfully petitioned for abandonment of operation over a given line, and subsequently successfully petitions for total abandonment of the line, this would constitute a change in the legal status. Prior to the total abandonment, the line was inoperative over the mileage in question, but the section of track was still in existence. Total abandonment removes the track from the physical supply of railroad mileage. Other cases that may be included in this category are those where the line is removed from the classification of common carrier and is considered as a proprietary carrier, where short lines have sought certificates to abandon segments about to be absorbed by other carriers, and where a short line has its traffic cut off and is rendered useless because of the abandonment of connections.126

This attempt to classify the reasons for abandonment of rail lines is necessarily rigid. In reality, few cases would fall neatly into one of these narrow categories, but would usually overlap two or more classifications. For instance, many cases give the reason for abandonment as the depletion of resources and the competition from

126 Cherington, op. cit., p. 114.
other carriers. In these cases it is impossible to assign a weight to each of the factors in order to determine a precise causal factor for the abandonment. The analysis of railroad abandonments in Ohio over the last eleven years (1948-1960) will illustrate this point.

Summary

The major cause of the railroad abandonments that have occurred in the United States appears to be competition from alternative forms of transportation. Railroads have suffered losses of both freight and passenger traffic, and other carriers have tended to divert traffic from the railroads. The main competition of railroads for freight traffic is the motor carrier, and for passenger traffic, the passenger automobile. The railroads have claimed, with some justification, that they are unable to compete with alternate forms of carriage when these alternative forms are subsidized in whole or in part by the taxpayers.

The depletion of resources as a reason for abandonments is overemphasized. The rigidity of the rail carrier, and its inability to adjust to new resources and new resource areas is a major factor in the loss of rail traffic and subsequent abandonment of the resource-oriented rail lines.

There are other reasons given for abandonments, but in the long run, the competitive factor appears to be inherent in all reasons proffered. No satisfactory basis has been found for assigning weights to the reasons for abandonment when two or more factors are present.
In addition to the direct effects of railroad abandonments, such as personnel reductions, the physical removal of facilities, and the discontinuation of service, there are side effects embracing such things as social dislocations and financial problems. These side effects will be considered in Chapter IV.
CHAPTER IV

THE ECONOMIC AND SOCIAL IMPLICATIONS OF RAILROAD ABANDONMENTS

The physical removal of a railroad or a portion of a railroad often causes social and economic dislocations in the area of abandonment. These dislocations may be gradual and readily absorbed by society, or they may be abrupt and cause long-run social and economic problems. If, for instance, the cessation of rail operations is attributable to competition from alternative forms of transport, the social and economic disruptions would probably be minor. The development of a significant degree of competition from an alternate carrier is usually an evolutionary process in which traffic is diverted over a period of time. With time to adjust to transport changes, disruptions may be minimized. If, on the other hand, abandonment is abrupt, such as might occur as a result of the rapid removal of industry from an area, the effects of such abandonments would probably be more severe and far-reaching.

Decisions to abandon a line, and the granting of permission to abandon by the regulatory authorities are not, however, accomplished immediately. A thorough investigation of the existing conditions by the regulatory agencies precludes any hasty cessation of services, regardless of the reason or reasons given for abandonment.

The Interstate Commerce Commission has been fully aware of the social and economic problems that accrue from railroad abandonments. As early as 1925, in the findings of the Commission in the Boston and
Maine Railroad Company Abandonment case, the Commission stated:

But irrespective of the origin of an existing line, people gather about it and create for themselves an interest in it and a dependence upon it. Under these circumstances abandonment brings about the kind of hardships with which it is so difficult to deal. The sufferers in such cases have no redress against those guilty of the original error. In some of the instant cases the extent of hardship which would probably follow abandonment would be very great, while in other cases it would be negligible.1

It should be noted that the above case was heard in 1925. At that time, with the railroads enjoying a virtual monopoly in the movement of freight and passengers, the abandonment of a line was undoubtedly of great significance. With the alternative methods of transport presently available in the form of highways and airways, the impact of a railroad abandonment would be much less. Social and economic disruptions would be minimized because of the ease of shifting from one mode of transport to another.

The Role of Regulatory Commissions in Abandonments

The function of the Interstate Commerce Commission and the various state commissions in abandonment cases is to protect the "present or future public convenience and necessity."2 To this end, the commissions have attempted to minimize the economic and social upsets attending abandonments. One method employed by the regulatory bodies is to insure that an abandonment will not deprive society of an adequate transport system. For this reason the regulatory com-

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1 105 I.C.C. 14 (1925).

2 41 Stat. 456 Sec. 1, Para 22 (1920).
missions are concerned as to whether or not the service of a line proposed to be abandoned can be handled adequately by another railroad, or if none is available, an alternate form of transport. 3

Commission hearings on proposals to abandon a line normally include such statements as:

The area is transversed by six State highways over which motor-carrier service is rendered by seven truck-lines. The local farmers utilize motor trucks and are not dependent upon the line. 4

Another example of the concern of the commissions over the availability of alternate carrier service is found in the following statement:

The portion of line proposed to be abandoned is paralleled by U.S. Highway 36 (Ohio Route 4) from Ostrander to Milford Center. Ohio Route 4 continues to parallel the line to Mechanicsburg. The road is a first-class all-weather road. Common carrier truck service to New Dover, Irwin and Milford Center is also served by Commercial Motor Freight, Inc. 5

Railroads have a responsibility to provide transportation service by virtue of the charter granted to them to carry on business within the various states. However, if the regulatory commissions ascertain that the public convenience and necessity does not require that the service of the road be continued, they may allow abandonment. The presence of alternative carriers tends to lessen the responsibility of

3 See Interstate Commerce Commission Finance Dockets Nos. 20475 and 20911 in Appendix 3.


the railroads and allows for abandonment because it is possible to show that alternative service exists. 6

Despite the care exercised by commissions in granting permission to abandon, cessation of service by a rail line cannot usually be accomplished without the impact of such abandonment being felt by some persons and institutions in the area involved. This chapter will examine some of the specific economic and social implications arising from the granting of permission to abandon all or a portion of a railroad line. Chapter V will examine some of the actual dislocations that have arisen from abandonments in the state of Ohio.

The Direct Labor Effects of Abandonments

Railroad abandonments may vary in size and significance from the discontinuance of ferry operations across a body of water to the abandonment of an entire line involving hundreds of miles of track. Depending on the extent of the abandonment, cessations of service may have varying degrees of effect on the labor force directly associated with the operation of the line. A minor abandonment need not cause any serious employment problem, but an abandonment of major proportions may well be accompanied by significant decline in total employment provided by the carrier.

Protection for railway workers displaced as a result of abandon-

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ment of a portion of a line is of vital interest not only to the worker or workers involved, but also to those persons who represent these workers in their labor associations. Many railroad abandonment hearings are attended by representatives of the Railway Labor Executives' Association. The role of these representatives is to assure fair treatment of the worker who may be idled as a result of an abandonment.

Employee Rights in Abandonment of a Portion of Line

The landmark case concerning the treatment of an employee in the abandonment of a portion of a line is the Chicago, Burlington and Quincy Railroad Company Abandonment. This case has been cited frequently in subsequent hearings when employee rights in abandonment proceedings have been in issue. Since the problem of the future of the employee is often an issue, and further since the above case indicates the prevailing legal rule applied to labor displacement problems in the abandonment proceedings, pertinent portions of the opinion are included in Appendix A of this dissertation.

By applying the rules as set forth in Chicago, Burlington and Quincy, the Interstate Commerce Commission has attempted to minimize the adverse effects of railroad abandonments on railroad workers.

7 In Ohio these representatives were present in eight of the twenty-three cases heard. See Interstate Commerce Commission Finance Dockets Nos. 16637, 18279, 18472, 18735, 20276, 20309, 20475, and 20923 in Appendix B.

8 257 I.C.C. 700 (1944) See Appendix A.

9 See n. 7 supra.
The rationale behind the application of the rule is to leave the worker or workers in the same or a similar position to that which they enjoyed prior to the abandonment. Further, the Commission has been of the opinion that savings realized by the rail lines in abandoning unproductive portions of lines should not be at the expense of the workers, but that savings should be shared by workers idled by the cessation of service. Cherington states the issue in the following manner:

Such protective provisions were in most respects comparable to similar conditions which the Commission had been applying in acquisition and consolidation cases. They have served subsequently as the general pattern for the Commission's action in cases of a comparable sort. The Burlington, at the time of this application was a prosperous carrier, which proposed to discard this particular branch line on which, it alleged, substantial operating losses were being incurred. The Commission's decision amounted to a ruling that some of the savings should be shared during a limited period, with dismissed and displaced employees.10

Under the rule, if a worker is unemployed as a result of the cessation of service on a segment of a railroad line, he is entitled to compensation for a period of up to four years based on his previous salary and work conditions. If a primary worker takes the job of a secondary worker ("bumps" the other worker) by exercising his seniority rights, the secondary worker is entitled to compensation. Further, if the displaced worker is forced to relocate because of his loss of position, he must be compensated for his relocation expenses and any loss that might accrue from the hasty sale of real property.

10 Cherington, op. cit., p. 171.
The Supreme Court of the United States recently rejected a railway union appeal for an injunction to halt the merger of the Erie and Lackawanna Railroads. The union had requested that a job freeze be applied to all workers of both lines in order to protect the workers from unemployment because of the merger. The Court, in an eight to one decision ruled that the Interstate Commerce Act does not require such a freeze of jobs for employees, although the railroads are still obligated to give compensation to affected workers.11

The Supreme Court ruling cited above apparently answers the question of the applicability of the compensation rule as applied to mergers. With the merger movement in an upswing, this ruling will probably be quite significant.

Equity suggests that some protection should be afforded workers idled by the abandonment of a portion of a railroad line. There is no recourse for the worker if a railroad company decides to relinquish a segment of its operations. Insofar as the rail company realizes economies by abandonment of a portion of a line, in the opinion of the writer these economies should not come at the expense of unemployed workers. It seems logical in the opinion of the writer that savings accruing from the abandonment should be shared with the idled workers until they have had the opportunity to locate similar positions. That the payment of compensation to idled employees for a period of up to four years is costly to the rail line cannot be questioned. However, the railroads are fully cognizant of the application

of the Chicago, Burlington and Quincy rule, and should take this into consideration in arriving at a decision to petition for abandonment.

Employee Rights in Abandonment of an Entire Line

A somewhat different situation exists when an entire line of railroad is to be abandoned. In the Missouri and Arkansas Railway Company Receivers Abandonment, the Interstate Commerce Commission found that no conditions of employee protection would be imposed where an entire line of railroad is permitted to be abandoned.

The abandonment of an entire railroad is quite different from the abandonment of a segment or branch of a road. When the entire road is removed from operation, the line is indicating that there is actually no profitable segment or portion of that line. There are no savings involved in such an abandonment, unless one considers the out-of-pocket losses that may have been involved prior to the abandonment. In such a case, the road is not attempting to economize at the expense of the workers, and there is little reason why they should be required to compensate workers idled by the abandonment when there is no income from the abandoned road. The worker is in a position similar to that in partial abandonment in that he is the innocent victim of the cessation of service, but a rail line that dissolves can hardly be responsible for the welfare of employees.

It should be noted that the majority of cases involving

12 271 I.C.C. 171 (1948).
abandonments are of the partial type, i.e., less than an entire line. For this reason, the protection of the employee under the Chicago, Burlington and Quincy rule is the more important of the two.

Other Employee Effects

There are social disruptions that arise from unemployment caused by abandonments, but these are difficult to evaluate. The social problem of leaving relatives and friends, forcing children to change schools, and adjusting to a somewhat different cultural atmosphere cannot be assigned a monetary value. However, insofar as the Interstate Commerce Commission has been able to control the disruptions, the hardships caused by unemployment or job relocation have been minimized as a result of the policy just described.

The Social Effects of Railroad Abandonments

As stated on the second page of this chapter the Interstate Commerce Commission has followed a practice of minimizing social upheaval that results from railroad abandonments. The burden of the Commission has been lessened by the improvement of services offered by alternative forms of transportation. Prior to the present state of development of the motor carrier industry, the abandonment of a rail line caused serious problems in the area involved. As late as 1936 it was not uncommon to find statements such as:

The fact is that the abandonment of a railroad line is likely to mean the practical death of many of the towns served by that line. Most of the smaller towns in this part of the country are fundamentally primary markets for the farmers. The farmers take their grain, cattle, and other products to the towns
Time and the technological changes in motor carrier transport have tended to alleviate the situation as described above. As a matter of fact, one of the reasons proffered for the abandonment of rail service is that the farmers have shifted their transport from rail to motor carrier. Presently the highway carriers are equipped to handle most of the goods that formerly moved by rail, and, as was discussed in Chapter III,\(^3\) the trucks are one of the major competitive forces contributing to the necessity for the railroads to abandon lines.

It may well have been true in earlier periods that the abandonment of a railroad caused considerable social and economic upheaval. The evidence at hand indicates that such is not the case in the present day. Instead, if railroad abandonments causing economic and social disruptions, the railroads appear to be the victims of social

\(^3\) Eastern Railroad Presidents Conference, Railroad Data, A report prepared by the Committee on Public Relations (Washington: Eastern Railroad Presidents Conference, 1936), p. 78.

\(^4\) See pp. 64-77.
and economic change that necessitates their abandonment. It will be shown in Chapter V that the shift in modes of transport, the changes in consumption of fuels, the depletion of resources, and other social and economic factors have preceded the abandonment of the rail lines. The abandonment of the rails has resulted, in the main, from a decline in the demand for the services of these rails. Regardless of the reason for the decline in demand, this fact has come prior to the petition to abandon, and the railroads have been left with little alternative than to cease service no longer required.

With the services of the rail carriers in certain areas no longer necessary, and with alternative forms of carriage available to the users of transport service, the Interstate Commerce Commission and the several state regulatory bodies have not found it necessary to be too concerned with considering economic and social disruptions resulting from rail abandonments.

An analysis of the social and economic problems resulting from railroad abandonments in the state of Ohio will occupy a portion of Chapter V of this investigation.

The Effects of Railroad Abandonments on Land Use

When a railroad company is granted permission to abandon all or a portion of its line, there is a theoretical release of land from the railroad use to some alternative use. The reason that the release is theoretical is that the land may not actually be put to an alternative use. If abandonment occurs in an urban area, or in the immediate vicinity of an urban area, there is likely to be a relatively high demand for the land thus vacated. Evidence
presented in Chapter V will show that the railroads have had little difficulty in disposing of urban or suburban land for such purposes as industrial sites, city easements, etc.

Land that is removed from rail use in rural areas presents a different problem from urban land. Unless the railroad is able to dispose of the rural land to the adjacent property owners, there is little that can be done toward utilizing the land thus vacated. Even if a farmer wished to extend his land holdings by purchasing the released land, he would find that years of use by the railroad had made this land unfit for immediate cultivation. Former roadbed land is not agriculturally productive land. Abandonment in rural areas may well lead to the existence of long swaths of land that are unfit for alternative use. In this case the probability is that the land will lie idle.

In the following chapter (Chapter V), an analysis of the abandonments in the state of Ohio will ascertain that land use changes that have resulted from rail abandonments in the state.

There are almost 19,000 miles of railroad in the state of Ohio. Of this total, 7,185 are main line, 2,907 are second main tracks, and 8,878 miles are yard, siding, and spur tracks. Since railroad abandonments as covered in this study are concerned only with main-line track, this mileage will be the only type considered.

15 Railroad mileage data secured from the tax duplicates of the Ohio counties.
16 Ibid.
Approximately 87,000 acres of land are devoted to main-line trackage and the abutting right-of-way in the state of Ohio. Table 17 shows the amount of main-line track in each county of the state, and the number of acres devoted to such trackage. Linear track mileage was converted to acres by estimating the right-of-way for these tracks.\(^{17}\)

While no Ohio county has as much as ten per cent of its total land area devoted to main-line track and right-of-way, the state total of land in this use is significant. Should railroad abandonments become widespread, it might well be that the state or the counties could find an alternative use for the land that would benefit the public. Just as some former canal land in Ohio was utilized for the building of highways,\(^{18}\) so might former rail land be used for the same purpose. The Pennsylvania Turnpike is built partially on former railroad property, and there is no reason to assume that Ohio could not put some of this vacated land to a similar use. However, abandonments to date have been quite limited in length, and the resulting land made available is not sufficient for road-building purposes. As another alternative, vacated land,

\(^{17}\) Right-of-way estimates were supplied by Division Engineers of the Pennsylvania Railroad Company and the Baltimore and Ohio Railroad Company, Columbus, Ohio.

\(^{18}\) Portions of the old Miami and Erie Canal are now used for highway purposes, and plans include the further utilization of abandoned canal land for future highway purposes.
<table>
<thead>
<tr>
<th>County</th>
<th>Main Line Miles</th>
<th>Main Line Acreage</th>
<th>Portion of Total Acreage in Rails</th>
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</thead>
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<td>Adams</td>
<td>32.6</td>
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<td>0.41</td>
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</tr>
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<td>1,663</td>
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<td>Main Line Acreage</td>
<td>Portion of Total Acreage in Rails</td>
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<td>0.33</td>
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Source: Main-line mileage as reported to the Ohio Tax Division by the railroads having trackage in the State of Ohio; acreage in railroads computed by using an average right-of-way of one hundred feet; portion of total acreage in rails computed from rail acreage as a per cent of total county area in acres.
particularly in the urban areas, might well be put to some community or municipal use.\textsuperscript{19}

Land use does not appear to be a significant problem at present. Abandonments have released some land for alternative uses, but the total amount has been relatively small. However, should abandonments become more widespread than they have been in the past decade, the state the local governments might well be faced with the question of how to best utilize this land. It should be mentioned that in the abandonment cases in the state of Ohio, only one was found where the land was operated on a lease basis and reverted to the owner following abandonment.\textsuperscript{20} In the twenty-two other abandonment cases, the railroad company owned the land and was free to dispose of it following the granting of permission to abandon operations.

\textbf{The Tax Effects of Railroad Abandonments}

It was pointed out in Chapter III that the railroads were at a competitive disadvantage with highway carriers, water carriers and airlines because of the subsidy grants to the latter three modes of transport. A suggested solution to the problem of the rail carriers was that user charges be levied against trucks, water carriers and aircraft in order to force them to pay a greater portion of their operational costs. While user charges are not necessarily the same

\textsuperscript{19} It will be shown in Chapter V that the land abandoned by the Cleveland and Pittsburgh Railroad Company has been purchased by the city of New Philadelphia for a right-of-way to run sewer and water lines to a newly developed municipal area.

\textsuperscript{20} See Finance Docket No. 18808, Appendix B, pp.
as taxes, the end result is similar. User charges are assessed to pay for construction, maintenance and administrative costs of transportation facilities that are provided publicly. On the other hand, ad valorem taxes on rights-of-way are assessed to pay for the general costs of government.

Individual shippers might be subject to burden variations as a result of alternative tax or user charge impact patterns, but the group as a whole would tend to have the same total burden either way prior to any subsequent shifting adjustments.

However, there is a significant difference between user charges and taxation when one considers the distribution of the revenues from these two forms of payment.

If a rational formula were developed wherein carriers using government-provided transportation facilities were to pay a true pro rata share of the construction, maintenance and administrative costs of these facilities and this pro rata share equalled the taxes paid by rail and pipeline carriers on their rights-of-way, plus the cost of upkeep of these ways, then fair competition under government, as to the use of highways of commerce, would be assured. It would make little difference from a competitive standpoint that some carriers contributed to the cost of publicly provided facilities whereas others paid taxes on transportation facilities privately owned. The objective would be equality of opportunity and under this hypothesis this would be attained.21

In addition, ad valorem taxes may apply without a necessarily direct relationship to the volume of operations or the level of projects, while user charges obviously relate to the level of operations and to some extent the rate of return, at least indirectly.

21 National Transportation Policy, op. cit., p. 450.
The problem of user charges vis-à-vis taxation continues to be one of prominence. The railroads feel that they are being unjustly discriminated against by having to pay taxes while alternative forms of transport (except pipelines which also pay property taxes) are exempt from state and local levies.

The competitive transportation struggle may be treated in one of two ways. Either user charges could be assessed against those carriers not currently paying these charges, or the taxes on pipelines and railroads could be eliminated. Either course would achieve the result of tending to equate competitive opportunity.

While some progress has been made toward placing a user charge on highway carriers,\(^{22}\) competitive equality is far from being a reality. It is probable that the achievement of competitive equality, if such an achievement is ever realized, will come in the form of the institution of more user charges on the carriers not presently taxed. Despite the rather strong interest group objection to such a move, it is felt that this procedure would meet less resistance than the removal of a source of income from so many state and local governments.

The railroads are attempting to bring their industry into a more advantageous competitive position by eliminating unproductive lines through abandonment, and thus escaping the tax burden on

\(^{22}\) See Chapter III, n. 87, supra.
segments that no longer produce revenues. Since ad valorem property taxes levied against the railroads are a portion of the fixed costs, any elimination or reduction of these taxes will lower costs and improve the competitive position of the rails.

In a recent report submitted to the Senate Committee on Interstate and Foreign Commerce, a recommendation was made that a Federal law be enacted that would exempt railroad right-of-way property from state and local taxation. The recommendation in part is as follows:

The first major tax measure, capable of practical fulfillment, recommended for Congressional action to equalize competitive opportunities for our Nation's transportation carriers, is legislation to exempt the right-of-way of railroads and pipelines from ad valorem property taxation by the States.

The exemption contemplated is the conventional exemption, sometimes granted in the early building era of the railroads, of land within a defined right-of-way of these carriers. Ownership or responsibility for maintenance of this property is not intended to be changed. Terminal areas, in the case of railroads to be defined by appropriate legislation, is not to be included within the exemption, principally because of the commercial value of the property apart from its use for the operation of the railroad.

The exemption is recommended to take effect gradually over a period of 10 years to permit state and local governments to adjust to the tax loss. Mechanics to do this might include use of the Interstate Commerce Commission's elements of value for a base year, as for example, 1960, to fix values of the right-of-way. Each succeeding year the value of that property would be construed to be reduced 10 per cent, until at the end

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23 See for example Interstate Commerce Commission Finance Dockets Nos. 20276, 20370, 20923, and 21303 in Appendix B. In these cases, the tax situation was listed as a contributing factor to the petition to abandon the rail facilities.
of the 10-year period the right-of-way land value would be construed to have no value for ad valorem or "in lieu" tax purposes. Acquisitions of new right-of-way property would be immediately exempt. The sale of right-of-way property would not affect the exemption schedule.\(^2\)

For the reasons stated previously, primarily the opposition that would be forthcoming from the state and local governments, it is not believed likely that the proposal will meet with immediate support. It will be shown later in this chapter that railroad property taxes make up a significant portion of the total property taxes in many local governments, and the removal of this source of revenue, even if accomplished over a period of years, would not be looked upon with favor by the governmental units concerned.

In addition, the recommendation to the Senate Committee offers no alternative tax plan for the governmental units experiencing loss of railroad ad valorem property taxes. It is improbable that the Federal government would deny the state and local governments substantial revenues without suggesting the possibility of replacement revenues from other sources or compensating transfer payments. Unhealthy local governments can be as big a national problem as unhealthy railroads.

The plea for tax relief by the railroads and the proposal in the report of the Magnuson Committee appears to be a current reaction to the present circumstances. When the railroads enjoyed a monopoly in the carriage of passengers and freight, there was little complaint

\(^2\) National Transportation Policy, op. cit., p. 463.
over the tax situation as applied to their property. Actually, most of the railroads accepted their state charters fully aware that the state and local governments would tax the rail property. It is only since the competition for traffic in freight and persons has become so acute that the solution to the rail problem has centered about the tax question.

It is not believed that tax relief will go very far in restoring the railroads to their former position of prominence as carriers. The problem is more deep rooted than the monies paid to state and local governments in the form of property taxes. The problem faced by the rails is fundamentally one of technological change with which the rails have not kept pace. Tax relief would only alleviate the situation temporarily, it would not cure the basic ills. Through a forced reduction of state and local taxes on railroads, and the imposition of taxes or higher user costs on alternative carriers, the Federal government might divert some traffic from these other carriers to the railroads. Such a move would have two immediate effects. First, there would be a substantial loss of revenues to many state and local governments. Second, there would be an increase in over-all freight rates that would add to the cost of the goods transported. In any case, the manipulation of taxes and user costs would not alter the inherent advantages of the various forms of transport. There would be no change in the inflexibility of route

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of the rails or the flexibility of the motor carrier. Less-than-carload lots would not be made carload lots by tax changes. Declining industries would not be revived by government action to make the rails more competitive and alternative carriers less competitive. Persons who are required to travel between New York and California would not suddenly shift from the airways to the rails because of an altered tax structure or imposed user costs. The government cannot legislate away inherent advantages.

Local governments undoubtedly are suffering some tax revenue losses as a result of the rail lines being abandoned in areas under their jurisdiction. These losses involve only small portions of line and hence small tax amounts. Unless and until railroad abandonments become so widespread as to involve more significant portions of land, the local governments are not expected to suffer materially.

In order to understand better the tax implications of abandonments, and the larger consideration of the tax problems as experienced by the railroads, it is advisable to examine more closely the actual tax pattern that is applied to the railroad property. For that reason, a discussion of state and local railroad taxes follows.

Further, since this investigation is concerned primarily with railroad abandonments in the state of Ohio over the past thirteen years (1948-1960), the Ohio method of taxing railroads will be used as an example of rail property taxation. In addition, the Ohio excise tax as applied to railroads will be included.

In the early years of the existence of the railroads, taxes on these carriers were usually either explicitly provided for in the
rail charters, or the taxes were forbidden for a designated period of time. As an example, the State of New Jersey indicated in the charters of newly formed railroad companies that these enterprises would be taxed for local purposes in the same manner and at the same rates as other property. Also, in Ohio, the charter granted to the Little Miami Railroad Company stipulated that the road should report its dividends and be taxed thereon in the same manner as banks, insurance and bridge companies. On the other hand, in an attempt to attract railroads to the area, several states specifically exempted the railroads from taxation.

To provide against the imposition of taxes which might become burdensome of even discourage the construction of railways, legislatures of states in all parts of the Union incorporated, in some charters, a provision limiting the power of the respective states to tax railroad property, and, in a considerable number of instances, exempting such property altogether from taxation, usually for a limited period of years. "That the capital stock of said corporation shall be and remain free from taxation until the profits collected by said railroad corporation shall be sufficient to afford dividend of five per cent per annum on the capital stock." This is from a Connecticut charter of 1833, and represents analogous provisions found in New England charters of that period.

Permanent property tax exemptions also exist. "A few railroads have exempt mileage because of charter provisions. Thus the lines

26 Lutz, op. cit., p. 6.


of the Baltimore and Ohio are exempt from Baltimore to the West Virginia border."^29

The property taxation of railroads presents several problems. First, since railroad property normally transcends local government boundaries, it is impractical to allow each of the local governments to assess rail property because of the non-uniformity of assessment that would probably result. As a consequence of this fact, rail property is more equitably assessed by a central authority, usually a state tax commissioner. The second problem involves the apportionment of the assessed value of the railroad to the local governmental units, if such an apportionment is in accordance with the state tax laws. According to Groves,

"...on the whole there is little doubt that railroad taxes are best suited for state revenue and that apportionment is a survival of the era when railroads were locally assessed.^30"

Where the value of the railroad is apportioned back to local governments, the value assigned to each taxing unit is then subject to the application of the mill levy applicable to property in the taxing unit.

In place of a property tax on railroads as discussed above, many states levy a gross earnings or gross receipts tax known as "in lieu" taxes. These taxes are substituted for general property

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taxes in many states because they offer an ease of administration not attainable through property taxation. However, the levying of "in lieu" taxes does not solve the problem of equitable distribution of revenues to local units.

As an example of the complexity of this problem, some of the standards of allocation and distribution considered for railroad gross earnings taxes have been single-track mileage, total-track mileage, total-track mileage with adjustment for value of terminal property, gross earnings, net earnings, car mileage, train mileage, car and locomotive mileage, "traffic units" calculated on tons of freight hauled and number of passengers carried, and value of property.31

In some instances, for example in Ohio, gross earnings taxes are levied in addition to, rather than in lieu of ad valorem property taxes.

Since this dissertation has as its basis a study of railroad abandonments in the state of Ohio, it is appropriate to examine the system of railroad taxation in Ohio.

Ohio Taxation of Railroads

The history of railroad taxation in Ohio has been examined carefully by James C. Dockeray in his study Public Utility Taxation in Ohio. The following excerpts from his study trace the evolution of the present Ohio tax system as applied to railroads.

The first recorded instance of railroad taxation in Ohio appeared in the incorporation documents of the Maumee and Kalamazoo Railroad Company in 1836.

This act provided that when the dividends of the company exceeded six per cent, the legislature could impose such taxes on the dividends as it deemed proper. An act in 1849 provided that the Little Miami Railroad should report its dividends and be taxed thereon in the same manner as banks, insurance and bridge companies were taxed under the law of March 12, 1831.\textsuperscript{32} This tax was not really significant.

However, in 1852, a bill was adopted that provided for "the assessment and taxation" of all property in this state, and for the levying of taxes thereon according to the true value in money. Section 21 of the 1852 act required that: "the president, secretary, or chief accounting officer of every canal of slackwater navigation company, railroad company, turnpike or plankroad company, bridge company, telegraph company, or other joint stock company except banking or other corporations specifically provided for...shall list for taxation at its actual value, its real and personal property, money and credits within this state. . . ." This section also provided that the companies subject to the tax should make their reports of valuation to the individual counties by taxing districts and that the personal property was to be apportioned to the various taxing districts in each county pro rata with the value of the real property.\textsuperscript{33}

The next major measure concerning the taxation of railroads in Ohio was the passage of the Act of May 1, 1862. This Act provided that

The county auditors of the county in which any railroad had its track or roadway or any part thereof should constitute a board of appraisers and assessors for such railroad company. In the case of inter-county lines, the board of appraisers was required to "apportion the value of the railroad property, moneys, and credits among the several counties involved, and to the taxing districts within the counties so as to equalize the relative value of the real estate,

\textsuperscript{32} See n. 27 supra.

\textsuperscript{33} Ibid., p. 6.
structures, and stationary personal property of such company therein in proportion to the whole value of the real estate, structures and stationary personal property of such railroad company in this state. ... 34

In addition, the value of the rolling stock was to be apportioned among the taxing districts involved in proportion to the length of such road in each. The term "length of such road" was not defined in the act. 35

In 1868 the attorney general indicated that apportionment should be on the basis of main track miles. 36 In 1884, the laws ruled that

(1) the value of the rolling stock was to be apportioned in proportion to the length of road in each taxing district; (2) the fixed property was to be apportioned in the proportion that the value of the part in each county bore to the total in the state; and (3) the value of the moneys and credits was to be apportioned in the same proportion as the value of the fixed property. 37

The assessment by a group of county auditors constituted the first break with individual assessment, and was, in fact, the move to centralized assessment. 38

Still assessment was not satisfactory. In 1865 the Annual State Board of Equalization of Railroads was created. The board was to equalize the values of the railroads in the state by raising or

34 Ibid., p. 13.
37 Ibid., pp. 15 and 16.
38 Ibid., p. 17.
lowering the values as set by the county boards of assessors and appraisers. However, the county auditors were still responsible for the assessments.39

In 1910, a State Tax Commission was created.40

All of the various state and county boards of appraisers and assessors and state boards of equalization for public utilities were wiped out, and their powers and duties transferred to the Commission.41

The Commission was charged with the assessment and apportionment of the property of all public utilities, with the assessment of public utility excise and corporate franchise taxes, and with the general supervision of the assessment and taxation of property in general as done by the various county officials.42

In 1896 the legislature extended the excise tax to electric light, gas, natural gas, pipeline, waterworks, street railroads, messenger and signal, railroad and freight line, and equipment companies.

This act provided that the tax should be levied at the rate of 1/2 of 1 per cent of the apportioned gross earnings of railroad companies.43

In 1910, railroad excise taxes were limited to intrastate business alone instead of interstate and the state's share of interstate

39 Ibid., pp. 20 and 21.
40 Ibid., pp. 20 and 21.
41 Ibid., p. 57.
42 Ibid., pp. 57 and 58.
43 Ibid., p. 58.
business. As a result, the taxable revenues declined significantly, and to compensate for this loss, the rate of the tax was raised to 4 per cent. The rate was dropped to three per cent in 1933 as a depression measure, but was raised again to 4 per cent in 1934.\textsuperscript{44}

Railroads in Ohio at present are subject to the public utilities property tax (both tangible and intangible) and the state public utilities excise tax.\textsuperscript{45} In addition the rail lines are assessed for funds to support the Ohio Public Utilities Commission.\textsuperscript{46} A discussion of these two major forms of Ohio taxation is included here.

**Ohio Property Taxes as Applied to Railroads**

Under the Ohio property tax laws railroads are taxed on the "true value in money" of all of their property.\textsuperscript{47} Real and personal property of the railroads that is used in the operation of the line, in most instances, is assigned situs to the taxing district where it is located. This statement holds true for such items as second track, sidings, branch lines and stationary personal property.\textsuperscript{48} However, all railroad tangible personal property cannot be assigned a definite situs. An example is the rolling stock of the railroad that may be, at any one time, anywhere along the line of the railroad.

\textsuperscript{44} Ibid., pp. 234 and 235.

\textsuperscript{45} 102 O.L. 232 (1911); Cf. Ohio Revised Code 5727.06.

\textsuperscript{46} 102 O.L. 235 (1911); Cf. Ohio Revised Code 4905.10.

\textsuperscript{47} Ibid.

\textsuperscript{48} Ibid., p. 236.
These "unsitused" items represent the distributive value of the tangible personal property. In the case of this distributive property, the value is apportioned to the Ohio counties in the proportion that the length of road in each county bears to the entire length of road in all counties. Currently railroad distributive taxes are apportioned on a basis of the main track mileage in each county.

Since that portion of a railroad's property that can be assigned a situs is listed and taxed in the county and subdivision of location, it is impossible to make a generalization as to the rates of taxation of this property. However, in the state of Ohio, property tax rates range from a low of 17.100 mills in New Boston to a high of 50.900 mills in Shaker Heights. The estate average for real estate and public utility property tax rates is 30.640 mills.

Each county taxes railroad property at the same rate as is applied to other real and tangible personal property located in a particular local government within the county. There is no uniform state rate for these taxes, but rather, each county administers and collects its own ad valorem tax from this type of property. It should be noted that the tax levies within the counties are not uniform. For instance, in Crawford County rates vary from 18.50


50 Ibid.

mills in North Robinson School District to 30.70 mills in Plymouth Local School District.\(^{52}\)

On that portion of railroad property that cannot be assigned to a taxing district, the Public Utilities Tax Division of the Ohio Department of Taxation determines the distributive value of the property that is to be apportioned. To arrive at this distributive value, the Public Utilities Tax Division

(1) uses as a starting point the distributive value fixed for each public utility for the previous year. Then the Division (2) deducts from this figure the value of materials and supplies that was included in the previous year's distributive value. The figure thus arrived at is the previous year's operating value. Now the Division (3) deducts from the previous year's operating value a sum which is obtained by multiplying such operating value by a percentage to be determined by the Tax Commissioner.\(^{53}\) Then, the Division (4) adds to this adjusted figure an amount representing the product of the multiplication of the value of the current year's additions, materials, and supplies by 80 per cent. Finally, the Division (5) deducts from this figure an amount which is determined by multiplying the cost of the retirements made during the current year by a percentage to be determined by the Tax Commissioner. The final figure that results from making these five calculations is the distributive value for the current year. The distributive value is then apportioned among the taxing districts. \(...^{54}\)

As was mentioned earlier in this chapter, the apportionment of distributive railroad funds is made on the basis of main track miles in

\(^{52}\) Data supplied by Crawford County Auditor.

\(^{53}\) The percentage figure is one agreed upon between the Ohio Tax Commission and each of the railroads.

\(^{54}\) Richard E. Neel, The Taxation of Public Utilities in Ohio, A study made for the Ohio Department of Taxation (Columbus: The Ohio Department of Taxation, 1960), p. 6.
each county as a proportion of main track miles in all counties.

Administratively, the valuation of public utility property falls into three broad categories: the value of real estate which is "sitused" or localized to the county in which it is located; certain tangible personal property which is "sitused" or localized in a given county; and all other tangible personal property which is not sitused or localized in a particular county and must be allocated as provided by statutes to all counties in which a given utility operates. The latter portion of the total valuation is known as the distributive value of public utility property.

Before proceeding to a presentation of the remainder of the railroad tax structure in Ohio, it is necessary to examine the Ohio method of apportioning the distributive funds to the county governments.

The state of Ohio allocates the distributive funds of railroad taxes to local governments on the basis of miles of main track in the local government. Unlike highway fund allocation on a basis of road mileage in a particular taxing district, there does not appear to be any inequity in this method of allocation. Use of railroad facilities does not normally increase the costs to the local government, hence allocation on miles of track does not appear to have any serious shortcomings.

The intangible personal property tax of Ohio also applies to railroads.\textsuperscript{55} Intangibles, as applied to railroads include money,

\textsuperscript{55} 74 O.L. 95; Cf. Ohio Revised Code, 5707.03.
credits, productive and unproductive investments, deposits, and other taxable intangible personal property.\[56\]

In making assessments under the intangible personal property tax, the Tax Commission utilizes the following criteria: (a) money is to be assessed at the amount thereof in dollars on hand on the day that such money is required to be listed (January 1, annually); (b) credits are to be assessed at their true value in money on the day as of which the same are required to be listed (January 1, annually); (c) productive investments are assessed at the amount of the income yield during the calendar year next preceding the date of listing (January 1, annually, or, if permission is granted by the taxing authority, at the end of the fiscal year); (d) unproductive investments are assessed at their true value in money on the day that such investments are required to be listed (January 1, annually); (e) deposits are to be assessed at their amount in dollars on the day that they are required to be listed (on a day in November fixed by the Board of Tax Appeals); and (f) other taxable intangibles are to be assessed at their true value in money on the day as of which the same are required to be listed (January 1, annually).\[57\] The assessments are certified by the Tax Commissioner on or before the third Monday in May to the Auditor of State who enters them on the intangible property tax duplicate.\[58\]

\[56\] Ibid.

\[57\] 94 O.L. 205; Cf. Ohio Revised Code, 5711.22.

\[58\] Ibid.
With the value of the intangible personal property determined as described in the previous paragraph, taxes are levied at the following statutory rates: 59

(1) On productive investments, the rate is five per cent of the income yield.

(2) On unproductive investments, the rate is two mills on the dollar.

(3) On deposits, the rate is two mills on the dollar.

(4) On money, credits, and all other taxable intangibles, the rate is three mills on the dollar.

The taxes levied against railroad intangibles, with the exception of those on deposits, go to the General Revenue Fund of the State of Ohio and are paid into the State Treasury. The taxes levied on deposits go to the local government funds of the counties in which the taxes originate. The Treasurer of State is responsible for allocating the taxes on deposits to the local governments. 60

The Railroad Excise Tax in Ohio

On or before the first day of September each year, 61 each railroad doing business in the State of Ohio must list the gross earnings of the company from business done within the state for the year ending on the thirtieth day of June next preceding. 62 From these gross earnings reports the base of the railroad excise tax is derived

59 57 O.L. 95; Cf. Ohio Revised Code, 5707.03.
60 102 O.L. 235 (1911); Cf. Ohio Revised Code, 5725.22.
61 Ibid., p. 224.
62 Ibid.
against which the rates are applied to determine the amount of tax liability. For each railroad the base of the tax is the gross earnings from its intrastate business. In Ohio, railroads are currently taxed at a rate of four per cent of gross earnings from intrastate business. Of this amount, three per cent goes to the state General Revenue Fund, and the remaining one per cent is earmarked for poor relief.

The railroads make significant tax contributions to the state and county treasuries of Ohio. Table 18 indicated that in 1960 the railroads paid twenty-two and three-quarters million dollars to the eighty-eight Ohio counties in property taxes. In addition the rail share of public utilities excise taxes distributed to the counties was over seven hundred thousand dollars. Moreover, the railroads paid excise taxes into the state general revenue fund that totaled over two million dollars. Finally, the railroad share of assessments to support the Ohio Public Utilities Commission was $39,254. These sums total to over twenty-five and one-half million dollars.

To return to a consideration of the tax effects of railroad abandonments, the loss of tax revenues brought about by intensified abandonments could affect seriously the financial status of the state and local governments in Ohio. There does not appear to be any current reason for alarm over the possible tax loss because of

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63 Ibid., p. 247.
64 102 O.L. 224 (1911); Cf. Ohio Revised Code, 5727.40.
65 102 O.L. 248 (1911); Cf. Ohio Revised Code, 5727.46.
<table>
<thead>
<tr>
<th>County</th>
<th>Total Tax</th>
<th>Property Tax</th>
<th>Excise Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams</td>
<td>$36,801</td>
<td>$35,737</td>
<td>$1,064</td>
</tr>
<tr>
<td>Allen</td>
<td>251,184</td>
<td>244,590</td>
<td>6,594</td>
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<tr>
<td>Ashland</td>
<td>154,297</td>
<td>151,858</td>
<td>2,439</td>
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<tr>
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<td>770,675</td>
<td>764,265</td>
<td>6,410</td>
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<td>168,663</td>
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<tr>
<td>Auglaize</td>
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<td>26,930</td>
<td>25,682</td>
<td>1,248</td>
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<td>242,196</td>
<td>229,178</td>
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<tr>
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<tr>
<td>Clark</td>
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<td>8,388</td>
</tr>
<tr>
<td>Clermont</td>
<td>55,992</td>
<td>52,929</td>
<td>3,063</td>
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<td>Coshocton</td>
<td>114,186</td>
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<td>2,063</td>
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<tr>
<td>Crawford</td>
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<td>233,275</td>
<td>2,992</td>
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<tr>
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<td>3,346,247</td>
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<td>2,978</td>
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<td>207,914</td>
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<td>4,254</td>
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<td>83,525</td>
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<td>1,702</td>
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<td>Hocking</td>
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<td>84,128</td>
<td>1,347</td>
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<td>Huron</td>
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<td>Licking</td>
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<tr>
<td>Logan</td>
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<td>91,998</td>
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## TABLE 18 (concluded)

<table>
<thead>
<tr>
<th>County</th>
<th>Total Tax</th>
<th>Property Tax</th>
<th>Excise Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lorain</td>
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<td>$13,330</td>
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<td>Mahoning</td>
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<td>39,826</td>
<td>1,064</td>
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<td>158,168</td>
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<td>5,094</td>
<td>780</td>
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<td>Ottawa</td>
<td>139,448</td>
<td>137,250</td>
<td>2,198</td>
</tr>
<tr>
<td>Paulding</td>
<td>75,514</td>
<td>74,450</td>
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<td>Perry</td>
<td>46,902</td>
<td>45,200</td>
<td>1,702</td>
</tr>
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<td>Pickaway</td>
<td>253,035</td>
<td>250,624</td>
<td>2,411</td>
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<tr>
<td>Pike</td>
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<td>262,048</td>
<td>1,134</td>
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<td>467,250</td>
<td>462,850</td>
<td>4,396</td>
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<td>Preble</td>
<td>77,594</td>
<td>75,396</td>
<td>2,198</td>
</tr>
<tr>
<td>Putnam</td>
<td>141,013</td>
<td>139,382</td>
<td>1,631</td>
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<td>Richland</td>
<td>246,971</td>
<td>239,739</td>
<td>7,232</td>
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<td>Ross</td>
<td>367,688</td>
<td>364,001</td>
<td>3,687</td>
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<td>Sandusky</td>
<td>229,489</td>
<td>226,277</td>
<td>3,262</td>
</tr>
<tr>
<td>Scioto</td>
<td>524,622</td>
<td>518,524</td>
<td>6,098</td>
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<td>Seneca</td>
<td>423,689</td>
<td>419,789</td>
<td>3,900</td>
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<td>Shelby</td>
<td>91,441</td>
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<td>583,264</td>
<td>13,401</td>
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<td>Tuscarawas</td>
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<td>247,689</td>
<td>4,325</td>
</tr>
<tr>
<td>Union</td>
<td>88,190</td>
<td>86,843</td>
<td>1,347</td>
</tr>
<tr>
<td>Van Wert</td>
<td>160,258</td>
<td>158,344</td>
<td>1,914</td>
</tr>
<tr>
<td>Vinton</td>
<td>102,418</td>
<td>101,780</td>
<td>638</td>
</tr>
<tr>
<td>Warren</td>
<td>105,233</td>
<td>102,610</td>
<td>2,623</td>
</tr>
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<td>Washington</td>
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<td>40,016</td>
<td>3,474</td>
</tr>
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<td>Wayne</td>
<td>355,711</td>
<td>351,670</td>
<td>4,041</td>
</tr>
<tr>
<td>Williams</td>
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<td>121,995</td>
<td>1,773</td>
</tr>
<tr>
<td>Wood</td>
<td>452,606</td>
<td>448,139</td>
<td>4,467</td>
</tr>
<tr>
<td>Wyandot</td>
<td>144,272</td>
<td>142,712</td>
<td>1,560</td>
</tr>
</tbody>
</table>

**Total**  
$23,462,398  
$22,753,372  
$709,026

**Source:** Property tax data supplied by the Ohio Railroad Association; Excise tax data supplied by the Auditor of State.
rail abandonments, but with some Ohio counties so dependent on railroad taxes, the possibility of the loss of these revenues should be considered. Earlier in this chapter a proposal presented to the Senate Committee on Interstate and Foreign Commerce which would forbid the state and local governments from levying property taxes on the railroads was considered. Should this be adopted, several Ohio counties would find themselves in serious financial difficulty. Table 19 indicates the total property taxes collected in each of the Ohio counties, the railroad property taxes accruing to these counties, and the per cent of the total property tax that is attributable to funds received from the railroads.

Fifteen Ohio counties obtained more than ten per cent of their total property taxes from railroad property taxes, and in two counties, over twenty per cent of the total property tax came from the railroads in 1960. The loss of railroad property taxes in these counties would cause serious financial difficulty.

Should railroad abandonments become widespread in those counties that depend heavily on the rail revenue as a source of income, it would be necessary for these areas to find alternative sources of revenue to compensate for the losses in rail taxes. It is not the purpose of this investigation to propose alternate tax sources for

66 See pp. 145 and 146 supra.

67 The fifteen counties were Ashtabula, Hardin, Harrison, Hocking, Huron, Lawrence, Pickaway, Pike, Portage, Ross, Scioto, Seneca, Vinton, Wood, and Wyandot.

68 The two counties were Vinton and Pike.
TABLE 19

TOTAL REAL AND PUBLIC UTILITY PROPERTY TAXES, RAILROAD PROPERTY TAXES AND RAILROAD PROPERTY TAXES AS A PER CENT OF TOTAL PROPERTY TAXES
OHIO COUNTIES 1960
(In Dollars)

<table>
<thead>
<tr>
<th>County</th>
<th>Total Property Taxes</th>
<th>Railroad Property Taxes</th>
<th>Railroad Property Taxes as a Per Cent of Total Property Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adams</td>
<td>$452,223</td>
<td>$35,737</td>
<td>6.59</td>
</tr>
<tr>
<td>Allen</td>
<td>5,171,600</td>
<td>244,590</td>
<td>4.73</td>
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<td>2,388,635</td>
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<td>764,265</td>
<td>12.37</td>
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<td>Athens</td>
<td>2,322,256</td>
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<td>Auglaize</td>
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<tr>
<td>Brown</td>
<td>860,768</td>
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<td>2.98</td>
</tr>
<tr>
<td>Butler</td>
<td>11,723,531</td>
<td>229,178</td>
<td>1.95</td>
</tr>
<tr>
<td>Carroll</td>
<td>972,306</td>
<td>82,431</td>
<td>8.48</td>
</tr>
<tr>
<td>Champaign</td>
<td>1,681,630</td>
<td>126,138</td>
<td>7.50</td>
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<tr>
<td>Clark</td>
<td>7,237,690</td>
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<td>Clermont</td>
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<td>Clinton</td>
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<td>Darke</td>
<td>2,540,477</td>
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<td>5.32</td>
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<tr>
<td>Defiance</td>
<td>1,764,163</td>
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<td>6.72</td>
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<td>2,156,140</td>
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<td>9.64</td>
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<td>Erie</td>
<td>5,129,908</td>
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<td>8.29</td>
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<td>County</td>
<td>Total Property Taxes</td>
<td>Railroad Property Taxes</td>
<td>Railroad Property Taxes as a Per Cent of Total Property Taxes</td>
</tr>
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<td>----------------------</td>
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<td>-------------------------------------------------------------</td>
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</tr>
<tr>
<td>Wyandot</td>
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<td>12.01</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$635,744,620</strong></td>
<td><strong>$22,753,372</strong></td>
<td><strong>3.58</strong></td>
</tr>
</tbody>
</table>

Source: State of Ohio, Department of Taxation, Annual Report, 1960, pp. 71-73, and Table 17.
the local governments, but it is appropriate to call attention to the fact that some future change in tax structure may be required. It is not too early for the local governments to take the possibility into consideration.

Railroad tax effects may be divided into two broad categories, those effects on the railroads having to pay the taxes, and those effects on the state and local governments that depend on the tax revenues. So far as the former is concerned, even if property tax relief were to be forthcoming, there would not be a basic change in the competitive position of the railroads. The unequal competitive situation stems from reasons more deep rooted than the payment of taxes, and tax relief would not permanently allivate the situation.

So far as the latter effect of rail taxes, that concerned with the revenues accruing to the state and local governments the abandonment of lines has not proceeded at a pace or volume that need cause any particular Ohio county immediate concern. However, the possibility of accelerated abandonments in the future might well cause some of the Ohio counties that are highly "railroad oriented" some concern.

Summary

The social and economic implications of railroad abandonments may be divided into two main groups; those that precede the abandonment, and those that result from the abandonment. Among the first group are the social and technological changes that lead to the adoption of alternative forms of transport that preclude or reduce
the need for the continuation of rail transport service. Changes may occur because of the flexibility and service offered by the motor carrier vis à vis the rail carrier. Technological change may result from the depletion or exhaustion of natural resources. In any case, the need for rail service has declined. These changes are long run in nature, and as such are absorbed in the social evolution. These changes cause rather than result from railroad abandonments. Abandonment after the fact of social or economic change need not cause any significant dislocations of the society or the economy. Specific segments of the economy, i.e., certain industries or individuals may feel the impact of abandonments, but no widespread upheaval will result.

Of a more serious nature are the economic changes that result from the actual abandonment of the lines. The effects on the labor force directly connected with the operation of the line being abandoned have been minimized. Carrier obligations to employees idled as a result of the abandonment tend to alleviate what might otherwise be a serious situation. The carriers experience increased costs as a result of the payment of this compensation, but the savings accruing from the abandonment of an unproductive line are believed to more than cover these costs. Carriers are not required to offer compensation to workers idled by the abandonment of the entire line of road because there are no savings to the company from the retirement of operations.

When a railroad abandons all or a portion of its line, and the rails and other physical equipment are removed, land becomes available
for alternative uses. Land that is released from rail use in urban areas may be readily adapted to an alternative use. On the other hand, land that is released in rural areas cannot be so readily utilized in other pursuits. The analysis of the railroad abandonments in the state of Ohio in Chapter V include an examination of the use to which former railroad land has been put.

The major economic problem attending railroad abandonments is that of taxation. There are two aspects of the tax problem of the railroads. The first is the burden of property taxes paid by the railroads, and their claim that these taxes are making the rail industry noncompetitive in the overall transport complex. The second concerns the loss of tax revenue by state and local governments.

It is not believed that tax relief would materially alter the competitive position of the rails. The reasons for the inability to compete are more deep seated than the tax structures of the various state and local governments. The railroads are being shunned by many shippers because of the time involved in transport, the inflexibility of the route, and other inherent disadvantages of this mode of transport. There is no evidence that tax considerations have in themselves caused any of the railroads to abandon lines. It will be shown in Chapter V that the petitions for abandonment in the state of Ohio sometimes indicate the amount of tax savings that may be realized should abandonment be granted, but in no case is there evidence that the tax problem was a controlling influence in the decision to seek abandonment.
The tax effects of rail abandonments on the state and local
governments do not appear significant at the present time. Abandon-
ments have not been of sufficient magnitude or in sufficient numbers
to cause any significant loss of revenues to the state and local
governments. An analysis of the abandonments in Ohio over the past
twelve years will verify this fact. However, if future tax exemption
policy should cause state and local governments to stop levying ad
valorem or "in lieu" taxes on the railroads or if the rate of rail
abandonments should accelerate, there would be cause for concern in
those local areas that are dependent upon rail revenues as a signifi-
cant portion of their tax revenue.

The preceding chapters have been concerned with the reasons for
railroad abandonments, and the economic and social implications of
these abandonments. In the following chapter, an analysis of the
railroad abandonments in the state of Ohio over the past twelve years
will examine the actual details concerning the reasons for abandon-
ment, the land use, tax, and social and economic problems that have
resulted.
CHAPTER V
AN ANALYSIS OF OHIO RAILROAD ABANDONMENTS, 1948-1960

During the past thirteen years (1948-1960), twenty-one authorizations were granted by The Interstate Commerce Commission and two by the Public Utilities Commission of Ohio allowing railroads to abandon a total of more than 185 miles of track in the state of Ohio. The purpose of this chapter is to analyze the Ohio abandonments in order to ascertain the effects of these abandonments on the social and economic life of the areas directly involved. The Interstate Commerce Commission and Ohio Public Utilities Commission reports relevant to these Ohio abandonments are included as Appendix B.

Reasons for Ohio Railroad Abandonments

Regulatory commissions require that a railroad have a valid reason for abandoning a particular line before the prayer of a petition to cease service is granted. The four basic reasons that account for petitions to abandon rail facilities were analyzed in Chapter III.¹ These are: (1) competition from alternative carriers, (2) readjustments in railroad operating practices, (3) depletion or exhaustion of natural resources or the closing of non-transportation facilities, and (4) legal changes in the status of the railroad and miscellaneous unknown causes.²

¹ Chapter III, pp. 58 and 59.

² See n. 1, Chapter III.
An analysis of the twenty-three abandonments in Ohio indicates that abandonments in the state have indeed conformed to this general classification. Table 20 shows the reasons offered by the railroads for the desire to abandon lines. The most common reason was competition (37.50 per cent), followed by decline in the source of traffic (25.00 per cent). Changes in the legal status of the railroads and readjustments of railroad operating practices each accounted for 18.75 per cent of the reasons proffered for the necessity to abandon. It should be noted that several of the petitions involved more than one reason for abandonment. For the twenty-three cases involved, there were thirty-two reasons offered in support of the need to relinquish service. A closer analysis of the reasons for abandonment illustrates the precise points at issue.

**Competition**

Competition, the most frequently mentioned reason for abandonment, may take one or more of several forms. Competition may come from other railroads, highway carriers, pipelines, or water carriers. All four forms of competition are represented in the Ohio abandonment cases.

**Competition from Other Railroads**

In the *Ohio and Morenci Railroad Company Abandonment* the Interstate Commerce Commission reporter stated:

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3 See Chapter III, p. 59.

4 See Appendix B, pp. 242-246.
## TABLE 20

REASONS OFFERED FOR ABANDONMENT OF RAIL FACILITIES IN OHIO

1948-1960

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Competition</th>
<th>Decline in Source of Traffic</th>
<th>Change in Legal Status</th>
<th>Readjustment of Operating Practices</th>
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<td>16332</td>
<td>x</td>
<td>X</td>
<td></td>
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<td>16637</td>
<td>x</td>
<td>X</td>
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<td>X</td>
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<td>27499</td>
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<tr>
<td>Total</td>
<td>12</td>
<td>8</td>
<td>6</td>
<td>6</td>
</tr>
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</table>

Source: Interstate Commerce Commission and Public Utilities Commission of Ohio abandonment cases included in Appendix B.
The principal reason for the loss in traffic and revenues is shown to result from the transfer by 2 shippers at Morenci of their business to the New York Central Railroad Company.

**Competition from Highway Carriers**

Highway carriers provided the greatest amount of competition for the railroads, and among the competitive factors were the most frequently mentioned reason for losses in traffic and revenues. In the Lornin and Southern Railroad Company Abandonment the Interstate Commerce Commission found the following fact:

The amount of traffic moving over the line in recent years has decreased because of the use of trucks for shipping stone outbound and coal and miscellaneous freight inbound.

Further, in the New York Central Railroad Company Abandonment, it is stated:

Practically all the coal now mined in the territory is transported by means of trucks. None has been shipped on the branch since July 1953.

Also, in the Springfield Suburban Railroad Company Abandonment the findings of the Interstate Commerce Commission include:

Diversion of freight to motor carriers has also contributed to the decrease in the applicant's traffic during recent years.

Finally, in the Cleveland, Cincinnati, Chicago and St. Louis Railway Company Abandonment, the application stated:

---

5 See Appendix B, pp. 255 and 256.


7 See Appendix B, pp. 287-290.

The portion of line ... traverses an agricultural territory which is not productive of rail freight traffic. The territory is adequately served by common carrier trucks. ... 

In seven of the twelve cases listing competition as a factor in abandonment, the highway carrier was either explicitly cited or implied as the major source of competition.

Competition from Waterways

One of the more interesting cases of abandonment in Ohio concerns the loss of rail traffic because of competition from barge lines. In the case of the Toledo and Eastern Railroad Company, the following statements by the Ohio Public Utilities Commission are significant:

In connection with other recent matters submitted to this Commission and, particularly, the several recent general applications for railroad freight rate increases, this Commission has been made aware of the background prompting the filing of this Application. The abandonment of service here being considered is a direct result of the pricing policies of Ohio railroads, which have annually prompted the railroads to seek increases in their freight rates. Such increases, particularly, in the transportation of coal, have had their effect by way of making it increasingly difficult for the electric power companies in this state to secure coal for the production of electrical energy without imposing additional and increased charges upon their customers. In an attempt to avoid these steady increases in transportation costs, all electric power companies in this state have sought various means of securing their coal by other than rail transportation. Some companies have met this challenge by installing pipelines for the transportation of their coal at lower cost. Others are locating their generating facilities in the coal fields themselves and transporting the electric energy by wire. Still other electric utilities, such as the Toledo Edison, have sought to alleviate their transportation cost difficulties by resorting to transportation by water. In the case of

9 See Appendix B, pp. 311-313.
Toledo Edison, so securing its coal has become so practical and successful that the Toledo Edison Company virtually has discontinued receiving coal via this Applicant railroad company. The Applicant, for its part, has, at least since 1947, and probably before that time, been utterly and completely dependent for its major source of revenue upon the transportation of coal for the Toledo Edison Company. Thus, the change in Toledo Edison operations outlined above has resulted in the complete removal of its principal revenue account. Faced with this situation, and without new sources of business, the Applicant is compelled to seek the consent of this Commission to the abandonment of its total operations.

The statement by the Ohio Public Utilities Commission is quite concise in indicating that this particular abandonment resulted from the ability of the water carrier to capture rail traffic because of the differential transportation rates charged by the two carriers.

**Competition from Pipelines**

Although the findings in the Toledo and Eastern Railroad Abandonment\(^\text{10}\) just cited hinted at the move from rail to pipeline for the transportation of coal, the greatest pipeline competition for the rails is associated with the petroleum industry. The Bay Terminal Railroad Company Abandonment\(^\text{11}\) is more specific concerning the competitive role of the pipeline. The following excerpt from the case illustrates the point:

> The applicant does not render any passenger service of any type, and its traffic as to freight has been gradually reducing in past years because of a change in policies in the transportation of petroleum products.

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\(^{10}\) Ibid.

\(^{11}\) See Appendix B, pp. 308-310.
The Sun Oil Company receives all its crude oil through a pipeline and transports most of its refined petroleum products by pipeline, tanker, or tank truck.

The preceding paragraphs represent a sample of the Ohio abandonment cases that indicate that competition from alternative types of transport has contributed to the advisability of abandonment. The major competitive force was in the form of highway carriers, but competition from other railroads, pipelines, and water carriers was also represented in the Ohio cases. The interested reader may wish to consider in detail the causes for abandonment suggested in the individual cases. For that reason, they are included as Appendix B of this dissertation.

Decline in the Source of Traffic

Of eight railroad abandonment cases in the state of Ohio that listed the decline in the source of traffic as a contributing factor to the necessity to abandon lines, the majority attributed the decline to a loss in rail coal traffic. The following cases illustrate the importance of the decline in coal traffic as a contributory reason for abandonments.

In the New York Central Railroad Company Abandonment,\textsuperscript{12} The Interstate Commerce Commission found that:

During the past 6 years, the only traffic over the line has been the freight of the Dry Fork Coal Company's mine. As proposed by the applicant, spur track rail service for that traffic will continue to be available after the line is abandoned. In May 1947, shipments were discontinued from the two other coal mines on the line. Those mines have been mined out and the tipples

\textsuperscript{12} See Appendix B, pp. 263 and 264.
are being dismantled. The applicant states that there is no likelihood of new industries being located on the line.

In the *Wheeling and Lake Erie Railway Company et al Abandonment*\(^{13}\)

the Interstate Commerce Commission found:

...The segment became a part of the Massillon branch and was utilized principally to serve coal mines and brick plants. These industries are no longer in existence.

Further, the *Chesapeake and Ohio Railway Company Abandonment*\(^{14}\) contains the following statement concerning the depletion of resources causing a decline in the source of traffic.

For many years, coal mining was the important industry in the territory served by the line. Prior to 1943, millions of tons of coal were produced by shaft mining for shipment to the Great Lakes region and throughout the central portion of the United States. Shortly after 1943, stripping operations started, and small strip mine operations which sprang up in the area depended almost entirely upon rail transportation for handling the coal to market. However, by 1952, all locations that could be profitably stripped were worked out, and the cost to mine the remaining coal in the area became prohibitive from a competitive standpoint. As a result, all the mines in the territory served by the line have discontinued operations, and the last carload of coal handled on the line moved July 21, 1952. Since then, only 14.4 tons of freight have been tendered to the applicant for transportation on the Snow Fork Subdivision. ...It is apparent from the record that public need for the line no longer exists and that its continued maintenance and operation would impose an undue and unnecessary burden upon the applicant and upon interstate commerce.

A similar situation may be found in Athens and Morgan Counties,

\(^{13}\) See Appendix B, pp. 268 and 269.

\(^{14}\) See Appendix B, pp. 275 and 276.
Ohio, where the New York Central abandoned almost sixteen miles of track.\textsuperscript{15} In the findings in this abandonment, the Interstate Commerce Commission representatives investigating the feasibility of abandonment stated:

The territory tributary to the branch is devoted principally to the production of coal by means of strip mining processes. Other industrial activities include farming and lumbering. No industrial plants are located on the branch, but there are a few business establishments engaged in handling local products and supplies. In former years the branch received its chief support from coal shipped by the Black Diamond Coal Company from its mines at Lathrop. These mines were closed on December 1, 1944, and the applicant states that there is no prospect that operations will be resumed. ... Practically all the coal now mined in the territory is transported by means of trucks. None has been shipped on the branch since July, 1953.

This case characterizes the dual reasoning behind several of the Ohio abandonments. Not only has the railroad suffered because of the decline in the source of traffic, but the rails have been supplanted by trucks because of the decline in the volume of coal mined. The reader should recall the problems experienced by the railroads discussed in Chapter III, pages 123 and 124, as a result of the high fixed costs of the rails and their inflexibility in adjusting to traffic pattern changes.

Finally, in the Cleveland and Pittsburgh Railroad Company et al Abandonment,\textsuperscript{16} the representatives of the Interstate Commerce Commission found that:

\textsuperscript{15} See Appendix B, pp. 265-267.

\textsuperscript{16} See Appendix B, pp. 277 and 278.
The area's coal mines, formerly the source of the segment's traffic, are depleted, and agriculture is now the principal industry. The farmers utilize public highways and are not dependent upon the segment. No service has been performed on such line for the past 2 years.

Evidence from the cases cited under this section demonstrates the fact that depletion of resources and the resultant decline in this source of traffic has been a significant contributory factor in the abandonment of rail lines in the state of Ohio. It should be noted that while Ohio ranks fifth in coal production by states in the United States, the total Ohio output of the product is less than 10 per cent of the national output. It is quite probable that the depletion of coal resources creates an even greater problem in states that are more closely oriented to the production of coal.

A decline in traffic may also result from the closing of non-transportation facilities. One Ohio abandonment serves as a good example of the effects of the closing of an industrial enterprise. In the Springfield Suburban Railroad Company Abandonment, in which the entire line was abandoned, the following statement points out the role of industry in the continued successful operation of a railroad.

Applicant's only operation is the performance of a switching and terminal service between its trunk line carrier connections and industries on its line. It presently performs such services on Monday, Wednesday, and Friday of each week. There are now relatively few industries located along its track. The largest of these plants is the now vacant Crowell-Collier plant, a


18 See Appendix B, pp. 287-290.
publishing company formerly contributing approximately 90 per cent of the traffic which applicant handled. This concern discontinued its business in Springfield in 1957, and since that time the owners of the plant property have been unable to sell or lease it. ... As shown, although applicant operated the line at a profit in 1956, it has suffered deficits in 1957 and 1958, primarily because of its loss of traffic formerly furnished by the publishing company.

Declines in the source of traffic, whether in the nature of depletion or exhaustion of natural resources, or a result of industrial or other non-transportation factors, have been a major contributing factor in the cessation of service of railroads in Ohio. A portion of the problem faced by the rails is their relative inflexibility in adjusting to new or alternate business. When the resources are depleted, the rails cannot adjust to new fields or to other enterprises unless they happen to be located on or relatively near the existing line. The railroad is then faced with the dilemma of hoping that new enterprises will locate in the area and utilize their facilities, or, as an alternative, abandoning the line to save the overhead expenses of maintaining a route that is no longer profitable. When resources are depleted, there is usually an accompanying decline in the over-all economic activity of the area affected.19 Realizing this fact, the representatives of the railroads are reluctant to base future policy on the possibility of a rejuvenation of the area. The alternative is abandonment of the no longer needed line. As coal continues to become more difficult and expensive to mine, and as the

use of coal as a fuel meets more vigorous competition from alternative forms of energy, it may be expected that many communities in Ohio that have their economies oriented toward the mining of coal will suffer economic dislocations. In this event, the railroads that serve these areas will experience difficulties in maintaining traffic and revenues, and abandonment may well follow.

The analysis of the depletion or exhaustion of resources as a reason for abandonment points up a significant fact. A review of the cases considered here indicates that the railroads have been the victims of the change in economic conditions rather than the cause of economic disruptions. In each case, the resource depletion has preceded the loss of traffic by the railroad, and the line has been left with no alternative other than abandonment. Abandonment frequently has ill effects on the remaining activity in the area involved, but with the source of traffic and revenues removed, the railroad cannot afford to preserve an unprofitable service.

Changes in the Legal Status of Railroads

Abandonment of a rail line may occur because of a change in the legal status of the railroad. Lack of traffic may result in an abandonment of use of a particular segment of line, but legal abandonment does not take place until sanctioned by the Commission authorized to act in each case. Or, a line or portion of a line may be removed from the classification of "common carrier." This situation could result from the sale or transfer of tracks from a common carrier to a private
company for use by that company. In Ohio, several rail abandonments
have resulted from legal changes. For instance, in the Bay Terminal
Railroad Company Abandonment the following statement provides an
example of the issue.

The sole shipper of outbound commodities located on
the applicant's line is the Sun Oil Company, which company
ships petroleum and petroleum products in tank cars.
Service furnished to the other two industries is very small
in nature. In the year 1954 Hirzel Brothers received 17
carloads of coal and the Republic Steel Corporation
received 91 cars of ore. Outbound products of these two
shippers are all transported by motor vehicle. In the
application the applicant proposes to sell all of its
right-of-way including its main tracks and yard tracks to
the Sun Oil Company. This company will then operate the
same as its own plant facility.

In this case, the road becomes the property of a private corporation,
and is transferred from the status of a common carrier.

A similar case is the Lorain and Southern Railroad Company
Abandonment. The following statement from the case illustrates the
significant point.

Upon abandonment of the line, the facilities will
be acquired by the quarry company for use as a part of
its plant trackage. Continued operation of the line
as a common carrier would impose an undue and unnecessary
burden upon the applicant and upon interstate commerce.

This line also was removed from the classification of a common carrier.

In the case of the Pennsylvania, Ohio and Detroit Railroad

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See Chapter III, pp. 124 and 125 for a discussion of the legal
changes that may lead to abandonments.

See Appendix B, pp. 308-310.

See Appendix B, pp. 255 and 256.
Company Abandonment⁵³ the following remarks indicate the change in

the legal status of the line:

No traffic has moved over the line since 1930, and

no maintenance has been performed since 1947. It is,

therefore, in poor condition. Adjacent landowners have

encroached on the right-of-way, and the tracks at road

crossings are covered with macadam. ...In light of the

fact that it has no value for transportation purposes,

its abandonment is warranted.

A similar case of deterioration through non-use and lack of

maintenance is evidenced in the Erie Railroad Company Abandonment.⁵⁴

...no traffic has been handled thereover for the

past 2 years and the applicant states that there are no

prospects of any traffic in the future. As the result

of deferred maintenance, over 90 percent of the rail,
ties and other track material has deteriorated to the

extent that they are of no value except for scrap. ...It

is clear from the record that the segment no longer serves

any useful purpose.

Changes in the legal status of the railroads are, then, contrib-

buting factors to abandonments in Ohio. Lines that have been inopera-

tive in the past have sought legal authorization to remove the lines

completely from the classification of common carrier. This removal

has taken one of two forms. Either the line has been abandoned for

all future transportation purposes, or the line has been sold to

private firms who intend to use the former common carrier property as

private property.

Removing rail property from the common carrier status accom-

plishes several objectives. When common carrier status is no longer

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²³ See Appendix B, pp. 253 and 254.

²⁴ See Appendix B, pp. 257 and 258.
applicable, the lines are not required to maintain the segments in full operating condition. If the line is fully abandoned, i.e., the rail property removed and the land sold, the line has no further maintenance costs. In addition, there are savings that accrue from taxes that no longer have to be paid to the state and local governments. Further, in most instances, the rail line can realize a salvage value from the abandoned facilities when they are disposed of. Both the salvage value of the abandoned lines and the tax savings, if any, resulting from abandonment will be discussed later in this chapter.

Changes in the legal status of the railroads is a method of reducing over-all costs of operating an entire railroad by selling or abandoning line that no longer has a place in the common carrier complex of the transportation industry.

Readjustment of Railroad Operating Practices

The final reason for abandonments to be considered in this section is that of changes in the operating practices of the railroads. Operating changes may take one of several forms. Sample Ohio abandonment cases will point up some of the reasons given for abandonment in the state that fall into this classification.

In the New York Central Railroad Company Abandonment the following statement illustrates the change in operating practices of the road:


26 See Appendix B, pp. 270 and 271.
The segment to be abandoned is a portion of applicant's northerly route between Meigs and Hobson. It was constructed in 1882 by the Ohio Central Railroad Company for the purpose of serving the coal fields in southern Ohio and affording an outlet for coal from territory south of the Ohio River. The Toledo and Ohio Central Railway Company acquired it in 1938; and that company was merged with applicant on June 30, 1952. Applicant also has another route between Meigs and Hobson which runs to the south of, but roughly parallel to the route involved herein. This southerly line is more advantageous as to grade and is presently being used by applicant for the movement of all through traffic between the above mentioned points.

A case including a similar duplicate track situation is the Norfolk and Western Railway Company Abandonment\(^{27}\) in which the following statement by the representative of the Interstate Commerce Commission is noteworthy:

The line sought to be abandoned was constructed in 1884 by the Cincinnati and Eastern Railway Company as part of its road between Cincinnati and Sciotoville, Ohio. In 1887 the line was acquired by the Ohio and North Western Railroad Company, and subsequently by the Cincinnati, Portsmouth and Virginia Railroad Company in 1891. The applicant acquired the line of the latter company in 1901 for the purpose of extending its railroad into Cincinnati, Ohio. In Finance Docket No. 15248, Norfolk and Western Railway Construction, 261 I.C.C. 813, decided June 6, 1946, (not printed in full), we authorized applicant to construct a second line which is generally parallel to the line herein sought to be abandoned, but which in some places is approximately 2 miles distant therefrom, and has fewer curves and superior grade than the old trackage. The new main-line trackage was completed in November, 1947, and since that time the great bulk of passenger and freight traffic has moved over it. ...Since the new line which was completed in 1947 provides an alternate route between Mineral Springs and Plum Run, and since no traffic is generated by the old line, the abandonment of the latter would have no adverse effect on the revenues of the

\(^{27}\) See Appendix B, pp. 281 and 282.
applicant. The applicant states that "operating expenses likewise would not be affected," but it would seem that these expenses should be decreased by reason of the fact that the carrier would be relieved of the necessity of maintaining this trackage.

Further, in the Mahoning Coal Railroad Company et al Abandonment the examiners, in considering parallel routes of the line, stated:

As between the High Grade segment and the parallel Low Grade branch, the latter, for all practical purposes, is the line over which is transported the mainline freight of the New York Central. The involved High Grade segment cannot be utilized for the movement of the greatest volume of such traffic, except at a substantial sacrifice in time and efficiency of operations, and at considerable increased costs. The reasons therefor have been fully discussed. ...In the examiner's opinion, the record supports applicant's determination that the involved High Grade segment is not necessary to the operations of the New York Central, and that the towns and individual users of service on such segment would suffer no undue hardship following the abandonment.

The three cases just cited illustrate the movement toward elimination of a duplicate track where a serviceable track remains which is capable of handling the present and foreseeable future traffic. Removal of this surplus track could result in savings in maintenance, taxes, and other operating expenses.

Removal of duplicate trackage is not the only revision in operating procedures that may contribute to abandonment. The elimination of grade crossings, and the high cost of such elimination may play a significant role in the move to abandon track. In the Connecting Railway Company et al Abandonment the following statement illustrates this point.

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28 See Appendix B, pp. 293-304.

29 See Appendix B, pp. 279 and 280.
It is apparent that the line is no longer serving any useful purpose and is being operated at a deficit. Its abandonment will enable the applicants to avoid an expenditure of a substantial amount for its reconstruction and will eliminate several potentially hazardous grade crossings.

Summary

From the preceding analysis of a sample of Ohio abandonment cases it can be seen that the abandonments in the state conform rather closely to the classifications as set up by Cherington. Several of the cases discussed include multiple reasons for abandonment, and it is impossible to weight the importance of the several reasons proffered in order to classify precisely the case as resulting from one factor or another.

From the data analyzed it appears that the most frequent reason for abandonment of rail lines in Ohio was competition. This competition came from other railroads, highway carriers, pipelines, and water carriers. Depletion or exhaustion of resources, or changes in non-transportation industries were also important as a contributing factor to abandonments in the state. The decline in coal production and transport was the most important single resource change to which abandonments were attributed.

Several railroads abandoned line that duplicated or paralleled another line, and thus made possible savings in maintenance and taxes. Finally, several lines were successful in removing unused facilities from the classification of common carrier. In some instances, unused

30 See Chapter III, n. l.
line was abandoned, and, in other cases, the property was transferred to industrial owners for private use.

Regardless of the reasons given for abandonments, one fact is significant. Through the abandonment of line, the railroads may reduce costs, and eliminate some of the inequities that they claim exist in comparison with other carriers. The removal of property that does not pay its way allows the rails to realize greater over-all earnings on the retained portion of their line. The removal of unused, obsolete, or duplicate track tends to reduce costs for the line seeking abandonment, and these cost reductions allow the line to make a better showing on the total remaining trackage. The trend toward elimination of waste in the industry appears to the writer to be a healthy policy. Further abandonments of facilities that cannot pay their way would contribute to the elimination of waste.

The reasons for abandonment having been considered, the effects of these cessations of service on the communities and areas affected will be considered.

The Direct Labor Effects of Ohio Abandonments

In eight Ohio abandonment cases the question of the future of employees idled by the abandonment of the line was an issue. In all of the cases except one the regulatory commission indicated that railway employees would be treated as required in the Chicago.

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31 See Interstate Commerce Commission Finance Docket Nos. 16637, 18279, 18472, 18735, 20276, 20309, 20475, and 20923 in Appendix B.

32 Finance Docket No. 20475.
Burlington and Quincy Railroad Abandonment case. In the Springfield Suburban Railroad Company Abandonment the Interstate Commerce Commission examiners pointed out that

The abandonment proposed herein contemplates the discontinuance of all railroad operations by applicant. We have held in prior proceedings of this nature that no conditions for the protection of railway employees would be imposed where an entire line of railroad is permitted to be abandoned. See Missouri and A Ry. Co. Receivers Abandonment, 271 I.C.C. 171 (183-184) and cases cited therein.

Of the six Ohio abandonments in which the application of the prescribed rules for idled employees was suggested, only one met with any opposition from the abandoning line. The following statement from the case is significant:

A representative of employees requests that if abandonment of the ferry is permitted, we impose for the protection of employees who may be adversely affected, conditions similar to those prescribed in Chicago B. and Q. R. Co. Abandonment, 257 I.C.C. 700. Actually, none of applicant's employees is used in operation of the ferry service. Moreover the proposed substituted service will require the continuance of the rail station at Ripley. Applicant therefore argues that the conditions should not be imposed because the only employee of applicant who might be affected is the clerk at the South Ripley station, and only then if the Kentucky Railroad Commission permits a change in that station from an agency to a non agency status. Stated otherwise, applicant contends that the necessity of obtaining the requisite State authority prevents the abandonment involved herein from directly affecting that employee. However, applicant clearly intends to request and obtain such

33 275 I.C.C. 700 (1944). See also Appendix A.
34 See n. 31, supra.
35 See n. 32, supra.
authority, if possible, in order to accomplish its overall plan to substitute highway operations in lieu of ferry operations. The record shows that applicant's employees were used in making repairs to the ferry boat, and since there exists a possibility that the agent at South Ripley may be adversely affected by the closing of the agency station at that point, a result directly attributable to the permission to abandon herein sought, our certificate herein will be issued subject to the conditions for the protection of employees as were imposed in Chicago, B. and Q. R. Co. Abandonment, supra.

Summary

Abandonment effects on employees directly associated with the line relinquishing service have been negligible in Ohio. In those cases where a question arose as to the treatment of employees, the regulatory commissions required that the parties concerned be bound by regulations similar to those prescribed in the Chicago, Burlington, and Quincy Railroad Abandonment. In one case, no protection was provided because the abandonment concerned embraced the removal of the entire line from service. To the extent that employee protection is necessary, the regulatory commissions appear to have found a uniform method of disposing of the problem through the application of the Chicago, Burlington and Quincy Railroad Company Abandonment, cited above. The Ohio cases do not yield evidence of any significant problem arising from this requirement by the commissions.

Opposition to Abandonments in Ohio

When a proposal is made to abandon all or a part of a railroad, an opportunity is given to interested parties to protest such abandon-

36 See Appendix B, pp. 287-290.
ment. If protesters can show good cause why the line should not be abandoned, or can show that the future public convenience and necessity would be threatened, the abandonment will not be allowed.

Opposition to rail abandonments in Ohio over the periods 1948-1960 was limited to seven of the twenty-three cases that arose. The remaining sixteen cases contain statements to the effect that no representations have been made by any State authority and no objection to the granting of the application has been presented. It is obvious that the objections voiced in the seven cases cited have been overcome, otherwise the abandonment petition would not have been granted. In order to understand better the handling of protests, several examples of opposition and the disposition of the objections to abandonment in Ohio cases are cited here.

In the Chesapeake and Ohio Railway Ferry Abandonment\textsuperscript{37} the following comments are significant:

The primary concern of those witnesses testifying in opposition to the application is their anticipated loss of business from the Kentucky side of the river because, if the ferry service is discontinued, a large majority of that business will undoubtedly be diverted to Maysville. Several witnesses connected with the tobacco warehouse also contend that the movement of hogsheads of tobacco out of their warehouse to the Maysville station cannot be conducted as expeditiously as it is now moving to the South Ripley station over the ferry. Applicant, however, denies this because it proposes to load the equipment to capacity rather than the partial loading as has been the past practice, and thereby make up for the additional time necessary to make the round-trip to Maysville. Because of the steep approaches to the ferry landings on each side of the river, trucks are loaded with only 4 hogsheads

\textsuperscript{37} See n. 32, supra.
of tobacco lying flat. Under the proposed operation over the highway, it is expected that the trucks could be loaded to a capacity of 8 hogsheads standing on end. Applicant points out that the over-all time-in-transit will be about the same, and that the greater availability of trains at Maysville as compared with trains at South Ripley will considerably expedite the subsequent rail movement of this traffic. The remaining contention by one of the opposing witnesses concerned his apprehension that the present mail service would be adversely affected. That applicant has no obligation in this respect seems clear. ...No one questions the fact that the local bank-to-bank traffic moving over the ferry will not, by itself, permit the continuance of its operation on a profitable basis. ...Abandonment no doubt will cause some inconvenience to people using the ferry exclusively in tank-to-bank service, but applicant cannot be expected to continue ferry operations at a loss in order to provide service for these patrons.

In the above case, the railroad successfully countered several of the protests by offering alternative service that was superior to the existing service. Those hardships, real or imagined, that could not be alleviated, were not considered sufficiently significant by the Interstate Commerce Commission examiner to prevent abandonment of a facility that could not be supported by either the existing or prospective future traffic.

Regardless of the reasons given for the desire to abandon a portion of a rail line, the basic causes for such abandonment center about the inability of the road to obtain sufficient revenues to continue operations. Whether revenues fall because of competition from alternative carriers, legal changes, resource depletion or exhaustion, or altered operating practices of the line makes little difference. The loss of revenue is the paramount consideration. In view of this fact it is interesting to note that frequently the industries or persons who suffered a decline in business that led
to the reduction in railroad revenues are the most vocal protesters to the abandonment of the line. Those industries or persons who have shifted their traffic to alternative carriers are frequently involved in objections to the cessation of service by the rails. A rather lengthy, but quite informative abandonment case points up these facts.

In the Mahoning Coal Railroad Company et al Abandonment the following statements are appropriate to the subject under consideration:

The Kinsman Chamber of Commerce, through its industrial development committee, seeks to attract industries to the Kinsman area. Up to the time of the hearing, however, the Committee had not been successful in its efforts. The Chamber of Commerce points out that Kinsman is within "easy" trucking distance of various industrial points, such as Ashtabula, Conneaut, Cleveland, Youngstown, Akron, and Pittsburgh, Pa., among others. The Ashtabula County Planning Commission has rezoned the right-of-way along the involved High Grade segment as industrial and commercial, and is also interested in similar developments along the Low Grade branch. It recently established, about several months prior to the hearing, an industrial committee to encourage industrial development in the county, but the committee's plans and actions are not completely formulated. In effect, the County Commission requests that applicant withhold their requested abandonment until such time as its industrial committee gets into full operation and can achieve some result.

The group of concerns previously referred to as being primarily affected by the proposed abandonment, also appeared in opposition to the application; specifically the Williamsfield Salvage Company, and the Ashtabula County Farm Bureau, Cooperative Association, the latter a member of the Farm Bureau Cooperative

38 See Appendix B, pp. 293-304.
Association, Inc., (FBCA), in connection with the Williamsfield station; The Trumbull County Farm Bureau Cooperative Association, also a FBCA member, and Willis Drum at the Kinsman station; Wade Griffin, doing business as Griffin's Mill, at Fowler; and a branch of the Trumbull Cooperative and the Stambaugh Hardwood Lumber Company at Tyrrell. The FBCA organization is a purchasing, manufacturing, and marketing association dealing in such commodities as feed, fertilizer, farm supplies, petroleum products, grain, meals, coal, and building supplies. The member associations here involved maintain at their locations feed mixing and grind equipment, grain elevators, and warehouses, among other facilities.

Williamsfield Salvage processes scrap foam rubber, polyethylene and plastic foam, its principal account being a firm at Akron, which also supplies and ships the scrap to be processed. Motor common carrier service to and from Akron is available to Williamsfield Salvage, but it asserts that the supplier demands rail service because of lower rates, and that the latter would divert its business if rail service were not available. During 1959, Williamsfield Salvage received 17 carloads and shipped 20 carloads, all in connection with the Akron account, except for two carloads. Also during 1959, Williamsfield Salvage received 9 truckloads of rubber scrap from another account at Ashland with the outbound movement of the processed commodity shipped by rail. It has a rail siding at its plant and asserts that the cost of trucking to and from a team track would consume the profits derived from the processing operation. Its investment in building and machinery aggregates $36,000 and it is unable financially to relocate. Williamsfield Salvage utilizes coal to operate its equipment, about one truckload weekly during winter and one truckload bi-weekly during the summer, a total of 216 tons having been consumed during 1959. It specifies and receives delivery by motor vehicle of all coal shipments because of the lower than rail rates. The Ashtabula farm cooperative during 1959 received 12 carloads of feed and shipped 8 carloads of wheat and one of soy beans. During the same year all of its fertilizer, ordered through the FBCA, was shipped in by truck from Alliance. However, it advised that after July 1960, the foregoing source will no longer be available, and that the new source of supply will be at Mt. Gilead, a distance to Williamsfield of in excess of 100 miles. In the opinion of the farm cooperative, rail service will be required from Mt. Gilead. Small tools, fencing, certain roofing materials, and small appliances are shipped from the FBCA headquarters at Jefferson transported by the cooperative's
private truck. Compared to the volume of feed transported by rail, only a comparatively small volume of such items is transported by truck from Jefferson.

The Trumbull farm cooperative at Kinsman, during 1959, received the following carload shipments: 22 of coal, 2 of fertilizer (from Mt. Gilead), 14 of feeds and grain and one each of bale twine and seed potatoes. It also receives about 10 truckloads of coal per year. Fertilizer is transported from Alliance in the cooperative's private trucks. Willis Drum engages in the sale of lime which is shipped in coal hopper cars to the team track, unloaded by conveyors into his trucks, and taken directly to the farmer's field and spread. During 1956, 1957, 1958, and 1959, he received, from Gibsonburg, 2,142 tons, 3,701 tons, 1,817 tons, and 2,237 tons, respectively. Drum contends that transportation of lime by motor common carrier is too expensive. He objects to receiving shipments on the Low Grade branch, specifically at Gustavus, on the grounds of inadequate unloading space and lack of scales. There are no competitors in the immediate territory served by Drum, an area within a radius of 10 to 12 miles of Kinsman, the closest lime dealers being at Conneaut and Youngstown.

Wade Griffin, doing business as Griffin's Mill, operates a feed mill and coal yard. He has coal conveyors and bulk storage and warehouse facilities. His principal sources of supply are, for coal, Champion, Pa., and Holden, W. Va., for soy bean flakes, Danville, Illinois. He sells coal to about 250 domestic users. Griffin stated that he received 60 carloads of coal during 1960; however, his exhibit of record showing the carloads of various commodities received by him during that year, embraces about 37 carloads of coal, and the difference is not explained. The exhibit also shows receipt of 5 carloads of fertilizer, 13 carloads of corn flakes, meal, feed, and grain, 2 carloads of oyster shells, and 1 carload of beet pulp. He also received about 20 truckloads of drain tile, apparently during 1959. Griffin contends that no major feed company has ever survived without rail service and that in the event of the abandonment herein, it would not be possible for him to receive the commodities handled by him at another rail station to be trucked into his place of business. Specifically, he contends that the Brookfield team track is not large enough to accommodate his one carload of coal weekly (on the basis of 60 carloads yearly), and that, with respect to feed, it is impractical to reload that commodity.
The Stambaugh Hardwood Lumber Company manufactures lumber from native hardwood logs. Its sources of supply lay in timber tracts generally within an area of 50 miles of the mill and all logs are trucked into the mill. During the first year of its operations, from April 1959 through April 1960, it shipped 45 carloads of lumber and one of logs. The foregoing, however, represents no more than one-half of its outbound volume; approximately 50 to 60 percent of its production is shipped by motor vehicle. Stambaugh Lumber estimated that during its second year of operation, increased production should result in an outbound volume of about 60 carloads. Presumably, shipments by motor vehicle would increase proportionally. Additionally, in the event the anticipated sale of wood chips becomes economically feasible, such material is presently being destroyed as waste, it would ship out about 2 carloads weekly, based on present production. It asserts that high grade logs in the area is getting scarce and should the supply become exhausted, incoming movements of logs would be transported by rail because long distance movements by small trucks is not economical. However, the witness for Stambaugh Lumber was unable to state the estimated length of time high grade logs would continue to be available in existing tracts and he conceded, that subject to various considerations, it becomes a matter of economics whether logs would be shipped long distances or the mill would be relocated. Presently, Stambaugh Lumber is located 0.5 miles from the Tyrrell team track. The carload service provided the Farm Cooperative at Tyrrell during 1959 consisted principally of the movement of coal, some 13 carloads, aggregate weight 650 tons. It also received one carload of fertilizer, of about 30 tons, from Mt. Gilead. During the same period, it received about 5 truckloads of coal. It supplies coal to about 125 to 150 domestic consumers. Carload shipments of coal are generally unloaded from the car into the trucks of the farm cooperative and delivered directly to the customer. Some coal is stored in the yard. With respect to taking delivery of fertilizer at any other point on the Low Grade branch, the Farm Cooperative asserts that it would take its truck 8 trips to transport a 50 ton car and the profit derived from fertilizer sales would not permit such operations. It sells about 150 tons to 200 tons of fertilizer annually most of which is delivered to it by truck from the FBCA station at Alliance. With the contemplated discontinuance of Alliance as a fertilizer distribution point, the Farm Cooperative will have available others at Dayton, Maumee, and Mt. Gilead, with the latter being the most likely new source of supply.
As between the High Grade segment and the paralleling Low Grade branch, the latter, for all practical purposes, is the line over which is transported the main-line freight of the New York Central. The involved High Grade segment cannot be utilized for the movement of the greatest volume of such traffic, except at a substantial sacrifice in time and efficiency of operations, and at considerable increased costs. The reasons therefor have been fully discussed.

In other significant respects, the two lines traverse a light traffic area and for the most part constitute an unnecessary duplication of facilities. In the examiner's opinion, the record supports applicants' determination that the involved High Grade segment is not necessary to the operations of the New York Central and that the towns and individual users of service on such segment would suffer no undue hardship following the abandonment. As seen, the several industrial committees have no firm commitments of any kind for future industrial developments on the High Grade line. They are equally interested in the locating of industries along the Low Grade branch, where applicant maintains a superior road bed from all operating viewpoints, and over which, as a result of the abandonment, the New York Central would be in a position to render more efficient and economical services. With respect to the individual concerns involved, they all have motor carrier services available. Such motor carrier service is being utilized for reasons of economy or personal convenience notwithstanding that in general the commodities being transported are susceptible to equal, if not greater, efficiency in rail operations, although at a somewhat higher rate. Those concerns desire rail service primarily as a standby facility for use at such future time as the shifting sources of supply would make it the more advantageous form of transportation. It is noted that for the same reasons of economic advantage, certain concerns are already utilizing service of the New York Central. None of the foregoing reasons, however, are controlling of the issues involved.

The application viewed in its proper light, proposes an abandonment of operations over the involved segment but not a corresponding abandonment of transportation services at stations thereon. In effect a rerouting of traffic is proposed under which the four High Grade line stations directly affected would continue to be served from nearby stations located on the Low Grade branch. Conceivably, the shift in service may cause certain concerns to suffer some inconvenience and a degree of increased costs. However, such results are far outweighed by the benefits which would accrue to applicants following the elimination of the burden of conducting operations at a loss over the involved
High Grade segment and also, as a direct result of the abandonment, the substantially improved services which, as a group, all users of the services of the New York Central stand to receive.

The inclusion of this lengthy excerpt from the *Mahoning Coal Railroad Company et al Abandonment*\(^{39}\) provides an excellent example of the protests that are frequently lodged in opposition to abandonment of a rail line. The interesting point that is made in the above extract is that the persons who were most anxious for the continuance of rail service were the very ones that could have, through the utilization of available service made the rail operations profitable, or at least less unprofitable.

A question arises when one considers the role of the railroads in serving actual and potential customers. Just how much should be required of the rails in the form of transport facilities to serve a group of users that cannot or will not fully utilize the service made available to them? One could take the stand that since the rails are common carriers, chartered by the state, they should stand ready to offer service to all customers regardless of the amount or frequency of shipments. This position is, however, unrealistic when one considers that the rail lines are privately owned and operated and further that there is a degree of maintenance and fixed cost that must be covered if the line is to operate effectively. If the rail lines are to be expected to provide service at all times to all customers, it would be necessary either to subsidize them so that they could

\(^{39}\) Ibid., pp. 299-303.
cover the costs on the portions of lines that did not pay their way, or, as an alternative, nationalize the roads and let the taxpayers bear the burden of supplying this less-than-adequate revenue traffic. These two possibilities have been discussed at length in Chapter III.

Another interesting point is made in the objections voiced against abandonments. Protestants appear to think that the continuation of operation of the rails will, in some magic way, guarantee economic development in the area and bring about a rejuvenation of business. Actually, it has been the decline in business, or the shift to alternative forms of transport that have caused the rails to seek abandonment. Continuation of service under such circumstances, in the opinion of the writer, would be sheer folly.

**Salvage Value of Abandoned Railroads**

The abandonment of a line of railroad usually results in the availability of the property for some alternative use. In order for the abandoned property to be utilized for other than rail operations, the rails, ties, tie plates, angle bars, and other equipment peculiar to rail transportation must be removed from the land. An exception to this generalization occurs when the rail property is sold or transferred to an individual or private company that plans to use the materials for privately provided rail transport services. Transfer of rail property for private use is indicated in the Bay Terminal Railroad Company Abandonment\(^{40}\) in which the property of the road was sold to

\(^{40}\) See Appendix B, pp. 308-310.
the Sun Oil Company for the use of that private company, and the Lorain
and Southern Railroad Company Abandonment\footnote{41} in which the rail property
was transferred to the Cleveland Quarries Company, to be utilized by
that company for transportation purposes.

Salvage value includes many variables, and no generalization as
to the value of abandoned rail property may be made. Table 21 indi-
cated the net salvage value of rail property as reported in Ohio
abandonment cases, the number of miles abandoned, and the net salvage
value per mile of abandoned rail line. The value per mile of the
salvageable materials ranged from a low of a loss of over one thousand
dollars to a high of over $38,000. The explanation for this wide
variation in per mile salvage value lies in the consideration of
several factors: (1) the market value of scrap metals and other
salvageable materials at the time of abandonment, (2) the condition of
the materials to be salvaged, (3) the accessibility of the materials
and the markets to which they will be shipped, and (4) the cost of
removing the materials.

There do not appear to be any economies of scale evident in
these data on the per mile scrap value of abandoned rail property.
The shortest abandonment recorded (0.82 miles) netted a per mile value
of more than $26,000, while the longest abandonment (27.15 miles)
netted only $9,500 per mile.

Computation of net salvage value is an estimate, but the best estimate available at the time. True value can only be ascertained

\footnote{41 See Appendix B, pp. 255 and 256.}
<table>
<thead>
<tr>
<th>Case Number</th>
<th>Salvage Value</th>
<th>Miles Abandoned</th>
<th>Salvage Value per Mile</th>
</tr>
</thead>
<tbody>
<tr>
<td>16637</td>
<td>$ 3,000</td>
<td>1.00</td>
<td>$ 3,000</td>
</tr>
<tr>
<td>17481</td>
<td>2,565</td>
<td>9.28</td>
<td>276</td>
</tr>
<tr>
<td>17580</td>
<td>23,443</td>
<td>0.82</td>
<td>26,074</td>
</tr>
<tr>
<td>18578</td>
<td>10,700</td>
<td>5.71</td>
<td>1,874</td>
</tr>
<tr>
<td>18734</td>
<td>8,775</td>
<td>3.68</td>
<td>2,384</td>
</tr>
<tr>
<td>18808</td>
<td>39,300</td>
<td>1.02</td>
<td>38,529</td>
</tr>
<tr>
<td>19612</td>
<td>-1,341</td>
<td>1.03</td>
<td>-1,302</td>
</tr>
<tr>
<td>20223</td>
<td>54,825</td>
<td>10.63</td>
<td>5,158</td>
</tr>
<tr>
<td>20276</td>
<td>142,080</td>
<td>4.11</td>
<td>34,569</td>
</tr>
<tr>
<td>20309</td>
<td>48,350</td>
<td>4.80</td>
<td>10,073</td>
</tr>
<tr>
<td>20370</td>
<td>20,798</td>
<td>1.40</td>
<td>14,856</td>
</tr>
<tr>
<td>20475</td>
<td>73,359</td>
<td>3.00</td>
<td>24,450</td>
</tr>
<tr>
<td>20911</td>
<td>287,840</td>
<td>20.27</td>
<td>14,200</td>
</tr>
<tr>
<td>20923</td>
<td>258,100</td>
<td>27.15</td>
<td>9,506</td>
</tr>
<tr>
<td>21303</td>
<td>160,159</td>
<td>22.79</td>
<td>7,025</td>
</tr>
</tbody>
</table>

Source: Data included in indicated cases and calculations therefrom.
when the abandoning line transfers the materials or land to a willing purchaser, but estimates may be calculated on the best available information. The following statement (Exhibit 1) in the petition for abandonment as offered by the Mahoning Coal Railroad Company et al Abandonment serves to illustrate the mechanics of arriving at a net salvage value.

The desirability of arriving at a realistic net salvage value may be further illustrated by reference to the Ohio and Morenci Railroad Company Abandonment. The following statement by the Interstate Commerce Commission examiners indicates the problem:

It may be that some arrangements could be made, if the application herein is granted, for service to some of the communities affected by the Detroit, Toledo and Ironton over some portions of the present line of the applicant. For this reason our certificate will be issued subject to the express condition that the applicant shall sell any portion of the property to be abandoned to any responsible person, firm, or corporation offering, within 40 days from the date of the certificate, to purchase the same for operation in railroad service, and willing to pay therefor not less than the fair net salvage value of the property which they may seek to acquire.

A similar case is the Springfield Suburban Railroad Company Abandonment in which the entire line was relinquished by the company. The following section of the report of the abandonment is relevant here:

---

42 See Appendix B, pp. 293-304.
43 See Appendix B, p. 301.
44 See Appendix B, pp. 242-246.
46 See Appendix B, pp. 287-290.
**EXHIBIT I**

**CALCULATION OF NET SALVAGE VALUE OF A RAILROAD LINE**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Quantity</th>
<th>Rate ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>G.T. 105# S &amp; Y Rail</td>
<td>1,528.62</td>
<td>$70.00</td>
<td>107,003</td>
</tr>
<tr>
<td>G.T. 105# Scrap Rail</td>
<td>382.13</td>
<td>$60.00</td>
<td>22,928</td>
</tr>
<tr>
<td>G.T. 100# S &amp; Y Rail</td>
<td>1,224.43</td>
<td>$70.00</td>
<td>85,710</td>
</tr>
<tr>
<td>G.T. 100# Scrap Rail</td>
<td>1,344.43</td>
<td>$60.00</td>
<td>80,666</td>
</tr>
<tr>
<td>G.T. 80# Scrap Rail</td>
<td>96.00</td>
<td>$60.00</td>
<td>5,760</td>
</tr>
<tr>
<td>Pres. Angle Bars, 105#,S.H. @ 2.50 Pr.</td>
<td>2,533</td>
<td>$2.50</td>
<td>6,332</td>
</tr>
<tr>
<td>Pres. Angle Bars, 100#,S.H. @ 2.50 Pr.</td>
<td>2,209</td>
<td>$2.50</td>
<td>5,522</td>
</tr>
<tr>
<td>Each Tie Plates, 105#,S.H. @ .44 Ea.</td>
<td>33,898</td>
<td>$.44</td>
<td>14,911</td>
</tr>
<tr>
<td>Each Tie Plates, 100#,S.H. @ .44 Ea.</td>
<td>45,526</td>
<td>$.44</td>
<td>20,031</td>
</tr>
<tr>
<td>Each Cross Ties, 7&quot;,S.H. @ .65 Ea.</td>
<td>13,377</td>
<td>$.65</td>
<td>8,695</td>
</tr>
<tr>
<td>Each Cross Ties, 6&quot;,S.H. @ .50 Ea.</td>
<td>8,220</td>
<td>$.50</td>
<td>4,110</td>
</tr>
<tr>
<td>Lbs. Miscellaneous Scrap @ .02 Lb.</td>
<td>1,671,827</td>
<td>.02</td>
<td>33,436</td>
</tr>
<tr>
<td>Signal Dept. Salvage</td>
<td></td>
<td></td>
<td>-15,332</td>
</tr>
<tr>
<td>Communications Dept.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total** $410,700

**Cost of Removing** $116,473

**Net Salvage Value of Tracks** $294,227

**Salvage Value of Land and Buildings** $10,650

**Net Salvage Value** $304,877

**Additional Expenditure required to rehabilitate Low Grade to accommodate passenger trains** $46,777

**Total Net Salvage Value** $258,100

Source: Interstate Commerce Commission Finance Docket No. 20923, Return to Questionnaire, p. 4.
Applicant also reports that it has received an offer from the Detroit, Toledo and Ironton Railroad Company to purchase the line for its net salvage value ($73,359) contingent upon the approval of the instant application. It has further agreed that upon conveyance and transfer of the properties, it will commence a new operation which will provide the few remaining industries now served by applicant with an uninterrupted rail switching service as may be necessary. As heretofore stated the Detroit, Toledo and Ironton Railroad Company presently has physical track connection with applicant near Bechtel Street, and no new construction will be necessary to accomplish the switching service. Under the circumstances we will impose a condition in our certificate that applicant shall sell any part of the line, track and appurtenant facilities to any responsible person, firm or corporation offering, prior to the effective date of our certificate...to purchase the same for continued operation and willing to pay not less than the fair net salvage value of the property sought to be acquired.

A net salvage value that is estimated on the high side might well preclude sale of the property to an individual or a company. On the other hand, an estimate that is too low could cause the abandoning line to dispose of its property at a price below the normal market price.

The net salvage value of an abandoned line may influence decisions as to whether to remove the physical railroad property or not. Abandonment does not require that facilities be removed and scrapped. In the case of the seventh abandonment, listed in Table 21, unless sale of the land were contingent upon the removal of the rail property, the line would not undertake a salvage operation that would cost more than one thousand dollars than could be realized from the salvageable materials.

47 Finance Docket No. 19612.
Land Use and Taxation Effects of Ohio Rail Abandonments

It was stated in Chapter IV\(^{48}\) that the abandonment of rail lines results in the theoretical release of land for some alternate use. The analysis of the abandonments in the state of Ohio illustrates the land use results of railroad abandonments.

Ohio Rail Abandonments and Land Use

Very little land changed hands, and still less was transferred to alternative uses because of rail abandonments in the state of Ohio. Table 22 indicates that in only six of the twenty-three abandonments was there a transfer of the land by the rail line.\(^{49}\) In three of these six cases the land was transferred, but no change in use occurred because the rail property was sold either to another railroad or a private enterprise that planned to continue the rail use.\(^{50}\) In two of the remaining three cases, a portion of the abandoned line was sold to adjacent property owners, while the remainder of the land was retained by the railroad. In the other case where the land was sold,\(^{51}\) the municipality through which the line was operated purchased the land for the purpose of providing sewer and water service to a newly-developing city area.

\(^{48}\) See Chapter IV, p. 137.

\(^{49}\) The six cases in which land was disposed of by the railroads were: Finance Docket Nos. 16332, 17580, 18173, 19612, 20309, and Ohio Public Utilities Commission Case No. 25319.

\(^{50}\) Finance Docket Nos. 17580, 18173, and Ohio Case No. 25319.

\(^{51}\) Finance Docket No. 19612.
<table>
<thead>
<tr>
<th>Case</th>
<th>Track Removed</th>
<th>Land Sold</th>
<th>Change in Property Tax Receipts of Local Governments</th>
</tr>
</thead>
<tbody>
<tr>
<td>16332</td>
<td>Yes</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>16637</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>17481</td>
<td>No</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>17580</td>
<td>No</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>18173</td>
<td>No</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>18279</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
</tr>
<tr>
<td>18340</td>
<td>Yes</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>18472</td>
<td>Yes</td>
<td>No</td>
<td>+$75.00</td>
</tr>
<tr>
<td>18578</td>
<td>Yes</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>18735</td>
<td>Yes</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>18739</td>
<td>Yes</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>18808</td>
<td>Yes</td>
<td>Reverted Easement</td>
<td>-150.00</td>
</tr>
<tr>
<td>19612</td>
<td>Yes</td>
<td>Yes</td>
<td>-34.00</td>
</tr>
<tr>
<td>20223</td>
<td>Yes</td>
<td>No</td>
<td>-28,209.45</td>
</tr>
<tr>
<td>20276</td>
<td>Yes</td>
<td>No</td>
<td>-1,785.18</td>
</tr>
<tr>
<td>20309</td>
<td>Yes</td>
<td>Part</td>
<td>-678.38</td>
</tr>
<tr>
<td>20370</td>
<td>Yes</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>20475</td>
<td>Yes</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>20911</td>
<td>No</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>20923</td>
<td>No</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>21303</td>
<td>No</td>
<td>No</td>
<td>None</td>
</tr>
<tr>
<td>25319</td>
<td>No</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>27499</td>
<td>No</td>
<td>No</td>
<td>None</td>
</tr>
</tbody>
</table>

Source: Information obtained from the abandoning railroads in Case Nos. 18340, 18375, 18472, 20309, 20923, 20370, 21303, 20276, 16637, 18279, and 18808. Information concerning Case Nos. 16332 (Lucas and Fulton Counties), 17481 (Warren County), 17580 (Lorain County), 18173 (Mahoning County), 18578 (Wayne County), 19612 (Tuscarawas County), 20223 (Richland and Crawford Counties), 20475 (Clark County), 20911 (Clinton and Highland Counties), 25319 (Lucas County), 27499 (Lucas County), and 18739 (Stark County) was obtained from the auditors of the indicated counties.

n.a. - Not applicable in ferry abandonments.
In only one abandonment in the state was there a reversion of easement property. The property reverted to the adjacent land owners, who have included this land in their farm property. In all other cases the railroads held full title to the property on which their tracks were laid.

The above statements bring to light some interesting facts concerning land use and taxation. While some of the land released for alternate use through abandonment is undoubtedly ill-suited for other uses, this is not true of all the land. Records indicate that at least some portions of abandoned rail property have been sought by private purchasers, but the rail companies have not been willing to sell the land. Why, then, have the railroads refused to dispose of the land that is of no further use as a transport facility? Why should the railroads be inclined to continue paying property taxes on land that has ceased to be productive? If the property taxation of railroads is as important as the railroads and Congressional investigating committees indicate, why haven't the railroads disposed of this tax burden by selling the property? One possible answer to these questions is that the property taxes that may be saved by relinquishing title to the land are not of sufficient magnitude to outweigh the speculative possibilities of future gains from the land. The speculative possibilities are of two basic types. First, should there be a

52 Records in the Auditor's office in Warren County, Ohio, indicate that at least four prospective purchasers have attempted to buy portions of the land made available through the abandonment of the Pennsylvania, Ohio and Detroit line (Finance Docket No. 17481), but to no avail.
renewal of demand for rail service, and a consequent demand for reconstruction of abandoned lines, the railroads would not be forced to repurchase land that they formerly owned at a price in excess of that which they originally paid for the property. In light of the reasons given for abandonment in Ohio, such as the depletion of coal resources, the competition from other carriers, and the cessation of service over obsolete or duplicate routes, the possibility of a significant increase in rail traffic involving potential re-establishment of abandoned lines in the state appears remote. However, should the depleted coal mines become economically productive through new mining methods or greatly increased demands for coal, the railroads would be in a position to utilize their property without having to repurchase the right-of-way at a presumably higher price than it sold for.

The second type of speculation is concerned with the land itself. With the continued rise in land values in the United States, the increased demand for industrial sites, and the dwindling supply of urban or close-in suburban property, the railroads might well expect to obtain future prices for land held that would exceed the present market value.

In the meantime, the fact that the railroad must continue to pay the property taxes on the land so retained does not appear to be a sufficient deterrent to force them to dispose of the land.

Basically, then, the abandonment of rail facilities in the state of Ohio during the period covered by this study has had little influence on the land use pattern in the state. Even though, in most
instances, the railroad track and other railroad materials have been 
removed from the land, the property has not yet been put to an alternate 
use and has been retained by the road.

Two of the Ohio abandonment cases involved the cessation of ferry 
service where public wharves were utilized, hence there was no land 
use change involved.

The Tax Effects of Ohio Rail Abandonments

It was pointed out in the preceding section of this chapter that 
in the majority of the abandonment cases in the state over the past 
twelve years, the land freed for alternate use by the abandonment of 
a line was retained by the railroad. The retention of this land means 
that the road is still charged with the property taxes on such land.

In the state of Ohio it makes no tax difference whether the 
property is used in the operation of the utility or not. The following 
section of the Ohio Tax Laws is explicit in making this point.53

The property owned or operated by a public utility 
required to make a return to the tax commissioner of its 
property to be assessed for taxation by the commissioner 
shall include such utility's plant and all real estate 
necessary to the daily operations of the public utility, 
and all other property, including that mentioned in 
section 5709.02 of the Revised Code, owned or operated 
by it wholly or in part within this state, used in connec-
tion with or as incidental to the operation of the public 
utility, whether the same is held in common or by the 
individuals operating such public utility. All the real 
estate and personal property of incorporated companies, 
including that mentioned in section 5709.02 of the Revised 
Code, owned and held by such corporation within this state 
in the exercise of its corporate powers, or as incidental

53 102 OL 224 (1911); Cf. Ohio Revised Code 5727.06.
there to, whether such property is used in connection with such public utility business or not,\textsuperscript{54} is conclusively deemed the property of such public utility.

The examination of the data presented in Table 22 reveals an interesting fact. Of twenty-one of the abandonment cases (excluding the two ferry abandonments) only eight indicated that the tracks and other materials had not been removed from the land. Of these eight, three were transfers to other railroads or to private concerns that planned to continue operation of a transportation facility. Of the remaining five abandonments, three occurred in late 1959 or 1960, and the railroads concerned indicated that they planned to remove the tracks. From these data it is possible to infer that salvage value, and the desire to escape high maintenance costs are a more important factor than taxation.

Railroad abandonments in the state of Ohio made little difference in the taxes paid to the state and local governments. If the two ferry abandonments are disregarded, of the remaining twenty-one abandonments, the county auditors of thirteen\textsuperscript{55} counties indicated that abandonment had made no difference in the amount of taxes received by that county. In the eight cases where tax changes followed abandonment, the loss of revenues was relatively minor.\textsuperscript{56} In

\textsuperscript{54} My emphasis.

\textsuperscript{55} The counties involved were: Lucas, Fulton, Warren, Lorain, Mahoning, Wayne, Stark, Trumbull, Clark, Clinton, Highland, Ashtabula, Delaware, Union, and Champaign.

\textsuperscript{56} The eight abandonments that caused tax changes affected the following counties: Jefferson, Athens, Morgan, Meigs, Hocking, Tuscarawas, Richland, Crawford, Adams, and Perry.
six of the eight cases, the total aggregated tax loss was only slightly over $6,000.00, or an average of about $1,000.00 per county. The remaining two cases contain elements that warrant separate consideration.

In one instance,\(^57\) not only did abandonment fail to bring tax relief to the abandoning road, but actually the taxes were increased by $75.00. This apparent phenomenon occurred because an appraisal following abandonment set the value of the property at a higher figure than it had been assigned prior to abandonment. Representatives of the Public Utilities Tax Division of the Ohio Tax Department indicated that because of rising land values, such an occurrence was not uncommon.

The second case that needs special consideration is that of the abandonment of the Connecting Railroad Company in Crawford County.\(^58\) Evidence obtained from the County Auditor's office indicated that the taxing districts affected by the abandonment had suffered a revenue loss of over $28,000.00 as a result of the cessation of service. Moreover, one of the school districts in the area of this abandonment had had its revenue decreased by over $9,000.00. In a relatively small school district, a loss of this magnitude could be quite significant. Thorough investigation of the facts in the case indicated, however, that the sizeable losses in revenues were not, in fact, a result of the rail abandonment. Rather, the decline in

\(^{57}\) Finance Docket No. 18340 (Jefferson County).

\(^{58}\) Finance Docket No. 20223.
revenue was attributed to the application of a different allocation process than had been utilized the previous year. Crawford County suffered revenue losses because of administrative changes, rather than because of the abandonment of the rail line. It was purely a matter of coincidence that the abandonment and the administrative change occurred in the same fiscal period. Still, in the county offices, the abandonment was cited as the reason for the decline in revenues.

There are several reasons why the tax effects of railroad abandonments in Ohio were negligible. First, no single abandonment was of sufficient size to be of great consequence. Second, and most important, since valuation of rail property is accomplished by a state commission, and this value allocated to the various taxing districts for the application of the individual mill levies, abandonment in one county would make little difference in the total value of a major railroad. In addition, what reduction in value did result from abandonment would be spread over a huge number of taxing districts, so that no single county would feel the direct effects of the abandonment.

In considering the excise taxes paid by the railroads in the state of Ohio, the reader should recall that these taxes are levied upon the gross earnings of the railroad within the state. Since abandonments occur on lines that are either non-productive or so slightly productive that they are presented for abandonment, there can be little tax difference attributable to losses from excises.
Summary

The land use and taxation effects of railroad abandonments in Ohio for the period under consideration are negligible. In only six of the twenty-three cases of abandonment in the state was the land sold by the abandoning line, and in three of these six cases, there was no change in land use because the new owners continued transportation operations. It should be noted that there has been a change in the use of land, but this change has been from a railroad use to an idle state. Failure on the part of the railroads to dispose of the land may be attributed to several factors such as the non-adaptability of the land to alternate uses, or the speculative desires or plans of the property owners.

Rising real estate prices, the demand for industrial sites, and the growth of urban areas all tend to make land speculation popular. The railroads also indicate that they are reluctant to dispose of land that may, at some later date, be needed for rail transport service. The repurchase of such land, at presumably higher prices, could be a significant cost factor for the rail lines.59

The fact that the rail lines have retained the land following abandonment indicates that the property tax on this land is not a significant factor of cost to the line. Or, stated otherwise, the speculative motive may outweigh the tax burden that accrues on the land. If the railroad property tax burden were as significant a

59 Based on information obtained from the local representatives of the New York Central Railroad Company, The Erie Railroad Company, and The Baltimore and Ohio Railroad Company.
transportation and competitive problem as the railroads and Congressional committees contend it to be, it is difficult to rationalize the retention of this tax burden by the rail companies.

Just as the land use effects of abandonments to not appear to present any immediate social or economic problems, neither do the abandonment effects of taxation. Tax savings accruing from the abandonment of property in the state averaged only about $1,000.00 per county in the six counties where savings occurred. In the majority of the counties experiencing abandonments over the past twelve years, no changes in taxes occurred.

One word of caution is necessary, however. Because abandonments during the period under study have not caused significant tax problems, is no reason to assume that future abandonments will have the same or similar negative results. Should abandonments become more widespread, and of greater length, the total value of rail property in the state could be lessened materially. Should this occur, the tax effects would, of course, be more significant. And should the recommendations to the Senate Committee on Interstate and Foreign Commerce forbidding the property taxation of railroads by state and local governments be adopted, the revenue losses to the taxing units would have definite significance.
CHAPTER VI
SUMMARY AND CONCLUSIONS

The preceding five chapters constitute a study and analysis of the phenomenon of railroad abandonments with especial attention to the experience in the state of Ohio. This final chapter presents a statement of the main points and findings ascertained in this investigation.

The Decline of the Rail Industry

The railroad industry in the United States has, in recent years, lost its position as the major factor in the transport of goods and passengers. In 1926 the railroads transported 76.8 per cent of the intercity commercial freight traffic and 75.2 per cent of the intercity commercial passenger traffic. By 1959 the rail portion of total freight traffic had declined to 45.4 per cent, and their share of the total commercial passenger traffic had fallen to 29.0 per cent. If total passenger traffic by both commercial and private carrier is considered, the rails carried only slightly more than three per cent of all passengers in 1959.

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1 The declining position of the railroads is treated in Chapter I.

2 See Chapter I, n. 3.

3 See Chapter I, n. 4.

4 Chapter III, Table 12.
There are several reasons for this dramatic reduction in rail-road participation in the over-all national transport complex. Among the more important of these reasons are: (1) the inflexibility of route offered by rail transport as compared with alternate carriers; (2) the lack of speed of delivery so essential in modern manufacturing and marketing operations; and (3) the availability of alternate forms of transport that can supply the speed and flexibility that is demanded by the shippers and receivers of goods. Because of these and other reasons, the railroads have become less than fully competitive in the struggle for transport business. As a result, the role of the rails in recent years has been a declining one, and the rail companies find themselves in a position where failure to correct the existing situation may well lead to continued and more severe losses of traffic.

The Regulation of Railroads

The decline in the position of the railroads as a common carrier has induced many of the lines to attempt to become more efficient through the elimination of unproductive or obsolete lines or portions of lines. One method of achieving this increased efficiency is the reduction of maintenance, labor, and tax costs by abandoning the portions of lines that have, for one reason or another, failed to provide sufficient revenues to warrant their continuation. However, the abandonment of a rail facility is not solely the choice of the

5 The regulation of railroads is treated in Chapter II.
railroad. Railroads in the United States are treated as public utilities, and as such are subject to regulation by Federal and State regulatory bodies.

The question of jurisdiction between the Federal and State Commissions in abandonment cases hinges on the question of whether or not the line sought to be abandoned is engaged in interstate commerce. The location of a line entirely within the boundaries of one state is not sufficient reason to preclude Federal control. So long as the line sought to be abandoned even connects with a line that is engaged in interstate commerce, the powers of the Interstate Commerce Commission supersede those of the various states.6

Regulation of railroads is concerned not only with rates and service, but also with construction of new line and the abandonment of old.7 Public utility status has the effect of requiring the railroad to provide continuous and adequate service to the interested public. The railroads are charged with providing service that is in the public interest and that conforms to the public convenience and necessity.8

The rationale of the current regulated position of the rails in American law derives from an essay written by Sir Matthew Hale, Lord Chief Justice of the King's Bench of England about 1670.9 It was an

6 See Chapter II, n. 82.
7 See Chapter II, n. 75.
8 See Chapter II, n. 76.
9 See Chapter II, n. 14.
easy transition from ancient English common law concepts to the pronouncements of Chief Justice Waite in the now-famous case of *Munn v. Illinois*¹⁰ when a judicial determination of policy became necessary in the United States. The significant wording by Chief Justice Waite was:

Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in this use, and must submit to be controlled by the public for the common good. ...¹¹

From these two famous statements of principle evolved the current legal framework of regulation of railroads in the United States.

*The Causes of Railroad Abandonments*¹²

In order for a rail line to obtain permission to abandon a portion of its road, it must be able to demonstrate to the regulatory commissions that the future public convenience and necessity will not be imperiled by the abandonment of the line. The proof of the desirability of allowing abandonment may take several forms. If, for instance, the railroad can show that former shippers no longer utilize the rails, there is little doubt that it will be allowed to abandon the line, or portion of line. If the railroad can show conclusively that the public convenience and necessity no longer

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¹⁰ See Chapter II, n. 10.

¹¹ See Chapter II, n. 16.

¹² Causes of railroad abandonments are treated in Chapter III.
requires the operation of a burdensome line, this too usually is acted on favorably by the commissions.

There are several reasons why shippers may have failed to utilize the available rail service to an extent that would make continued operation of the line feasible. The most frequent reason for abandoning a line is competition.\textsuperscript{13}

Competition may be present in the form of other railroads, motor carriers, waterways, pipelines, or air carriers. Most of the competition for passenger service comes from the private automobile.\textsuperscript{14} The ability of alternate carriers to divert traffic from the railroads results from several basic factors. Both air and highway transport can offer a speed of delivery that is not attainable by rail. In addition the motor carrier offers a flexibility of route that is not possible by rail. Finally, the cost structures of the several carriers are conducive to a diversion of traffic from the rails. Railroads, with their relatively high fixed costs must operate at a volume sufficient to cover these fixed costs. Motor carriers, on the other hand, with the greater portion of their total costs being of the variable type, are able to handle smaller loads and more heterogeneous cargoes without experiencing cost difficulties.

The rail industry presents a convincing case in explaining that alternate forms of transport, particularly the air lines, highway carriers, and water carriers are subsidized in that their "way" or

\textsuperscript{13} See Chapter III, pp. 59-114.

\textsuperscript{14} Passenger automobiles transported 89.5 per cent of the total passengers in 1959.
terminal facilities are provided at public expense. In addition, the railroad industry also indicates that it, along with the pipelines, is subjected to state and local taxes on property and earnings which are not applicable in the main to the other carriers.\(^\text{15}\)

The two major plans to correct the competitive inequality of the rails vis-à-vis highway, water, and air carriers are the imposition of user charges on the three latter modes of transport and/or the abolition of state and local property or "in lieu" taxes levied against the railroads. Of the two proposals, the imposition of user costs on trucks, aircraft, and water carriers appears to be the more feasible and equitable.\(^\text{16}\) The possible abolition of railroad taxes and the economic results of such a move will be discussed at greater length later in this summary.

A second major reason offered for the desirability of abandonment is the decline of traffic.\(^\text{17}\) When traffic is lost by the railroads because of diversion of shipments to other modes of transport, there is not necessarily a decline in the total freight traffic moved in the economy. Diversion merely signifies a reallocation of the traffic to other carriers. However, there are instances where the available traffic declines for all carriers. For example, the depletion or exhaustion of natural resources results in a decline in the traffic available for all forms of transport. Depleted coal deposits, cut-over

\(^{15}\) See Chapter IV, pp. 142-151.

\(^{16}\) See Chapter IV, pp. 144-151.

\(^{17}\) See Chapter III, pp. 116-124.
timber land, or overworked ore mines are no longer able to supply freight traffic for the railroads that once served them. In fact, many of the rail lines were constructed expressly for the purpose of servicing these resource industries. If there is no possibility of a rejuvenation of these resources, the railroads frequently attempt to abandon the useless facilities in an effort to escape the costs of maintenance, taxes, and labor on lines that are no longer productive of traffic or revenues.

Railroad companies have attempted to relieve themselves of financially burdensome, unproductive lines by eliminating tracks and other equipment that was put into service in the over-optimistic boom construction period of the rails or track and other materials that become unnecessary through mergers or consolidations of lines. In addition, new construction to improve route or grade makes the replaced route useless, and abandonment usually follows.

Finally, abandonment may result from changes that occur in the legal status of the railroads. If a rail company disposes of a facility to private persons or private enterprise, such line is no longer classified as common carrier property, even though it may still be retained for transport service, and through this legal change it is removed from public use.

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18 See Chapter III, pp. 124 and 125.
The Economic and Social Implications of Rail Abandonments

Regardless of the reasons that cause abandonment, the cessation of service by a rail line may have repercussions in the area of abandonment. Earlier in our history, the cessation of service by a rail line might have been expected to cause serious economic problems in the area involved. In a period when the rails enjoyed a virtual monopoly in the movement of passengers and goods, the removal of the line could be expected to cause isolation and economic decline along the route of the road. However, with the availability of alternate transport methods the transition from rail to other types of carriage can normally be made with a minimum of disruption. In fact, the change to alternate carriers normally precedes the abandonment of the railroad. This fact is demonstrated by an analysis of abandonment actions in which the rails repeatedly offer as a reason for abandonment the fact that traffic has been diverted to some other form of transport. If this conclusion be accepted, it is difficult to also conclude on the basis of experience in Ohio that the abandonment of a rail line will cause serious local economic dislocations.

The above statement does not imply that abandonment petitions do not meet with opposition from the persons and institutions that still depend on the rails for a portion of their transport needs. However, closer investigation into the opposition to abandonments indicates that the very persons who object strenuously to the cessation of rail

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19 Economic and social implications of abandonments are treated in Chapter IV.
service could have provided additional traffic for the rails that might have prevented the abandonment. Instead, these persons and industries have seen fit to transfer the bulk of their traffic to alternate carriers. The competition from these alternate carriers is, in many instances, the reason given by the railroad for the necessity to abandon. No evidence was obtained that indicated that reasons offered in justification of abandonment were not in fact applicable. The regulatory commissions have not acted favorably on opposition claims where the retention of the rail line would merely provide auxiliary service for the shippers. In considering the feasibility or desirability of abandonment, the regulatory commissions investigate carefully all aspects of a particular case before reaching their final decisions.

The labor force directly associated with the operation of the railroad line abandoned is protected from financial loss through the application of the rules as set forth in the Chicago, Burlington and Quincy Railroad Company Abandonment. Under this ruling, an employee idled as a result of the abandonment of a portion of a rail line must be compensated up to a period of four years by the railroad unless he is able to find employment comparable to that he was forced to leave. In addition, should the employee suffer financial losses as a consequence of having to relocate, such losses are to be covered by the railroad. This employment coverage may extend for a period of four years. If, instead of the abandonment of a portion of a line, the cessation of service involves the entire line of operations of a

20 See Chapter IV, n. 8, and the Appendix A.
company, the employee protection rule does not apply. The rationale behind the application of the employee protection rule being contingent on whether the abandonment is partial or entire is that savings will normally be realized by the abandoning line in partial abandonments, and those savings should be shared with the idled workers rather than be at the expense of these workers. Obviously such savings do not accrue in total abandonments, and coverage for workers idled under these circumstances is not required.

The compensation of employees idled by abandonments constitutes an increase in the costs of the abandoning line. However, the railroads are fully aware of the application of the employee compensation rule, and the cost involved in providing remuneration for the idled employees is evidently not so important as the other savings that accrue from abandonment, or presumably the cessation of service would not be undertaken.

One of the more prominent economic problems that arise as a result of abandonments is that of taxation. The problem takes on a prominence not so much because of the revenue presently involved, but because of the emphasis that has been given this factor by the railroads, and more recently by an investigating committee reporting to the Senate Committee on Interstate and Foreign Commerce.

The taxation of railroads has two basic effects; the taxes cause an increase in the costs of the rail company, and revenues are provided to the state and local governments. The abandonment of a rail

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21 See Chapter IV, n. 12.
facility has the opposite effect in that costs of the rail companies are reduced, and reductions in revenues of the state and local governments result.

Earlier in railroad history the imposition of taxes did not necessarily add to the costs of the line involved.

In the pre-war period, World War I competition of other transportation industries with the railroads was of such small proportions that it was generally believed to be a matter of relative indifference to the railroad companies themselves whether their taxes were large or small, since they could be covered, along with a reasonable return to capital, by rates fixed within the limits of what the traffic would bear. Demand for railroad service was relatively inelastic and increases in the taxes were presumed to be shifted to passengers and shippers in the form of higher rates. ...Serious competition in the form of motor and water transportation has come into existence, and tax increases are not easily absorbed by rate increases.22

Railroads in Ohio are subjected to the general property tax, both tangible and intangible, and to the public utilities excise tax.23 In addition they are assessed a portion of the cost of maintaining and operating the Ohio Public Utilities Commission.24 In 1960, the railroads alone paid over 25.5 million dollars into state and local government treasuries in Ohio.25

The taxation of the right-of-way property, along with buildings and other rail property, is cited by the rail industry as a primary

22 Moulton and Associates, op. cit., p. 231.
23 See Chapter IV, n. 45.
24 See Chapter IV, n. 46.
25 See Chapter IV, Table 18.
reason for the non-competitive position of the rails. The railroads contend that while they are forced to pay property taxes the alternative forms of transport actually receive subsidies in the form of tax contributions to their rights-of-way or terminals. This fact, the railroads contend, is particularly true in the case of publicly provided highways and waterways, and the municipal and federal supply of air terminal facilities.

This tax problem has reached the stage where an advisory committee, reporting to the Senate Committee on Interstate and Foreign Commerce, has recommended that Federal legislation be passed forbidding the property taxation of the railroads by state and local governments. The committee feels that by the imposition of this rule, the rail industry would return to a more competitive position in the national transport complex.

It is difficult to agree that the removal of the burden of state and local property taxes will alter materially the basic source of the rail problem. Certainly, the costs incurred by the rails in paying property taxes are a burden that is escaped by many of the other carriers. However, the non-competitive position of the railroads is not based solely on tax cost factors. There are inherent disadvantages to transport by rail that can hardly be completely eliminated by alterations in tax methods. The present dilemma faced by the rail industry stems from the high non-tax fixed cost nature of the industry,

26 See Chapter III, n. 91, 97, and 103.

27 See Chapter IV, n. 24.
the inflexibility of routes offered by the rails, and their inability
to compete with alternate forms of transport in the speed of moving
goods and passengers. No alteration in the tax programs will entirely
offset these inherent disadvantages.

In considering the proposal to abolish applicable state and local
property and "in lieu" taxes, it is necessary to consider not only
the payers of these taxes, but also the receivers of the revenues from
the levies. State and local governments have come to depend heavily
on the revenues that accrue from the taxation of railroads. The
imposition of taxes on the rail industry is not new, and the basis
for taxation is frequently set forth in the granting of the charter
to operate a rail line. With the heavy reliance on the revenue
from rail taxes, removal of these levies would create financial
difficulties in many areas. The elimination of rail taxes in order to
aid that transport industry would perhaps have side effects that were
more acute than the original ills. The question appears to reduce
itself to a decision as to whether to have unhealthy railroads or
unhealthy local government treasuries. Unless the Federal Government
is able to offer an acceptable suggestion for an alternative source
of revenue, it appears unlikely to the writer that exemption of
railroad property from ad valorem taxation is feasible. The writer,
on the other hand, would have no particular objection to the enactment
of pending federal legislation (H.R. 7421) which would: (1) make
assessment of the property of a common carrier at a greater percentage

of market value than other property unlawful as a discrimination against
and undue burden on interstate commerce and (2) give federal courts
jurisdiction in such cases. Analysis of the rail abandonments in the
state of Ohio sheds further light on the problem of taxation of rail
property.

Railroad Abandonments in Ohio, 1948-1960

A review of the twenty-three railroad abandonments in the state of
Ohio over the past twelve years makes possible the formulation of some
conclusions concerning the causes and effects of these abandonments.
While the Ohio data do not necessarily lend themselves to conclusions
that are universally true, they do reveal the facts of abandonment
in a state that has a sufficiently diversified economy to make it
relatively representative of national trends. Although the data
investigated apply only to the state of Ohio, they may well reflect
situations that exist in other parts of the country.

The reasons given for abandoning rail lines in Ohio conform to
the national pattern of abandonment causes.29 Competition from
alternate carriers was the primary reason for abandonment. Competition
was present in the form of other railroads, pipelines, barges (water
carriers) and highway carriers. Highway carriers were the most fre-
quently mentioned cause of rail traffic diversion. Competition from
other carriers was mentioned as the reason for rail abandonment in
Ohio in 37.50 per cent of the cases.30

29 See Chapter V, Table 20.

30 Ibid.
Closely following competition as the reason for abandonment was a decline in the source of traffic. Twenty-five per cent of the abandonment cases were based on a decline in traffic attributable to a depletion of or change in the economic feasibility of extraction of natural resources or the removal of industry.\(^{31}\) By far the most important factor in the decline in the source of traffic was the depletion of coal resources in the state. Ohio ranks fifth nationally in the production of coal,\(^{32}\) and the declines in this industry are understandably felt in the rail operations that have primarily hauled coal.

Changes in the legal status of the railroads and readjustments of railroad operating procedures each accounted for 18.75 per cent of the reasons offered for the necessity to abandon.\(^{33}\)

Reasons for abandonment could not be classified precisely in one category or another. Seldom is there one single factor that causes a rail line to seek abandonment. Many of the petitions requesting abandonment understandably listed multiple reasons for the necessity to cease service.\(^{34}\)

The problem of treatment of employees idled by rail abandonment was raised in eight of the twenty-three cases. In seven of these eight cases, the ruling in the *Chicago, Burlington and Quincy Railroad*
Company Abandonment was cited as the governing factor in the treatment of idled employees. In the remaining case, the abandonment encompassed the entire line of road, and thus no employee protection was awarded.

Most of the petitions to abandon portions of rail line in Ohio were unopposed by persons and institutions along the route of abandonment. However, where opposition did occur, the Interstate Commerce Commission investigators found that the persons and industries that opposed abandonment were the ones that had diverted their incoming and outgoing shipments from the rails in favor of alternate lower cost or more convenient forms of carriage. In addition, the railroads were able to prove that the line to be abandoned served an area that was adequately serviced by alternate transport carriers, and that the need for continued rail service no longer existed.

When rail management considers the possibility of abandonment of a portion of line, one of the factors involved in the decision is the salvage value of the rail equipment involved in the abandonment. Net salvage value is important for two reasons. First, it represents income from an otherwise unproductive operation. Anything that can be salvaged from a line that no longer produces revenues not only places cash in the hands of the railroad, but also eliminates costly maintenance outlays on the property. The second reason for the importance of the salvage value is that this value sometimes becomes the lower limit of an acceptable market price for the sale of the former rail property. In several of the Ohio abandonment cases the
Interstate Commerce Commission investigators set the sale price of the railroad property at "not less than the net salvage value."\(^{35}\)

While no specific findings as to land use and taxation exist on the national level, the suggestion is often made that land taken from rail use will be made available for alternate uses, and that the railroads will realize some tax relief as a result of the abandonment of unproductive rail lines.\(^{36}\)

Although most Ohio abandonment cases indicated that the physical rail property had been removed from the land and that the salvage value from the sale of this property had been realized,\(^{37}\) in only six cases of the twenty-three analyzed was the land disposed of by the railroad.\(^{38}\) The railroads failed to sell the land and apparently elected to continue paying applicable property taxes. This fact is not consistent with the contention that the railroads are suffering a loss of competitive position because of the imposition of state and local taxes, at least as applied to the abandonment sample analyzed here.

Available evidence indicates that the railroads are reluctant to dispose of land that was purchased at a relatively low price until they can obtain the highest possible speculative gain from the sale

\(^{35}\) See Chapter V, notes 43 and 44.

\(^{36}\) Taxes are a portion of the fixed costs of a railroad company. The elimination of taxes through abandonment would reduce or eliminate this fixed cost.

\(^{37}\) See Chapter V, Table 22.

\(^{38}\) Ibid.
of that property. With a continuing increase in property values, the speculative possibilities of the future sale of former rail land are an important factor in sales decisions. Further, should land that has been removed from actual rail use become needed for later rail use, the railroads would probably have to repurchase that land at a higher price than they could obtain for it in the present.

The above statements contain two significant elements. First, the salvage value and the opportunity to escape from relatively high maintenance costs overshadow in importance the tax savings that may accrue from abandonment. Second, the speculative possibilities of future land sales appear to outweigh the property tax burden resultant from retaining abandoned operating property in some instances. These facts do not support a policy of exempting railroad property from state and local ad valorem taxation. If property taxes were the significant factor they are sometimes alleged to be, railroad companies would divest themselves promptly of the abandoned property on which they continue to pay ad valorem taxes.

The analysis of Ohio railroad abandonments suggests that land use and tax results of railroad abandonments within the state to date do not appear to be highly significant. Generally, land has not changed hands, so little can be said concerning the alternate uses to which this property might be put. Rail abandonments in Ohio have been of limited size, and as such, have had little apparent effect on the roads that pay the taxes or the governments that receive them. It is possible that future abandonments may be of sufficient size and
importance to affect materially both the abandoning lines and local
government revenues.

Conclusions

The current competitive position of the railroads in the United
States demands that some action be taken to assure the railroads a
position in the national transportation network that will best utilize
this mode of transport. Little can be done, at least in the short run,
to alter the competitive disadvantages inherent in the rail movements
of goods and persons. There are, however, certain operational adjust-
ments that may tend to change the competitive position of the rails.
One of these operational changes is the abandonment of rail lines that
no longer contribute to efficient transport operations.

The abandonment of unnecessary rail lines serves several purposes.
First, abandonment allows a rail line to escape costly maintenance
expenditures that frequently are not covered by operating revenues.
Second, abandonment allows the rail line to realize a salvage value
from track and other material that serves no further purpose. Third,
the cessation of rail service and the removal of physical rail equipment
releases land that may then be sold by the line or utilized by the
rail company in non-transport ventures. Finally, abandonments of
rail lines no longer used for transportation may, if they are of
sufficient size, reduce the property tax burden of the railroads.

All of the above statements indicate a reduction of costs that
would accrue to the railroads if abandonments were undertaken as an
operational readjustment. Granted, there would be no material change
in the inherent competitive disadvantages of the railroads, but a reduction of costs through this type of operational readjustment would permit the railroads to realize a greater return on total operations.

This investigation concludes that the economy would not experience significant disruptions if the railroads were to embark on a vigorous abandonment policy in order to lower costs. Since social change, in the form of the adoption of the passenger automobile, and the diversion of freight traffic from railroads to alternate carriers, has caused much of the loss of traffic experienced by the rail lines, no major social disruptions need result from the abandonment of useless lines. Continued care by commissions authorized to act in abandonment cases is essential to the preservation of the rights of both the rail lines and the shippers and customers that utilize these lines.

The loss of tax revenue to state and local governments that would accrue should abandonments become widespread would be a major consideration. However, here a distinction should be drawn between the abolition of taxes by legislative action and the reduction of taxes through operational readjustments. In one case the railroads are encouraged to retain lines that no longer serve a purpose because tax relief would lower the costs of retaining the line. In the second case, that of tax relief through abandonment, the railroads are encouraged to aggregate savings that would result from the escape of maintenance costs, the salvage value that would be realized, and the savings in property taxes. In the latter case the railroads would realize a much greater cost reduction in relation to mileage
abandoned than they would through the abolition of state and local property taxes.

Further, while the abolition or limitation of state and local property taxes applicable to railroad property by Congressional enactment would undoubtedly meet with vigorous opposition from the state and local governments, there could be little opposition to an industry attempting to make itself more competitive through the elimination of inefficiency.

If either ad valorem tax exemption or systematic abandonment were used to improve the competitive position of the railroads, the state and local governments will suffer revenue losses. Systematic abandonment of uneconomic rail lines would be less drastic than the abolition or modification of taxing power that has rested in the state and local governments for many years.

While not the only answer to the railroad dilemma, it is concluded that a vigorous, well-planned, and carefully administered program on the part of railroad management aimed at the systematic abandonment of rail lines no longer serving a useful transport function would contribute to an effective solution of the problems of the American railroads.
APPENDIX A

PROTECTION FOR EMPLOYEES IDLED BY ABANDONMENT
OF A PORTION OF RAILROAD LINE

Concern for the welfare of railroad employees unemployed
because of the abandonment of a portion of a line has caused the
regulatory commissions to arrive at a standard of treatment for
these employees. The landmark decision concerning employee treat-
ment was the Chicago, Burlington, and Quincy Railroad Company
Abandonment.¹ Because of the long-range significance of the
findings in this case, it is presented here in its entirety.

Obviously the effect of any abandonment upon employees
cannot be determined definitely until the abandonment is
actually accomplished. It is our judgment that in cases of
the character herein involved, protection should be afforded
employees adversely affected, and that the carrier and the
employees should be advised of our views with respect to the
measure of such protection. Accordingly, our certificate
herein will be issued upon the following conditions:

1. If, as a result of the abandonment permitted herein,
any employee of the Chicago, Burlington and Quincy Railroad
Company, hereinafter referred to as the Carrier, is displaced,
that is, placed in a worse position with respect to his compen-
sation and rules governing his work conditions, and so long
thereafter as he is unable, in the exercise of his seniority
rights under existing agreements, rules, and practices, to
obtain a position producing compensation equal to or exceed-
ing the compensation he received in the position from which
he was displaced, he shall be paid a monthly displacement
allowance equal to the difference between the monthly compensa-
tion received by him in the position in which he is retained
and the monthly compensation received by him in the position
from which he was displaced. The latter compensation is to be
determined by dividing separately by twelve the total compensa-
tion received by the employee and the total time for which he
was paid during the last twelve months in which he performed
services immediately preceding the date of his displacement as
a result of this abandonment (thereby producing average monthly
compensation and average monthly time paid for in the test

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period). If his compensation in his retained position in any month is less than the aforementioned average compensation in the test period, he shall be paid the difference, less compensation at the rate of the position from which he was displaced for time lost on account of his voluntary absences in his retained or current position, but if in his retained position he works in any month in excess of the average monthly time paid for in the test period, he shall be compensated for the excess time at the rate of pay of the retained position; provided, however, that nothing herein shall operate to affect in any respect the retirement or pension or annuity rights or privileges in respect of any employee; provided, further, that if any employee elects not to exercise his seniority rights he shall be entitled to no allowance, and provided, further, that no allowance shall be paid to any employee who fails to accept employment, with seniority rights in a position, the duties of which he is qualified to perform. The period during which this protection is to be given, hereinafter called the protective period, shall extend from the date on which the employee is displaced to the expiration of four years from the effective date of our certificate herein; provided, however, that such protection shall not continue for a longer period following the effective date of our certificate herein than the period during which such employee was in the employ of the carrier prior to the effective date of our certificate.

2. If, as a result of the abandonment herein permitted, any employee, hereinafter referred to as the dismissed employee, of the carrier is deprived of employment with said carrier because of the abolition of his position or the loss thereof as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the abandonment herein permitted, he shall be accorded a monthly dismissal allowance equivalent to one-twelfth of the compensation received by him in the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of this abandonment. This allowance shall be made during the protective period to each dismissed employee while unemployed, provided, however, that no such allowance shall be paid to any employee who fails to accept employment, with seniority rights, in a position, the duties of which he is qualified to perform.

The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the carrier, should agree upon a procedure by which the carrier shall be currently informed of the wages earned by such employee in employment other than with the carrier, and the benefits received.
The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service after being notified by the carrier of a position, the duties of which he is qualified to perform and for which he is eligible, or in the event of his resignation, death, retirement on pension, or dismissal for good cause.

3. No employee affected by the abandonment permitted herein shall be deprived during the protective period of benefits attached to his previous employment, such as free transportation, pensions, hospitalization, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, on active service or on furlough, as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

4. Any employee retained in the services of the carrier involved in the abandonment herein permitted, or who is later restored to service after being entitled to receive a dismissal allowance, and required to change the point of his employment as a result of the transaction, and within the protective period is required to move his place of residence shall be reimbursed for all expenses of moving his household and personal effects, for the travelling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed two days, the exact extent of the responsibility of the carrier to be agreed upon in advance by the said carrier and the employees affected; provided, however, that changes in place of residence, subsequent to the initial change caused by the abandonment, which result from the exercise by the employee of his seniority rights shall not be considered as within the foregoing provision.

5. In the event that any dispute or controversy arises with respect to the protection afforded by the foregoing conditions Nos. 1, 2, 3, and 4, which cannot be settled by the carrier and the employee, or his authorized representatives, within 30 days after the controversy arises, it may be referred, by either party, to an arbitration committee for consideration and determination, the formulation of which committee, its duties, procedures, expenses, et cetera, shall be agreed upon by the carrier and the employee, or his duly authorized representatives.

6. (a) The following condition shall apply, to the extent it is applicable in each instance, to any employee who is retained in the service of the carrier (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment within the
protective period as a result of the abandonment herein permitted, and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the carrier for any loss suffered in the sale of his home for less than its fair value. In each case, the fair value of the home in question shall be determined as of a date sufficiently prior to December 3, 1943, to be unaffected by the filing of the application herein. The carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

2. If the employee is under a contract to purchase his home, the carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by the consummation of the abandonment herein permitted and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this condition.

(c) No claim for loss shall be paid under the provisions of this condition which is not presented within one year after the date employee is required to move.

(d) Should a controversy arise with respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier, and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real-estate appraisers, selected in the following manner: one to be selected by the representatives of the employees and the carrier, respectively, and these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be
final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.\(^2\)

\begin{align*}
1 \text{ 257 I.C.C. 700 (1944).} \\
2 \text{ Ibid., pp. 700-707.}
\end{align*}
APPENDIX B

COMMISSION FINDINGS IN OHIO RAILROAD ABANDONMENT CASES
1948-1960

Appendix B is included to provide the interested reader with the pertinent information and Commission analysis in each of the twenty-three railroad abandonments that occurred in the state of Ohio between 1948 and 1960. Data were obtained from the Interstate Commerce Commission and The Public Utilities Commission of Ohio.

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 16332
OHIO & MORENCI RAILROAD COMPANY ABANDONMENT

Submitted July 26, 1950 Decided August 30, 1950


James A. Gorrell and Harry F. Gillis for applicant.
F. W. Miller, William V. Blake, C. J. Kucera, Donald F. Melhorn, Fred W. Duncan, John D. Rice, Max Clendenin, Ralph L. Walson, Mrs. Dorothy Keith, M. B. Clark, L. B. Hall, Alphonse Patteuw, and Coleman A. Stanislav for protesters.

REPORT OF THE COMMISSION ON FURTHER HEARING
DIVISION 4, COMMISSIONERS MAHAFFIE, ROGERS, AND MITCHELL

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BY DIVISION 4:

Exceptions to the report proposed by the examiner were filed and the case has been argued orally.

The Ohio & Morenci Railroad Company on October 27, 1948, applied for permission to abandon its entire railroad properties, consisting of (1) its main line extending from Berkey westerly to Morenci, approximately 21 miles, in Lucas and Fulton Counties, Ohio, and Lenawee County, Mich., and (2) a switching track in the village of Blissfield extending from a point 500 feet east of Collins switch northwesterly to Main Street, approximately 4,100 feet, together with appurtenant spur tracks, in Lenawee County, Mich. Protests were filed, a hearing was held, and the case was argued orally. The application was denied by our order of September 23, 1949, 275 I.C.C., without prejudice to its renewal at the expiration of 2 years, upon proof that the system could not be continued in operation upon a profitable basis. On November 25, 1949, the applicant filed a petition urging that a further hearing be held, to afford it an opportunity to show that operation of the properties is resulting in a substantial loss. No reply to the petition was filed. The proceeding was reopened by our order dated December 21, 1949, and a further hearing has been held. No representations have been made by State authorities.

After the close of the hearing the applicant requested permission to withdraw that portion of the application seeking authority to abandon the switching tracks in Blissfield. Pursuant to that request the Commission, by Commissioner Mahaffie, by order dated March 23, 1950, dismissed the part of the application relating to those tracks. Some of the evidence presented at both of the hearings related to the traffic, revenues, expenses, etc., in connection with the Blissfield operation. The report under date of September 23, 1949, supra, also set forth the history of the organization of the applicant and its acquisition of the entire system. In view of the dismissal of the portion of the application relating to the Blissfield tracks, however, the proposed abandonment is restricted to the main line, sometimes referred to as the Morenci branch.

The stations on the line are Berkey, Metamora, Champion, Whiteville, Seward, Lyons, Denson, and Morenci. The populations of Berkey, Metamora, Lyons, and Morenci are shown as 248, 490, 464, and 1,845, respectively. The populations of the other points are not shown. All of the stations are on a State highway which parallels the line. Morenci is served by the New York Central Railroad, and Denson and Champion are located on the Detroit, Toledo & Ironton Railroad. The applicant has connections for the interchange of traffic at Denson and Champion with the line of that carrier. The territory tributary to the Morenci line is devoted principally to farming, the chief crops being grain and tomatoes. Train service is restricted to freight
business. All of the freight handled moves between points on the line and points on other railroads.

Carloads of freight handled on the line during the years 1943-47, and the first 11 months of 1948, are shown, in order, as 1,192, 871, 954, 1,104, 960, and 1,069. The financial results of operation during the same periods are shown as follows: Railway operating revenues $50,627, $46,824, $47,351, $47,212, $51,200, and $59,541, operating expenses and taxes $38,553, $38,173, $40,404, $42,603, $50,876, and $44,218, and net revenues $12,074, $6,650, $6,947, $4,609, $324, and $15,323. The applicant states that during the year 1949 the number of carloads of freight handled was 804 less than the number handled in 1948. The financial results for 1949 are shown as follows: Revenues $27,578, operating expenses $45,930, railway tax accruals $3,170, and net loss $21,522.

The principal reason for the loss in traffic and revenues is shown to result from the transfer by 2 shippers at Morenci of their business to the New York Central Railroad Company. The record of the previous hearing with respect to this subject was fragmentary, and indicated that the applicant lost the business willingly, in order to produce a condition warranting the abandonment of its railroad. At the further hearing, however, the applicant presented evidence to the effect that the principal shipper in question requested the applicant to arrange for the discontinuance of service to its plant, and caused the city of Morenci to levy a fine of $500 a day against the applicant for operating within the city limits without a franchise. Enforcement of the penalty is said to have been postponed upon the understanding that the side track of the applicant be removed and the New York Central be permitted to place a track on the same site, which occurred. After service by the New York Central was established the city granted a franchise to the applicant, and no portion of the fine was collected.

The evidence presented by the applicant with respect to the transfer by the 2 shippers of their business to the New York Central has not been contradicted. The protestants persist on brief and in oral argument, however, to contend that the applicant lost the shippers willingly, in order to be able to show that the railroad could not be operated except at a loss. The shippers in question furnished the applicant about 40 percent of its system revenues. The record does not show that the applicant engaged in any wrongful action in connection with the matter in question. In any event, however, the business of the shippers mentioned cannot be regained by the applicant and all of the other traffic which reasonably can be expected to move over the line will not produce revenues sufficient to meet the cost of operation.

An elevator company at Metamora, having an investment of $76,000, shipped 113 carloads of freight over the line in 1949. A dealer in
lumber and coal at the same point gave the applicant 26 carloads of freight business during the same year. His company has an investment of $25,000 in the business. Another firm at Metamora handles some coal, but its principal business is the sale of petroleum products. None of the petroleum is shipped by rail, however. A feed, coal, and grain cooperative at Berkey, having an investment of $30,000, shipped 51 carloads of products over the line during 1949. A grain and coal company at Lyons, having an investment of $40,000, shipped 88 cars during the year, and expects its business to increase somewhat if operations are continued. The operator of an elevator at Whiteville gave the applicant 138 carloads of business in 1949, as compared to 124 in 1948. A dealer in lumber and coal at Morenci, also having a plant at Hudson, on the New York Central, shipped only 97 cars over the line during the past year as compared to 158 in 1948. The shipments of the Campbell Soup Company over the line declined from 300 cars in 1948, to 56 in 1949. Its shipments consisted of raw tomatoes grown in the community. Most of the tomatoes handled by it near the line were moved to one point in Ohio and 2 in Indiana by trucks. A representative of the company does not predict that shipments over the Morenci line will be increased materially if the line is continued in operation. The company has loading facilities at points on the New York Central near the Morenci line, and will continue to be served by that carrier if the application herein is granted.

The applicant's track is not in good condition. It is laid with old 60-pound street car rails, most of which are badly bent, and some are broken. A large proportion of the ties are in such poor condition that they are practically worthless. Some will not hold spikes, and on some occasions rails have turned on their sides resulting in train wrecks. The line cannot be operated safely in its present condition, even at as slow a speed as 10 miles an hour. The applicant estimates the cost of placing the track in reasonably good condition, including the replacing of the rail with 80-pound steel, at approximately $20,000 per mile or a total of $440,000. Most of the material for such a job would be secondhand. It also estimates the cost of repairing or replacing the rails which are broken or badly bent and worn, replacing most of the rotten ties, and rearranging the ballast now in the roadbed at $5,000 a mile of track. This would be expected to enable the applicant to operate the line from 7 to 10 years. It is estimated further by the applicant that the line could be continued in operation on a minimum basis of efficiency for about 5 years by replacing some of the worst rails and ties and reworking the present ballast. This would cost about $2,000 a mile. Unless substantial repairs are made, however, the line cannot be operated safely and efficiently.

It is clear from the record that the line is being operated at a substantial loss to the applicant, and that continued operation
will result in more serious losses. The operating revenues are not sufficient to meet the necessary cost of operation without regard to provision for replacement of exhausted track materials. There is no prospect of any material increase in the volume of traffic or revenues if operation is continued. The proposed abandonment will result in inconvenience to the shippers served, particularly those outside of Morenci, who will not have access to another railroad. Metamora is about 1.75 miles from a line of the Detroit, Toledo & Ironton Railroad, and Whiteville about 1.5 miles therefrom. None of the stations are more than approximately 5 miles from a line of that carrier, and Champion is on 1 of those lines. The carrier mentioned does not, however, have station or sidetrack facilities near its connections with the Morenci line. It may be that some arrangements could be made, if the application herein is granted, for service to some of the communities affected, by the Detroit, Toledo & Ironton over some portions of the present line of the applicant. For this reason our certificate will be issued subject to the express condition that the applicant shall sell any portion of the property to be abandoned to any responsible person, firm, or corporation offering, within 40 days from the date of the certificate, to purchase the same for operation in railroad service, and willing to pay therefor not less than the fair net salvage value of the property which they may seek to acquire.

While the proposed abandonment would result in some inconvenience to the general public, such inconvenience would not be as serious as the losses which would be incurred by the applicant through continued operation. Such operation would impose an undue burden upon the applicant and upon interstate commerce.

Subject to the condition with respect to the sale of the property in question, or any portion thereof, for operation in railroad service, stated above, we find that the present and future public convenience and necessity permit abandonment by the Ohio & Morenci Railroad Company of its line of railroad in Lucas and Fulton Counties, Ohio, and Lenawee County, Mich., described herein. On the understanding that, before recording in its books the related journal entries to show retirement of the line from service, the applicant first shall submit, in duplicate, the entries for our consideration and approval, an appropriate certificate will be issued, effective from and after 40 days from its date, in which suitable provision will be made for the cancellation of tariffs.
Certificate issued permitting abandonment by the Chesapeake & Ohio Railway Company of its ferry between Ripley, Brown County, Ohio, and South Ripley, Mason County, Ky. Conditions prescribed.

Richard T. Wilson, Jr., for applicant.
John W. Gee, Oliver L. Welf, Jr., Archie R. Hicks, Jr., and Noel George for protesters.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFFIE, ROGERS, AND MITCHELL

BY DIVISION 4:

Exceptions were filed to the report proposed by the examiner.

The Chesapeake and Ohio Railway Company on July 11, 1949, applied for permission to abandon its ferry across the Ohio River between Ripley, Brown County, Ohio, and South Ripley, Mason County, Ky., approximately 1 mile. Protests were filed and a hearing was held. No representations have been made by State authorities. Unless otherwise indicated, all points hereinafter mentioned are in Ohio.

The main line of the Chesapeake & Ohio between Cincinnati and Ashland, Ky., is located on the south bank of the Ohio River, and passes through South Ripley. Directly across the river from South Ripley is Ripley, a point to and from which applicant has published rates since 1888. The ferry was operated on an independent basis until 1901 when applicant acquired both the ferry-boat and the franchise. In 1926, the ferry equipment was sold to the Manchester Ferry Company which operated the franchise under contract with applicant until November 1943. In 1942 the ferry company was financially unable to make substantial repairs to the operating equipment and as a result applicant was required to purchase another ferry-boat and lease it to the ferry company. The following year the latter terminated its contract with applicant which, in turn, leased the
ferry equipment to the present operator who performs both the ferry and incidental trucking service at both South Ripley and Ripley as agent of applicant. Except for short periods when repairs to equipment were necessary, or river conditions were hazardous to navigation because of high water or ice, the ferry has been operated continuously since 1888.

Pursuant to the terms of an agreement dated November 1, 1943, the applicant leases a boat to the ferry operator at an annual rental of $300, payable in equal quarterly installments in advance. All taxes assessed against the vessel and premiums for insurance are paid by the applicant for which the lessee reimburses the applicant to an amount not exceeding $60 a month, or $720 a year. The lessee furnishes all fuel, oil, and running repairs, and pays the wages of the master and crew, as well as any other costs of operation, including necessary governmental license and inspection fees. Applicant, however, is primarily responsible for such costs, and for any damage to lading while enroute on the ferry. On the traffic handled to or from the railroad, via the ferry, the applicant pays lessee $1.80 a ton with a guaranteed minimum of not less than $720 a month. The minimum, rather than the tonnage rate, usually has been the basis for compensation during 9 months of each year, except in 1947 and 1949 when the minimum applied for 10 months. In addition, the operator retains all the revenues derived from local bank-to-bank business. Because of increased labor and material costs, the ferry operator has requested that the existing agreement with applicant be revised so as to increase the guaranteed minimum compensation to $1,075 a month, or a potential increased cost to the applicant of $4,260 a year.

Present operations are conducted with a wooden hull vessel 64.7 feet long and 26 feet wide, propelled by a 60-horsepower Diesel engine. It will accommodate 3 trucks of 6 automobiles, and has a passenger room with a capacity of 15 people. Landings, consisting of a float and ramp, are maintained on both sides of the river to which the ferry is anchored when vehicles and passengers embark and disembark. The floats are 40 feet long and 22 feet wide, and the ramps are 20 feet long. Applicant states that the ferry's depreciated book value is $5,229 and its estimated salvage value is $3,000. As of the date of the hearing it was in safe operating condition, but an estimated $9,665 will have to be spent on repairs and replacements to permit safe operation during the next 2 years.

The ferry operation requires the employment of three men, (including a night watchman), and two trucks and drivers during 9 months of the year. Three additional trucks and drivers are employed during the tobacco season extending from December through February of each year. The direct supervision of the ferry and pick-up and delivery operations are vested in applicant's agent at Ripley where an office and freight room are leased by applicant. Applicant's clerk located
at the South Ripley station handles all the billing on shipments moving to and from Ripley which have either a prior or subsequent movement by rail.

The South Ripley freight station is served by one freight and one passenger train a day in each direction. Less than 10 people reside in the immediate vicinity of the station, and the total revenue from rail freight originating at or delivered to that point amounted to $818 between January 1946 and December 1949. Carload traffic from points beyond South Ripley destined to Ripley is spotted on team tracks, and the less-than-carload traffic is unloaded from way-freight trains on the station platform at South Ripley. This freight is then loaded on trucks which are driven on to the ferry. After ferriage across the river the freight is delivered to applicant's station or directly to consignees in Ripley. Outbound freight is handled in the reverse direction in the same manner. Rail passengers may purchase through tickets to or from Ripley, including ferriage across the river. However, only 28 such passengers used the ferry service from January 1946 to December 1949.

The ferry also handles freight and passenger traffic in local bank-to-bank service. On weekdays it is operated from 7:00 a.m. to 5:30 p.m., and on Sundays from 7:00 a.m. to 5:00 p.m., making only such trips as are necessary to handle the traffic. During 1948 it operated on 323 days, averaging 12.2 round-trips per day. A journey across the river by ferry requires between 5 and 10 minutes elapsed time.

According to the 1940 census, Ripley had a population of 1,623 people. It is located on an improved east-west Federal highway extending along the north bank of the Ohio River between Cincinnati and Portsmouth, parallel to the applicant's main line on the south side of the river. Several improved north-south Federal highways also converge at Ripley and these, together with the State and county roads with which they connect, provide adequate highway facilities to serve Ripley and the tributary territory. Connections with the Kentucky highway system are afforded by a bridge across the Ohio River at Maysville, Ky., approximately 9 miles east of Ripley and by a ferry at Augusta, Ky., approximately 11 miles west thereof. Daily motor-vehicle common carrier freight and passenger service is available between Ripley and Maysville.

Ripley passengers desiring to travel on the applicant's system beyond the ferry ordinarily proceed by bus or private automobile to Maysville, Cincinnati, or Portsmouth in order to board faster trains. As a consequence, the record shows that during the years 1946-48, and the first 11 months of 1949, in order, only 22, 5, 1, and 0 rail-road passengers used the ferry. Local bank-to-bank ferry passengers, not including passengers when transported at rates on vehicles and passengers therein, during the same periods numbered 4,280, 6,134, 3,795, and 3,340, respectively, on which the fare collected and
Financial results of ferry operations for the years 1946-48, and the first 11 months of 1949, in order, are shown by the applicant as follows: Total system operating revenues derived from traffic handled over the ferry $32,764, $36,800, $35,362, and $22,495, of which $5,140, $7,234, $6,893, and $5,039 were assigned to the ferry direct; expenses incurred by applicant in connection with the operation of the ferry and the traffic handled thereover—compensation paid to the ferry operator $13,649, $13,232, $12,030, and $10,528, repairs and operating expenses on ferry vessel paid by applicant $4,552, $4,678, $4,689, and $4,386, station expenses at Ripley and South Ripley in connection with the ferry traffic $6,032, $6,605, $7,160, and $6,526, totals $24,233, $24,515, $23,879, and $21,440; cost of handling the ferry traffic over the applicant's system rail lines, based on 50 percent of the revenues remaining after deducting the assignment made to the ferry direct, $13,662, $14,638, $14,085, and $8,590; and net system deficits of applicant resulting from operation of the ferry $5,131, $2,344, $2,602, and $7,535. Considered as a separate unit of transportation, the losses sustained from operation of the ferry for the periods indicated would have been $16,198, $14,148, $13,575, and $13,255.

In arriving at the foregoing results of operation, the ferry was credited with all the revenues, both passenger and freight, earned in local bank-to-bank service, and the tariff arbitrators published by the applicant for the ferry service on traffic having a prior or subsequent movement by rail. The revenue collected and retained by the ferry operator on local traffic does not affect the amount of compensation paid to the ferry company for handling traffic originating or terminating beyond South Ripley. Included as expenses were the actual costs for insurance and railway tax accruals, and an estimated amount for annual repairs based upon past experience. Transportation expenses, including wages of station employees, also were actual.

If the authority sought herein is granted, applicant proposes to continue to serve Ripley out of the Maysville station by using the same method of operation and equipment that it now uses over the ferry. In MC-109867 (Sub-No. 3), Chesapeake and Ohio Railway Company-Ripley, Ohio, M.C.C., (decided September 8, 1950) issuance of a certificate.
authorizing such operations over U. S. Highway 68 between Ripley and Maysville was approved by division 5, subject to the following conditions: (1) that the relief sought in this proceeding is granted, and (2) that the ferry operation between South Ripley and Ripley is actually abandoned. Applicant applied for that authority contingent on the approval of the relief sought herein. It estimates that more than $13,000 annually can be saved by the proposed truck operation with some improvement in the rail service, because more train schedules are available at Maysville than at South Ripley.

On both sides of the river, the territory tributary to the ferry is devoted principally to agriculture. Ripley is a supply center for this area, and has several tobacco warehouses where one of the principal crops produced is marketed. In addition, a bank, a foundry, and a number of retail supply concerns are located in Ripley. The amount of business transacted there has been fairly constant and no increase or expansions are anticipated. The primary concern of those witnesses testifying in opposition to the application is their anticipated loss of business from the Kentucky side of the river because, if the ferry service is discontinued, a large majority of that business will undoubtedly be diverted to Maysville.

Several witnesses connected with the tobacco warehouses also contend that the movement of hogsheads of tobacco out of their warehouses to the Maysville station cannot be conducted as expeditiously as it is now moving to the South Ripley station over the ferry. Applicant, however, denies this because it proposes to load the equipment to capacity rather than the partial loading as has been the past practice and thereby make up for the additional time necessary to make the round-trip by highway to Maysville. Because of the steep approaches to the ferry landings on each side of the river, trucks are loaded with only 4 hogsheads of tobacco lying flat. Under the proposed operation over the highway it is expected that the trucks can be loaded to a capacity of 8 hogsheads standing on end. Applicant points out that the over-all time-in-transit will be about the same, and that the greater availability of trains at Maysville, as compared with trains through South Ripley, will considerably expedite the subsequent rail movement of this traffic. The remaining contention by one of the opposing witnesses concerned his apprehension that the present mail service would be adversely affected. That applicant has no obligation in this respect seems clear. See A. T. & S. F. Ry. Co. v. United States, 225 U.S. 640, and Union Pac. R. Co. v. Public Service Commission, (Utah) 132 P. (2nd) 128.

No one questions the fact that the amount of local bank-to-bank traffic moving over the ferry will not, by itself, permit the continuance of its operation on a profitable basis. Furthermore, it is equally clear that with the addition of the rail traffic moving to and from Ripley, ferry operations have resulted in considerable losses to applicant for several years without any prospective relief. Abandon-
ment no doubt will cause some inconvenience to the people using the ferry exclusively in local bank-to-bank service, but applicant cannot be expected to continue ferry operations at a loss in order to provide service for those patrons. The record is clear that neither the present or prospective local bank-to-bank traffic, nor the rail traffic moving beyond South Ripley, or a combination of both, is sufficient to warrant the continued operation of the ferry. Under the circumstances, such operation would impose an undue burden upon the applicant and upon interstate commerce.

A representative of employees requests that if abandonment of the ferry is permitted, we impose for the protection of employees who may be adversely affected, conditions similar to those prescribed in Chicago, B. & Q. R. Co. Abandonment, 257 I.C.C. 700. Actually none of applicant's employees is used in operation of the ferry service. Moreover, the proposed substituted service will require the continuance of the rail station at Ripley. Applicant therefore argues that the conditions should not be imposed because the only employee of applicant who might be affected is the clerk at the South Ripley station, and only then if the Kentucky Railroad Commission permits a change of that station from an agency to a nonagency status. Stated otherwise, applicant contends that the necessity of obtaining the requisite State authority prevents the abandonment involved herein from directly affecting that employee. However, applicant clearly intends to request and obtain such authority, if possible, in order to accomplish its overall plan to substitute highway operations in lieu of ferry operation. The record shows that applicant's employees were used in making repairs to the ferry boat, and since there exists a possibility that the agent at South Ripley may be adversely affected by the closing of the agency station at that point, a result directly attributable to the permission to abandon herein sought, our certificate herein will be issued subject to the conditions for the protection of employees as were imposed in Chicago, B. & Q. R. Co. Abandonment, supra.

Subject to the foregoing conditions for the protection of employees, we find that the present and future public convenience and necessity permit abandonment by The Chesapeake and Ohio Railway Company of the ferry between Ripley, Brown County, Ohio, and South Ripley, Mason County, Ky., described herein. On the understanding that, before recording in its books the related journal entries to show retirement of the ferry from service, the applicant first shall submit, in duplicate, the entries for our consideration and approval, an appropriate certificate will be issued, effective from and after 40 days from its date, in which suitable provision will be made for the cancellation of tariffs.
CERTIFICATE IS ISSUED PERMITTING ABANDONMENT BY THE PENNSYLVANIA, OHIO & DETROIT RAILROAD COMPANY AND ABANDONMENT OF OPERATION BY THE PENNSYLVANIA RAILROAD COMPANY, LESSEE, OF A LINE OF RAILROAD IN WARREN COUNTY, OHIO.

WINDSOR F. COUSINS FOR APPLICANT.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFFIE, ROGERS, AND JOHNSON

BY DIVISION 4:

The Pennsylvania, Ohio and Detroit Railroad Company and The Pennsylvania Railroad Company, lessee, on September 12, 1951, applied for permission to the former to abandon, and to the latter to abandon operation of, that portion of the so-called Lebanon branch line of railroad extending from Lebanon to Lytle, approximately 9.28 miles, in Warren County, Ohio. No representations have been made by any State authority and no objection to the application has been presented. All points hereinafter mentioned are in Ohio unless otherwise stated.

The line of railroad under consideration, hereinafter sometimes referred to as the line, was constructed sectionally by different corporations during 1882 and 1885. It was later consolidated with other lines to form the applicant owner's present railroad, which, about the same time, was leased to the Pennsylvania. See Lease of Properties of Subsidiary Cos., by P. R. R., 72 I.C.C. 674. Acquisition and Stock Issue by P. O. & D. R.R., 105 I.C.C. 189. The Lebanon branch, including the line herein proposed to be abandoned, is an alternate route between Middletown Junction and Hageman, on the one hand, and Xenia and Dayton, on the other.

No traffic has moved over the line since 1930, and no maintenance has been performed since 1947. It is, therefore, in a poor condition. Adjacent land owners have encroached on the right-of-way.
and the tracks at road crossings are covered with macadam. The net salvage value of the recoverable property, consisting mainly of 85-pound rail and tie plates and four steel bridges, is reported to be $2,565.

The line served an estimated population of 500. The points shown as stations, viz, Lolam, Kitchener, Venable, and Edgewood are not built-up communities and have no station facilities. The unincorporated village of Dodds with a population of about 50 is approximately 6 miles from Lebanon and Waynesville, both of which are served by other lines of the Pennsylvania. The only connection which the segment proposed to be abandoned has with another line of railroad is at the points of severance.

U. S. Highway No. 42 about parallels that portion of the line on the east between Lebanon and Waynesville, and on the west from Lebanon to Dayton it is paralleled by State Highway No. 48. Access to these highways is provided by county and secondary roads. The territory is served by two motorbus lines and the same number of carriers by motor-truck. Farming is the principal industry and whatever transportation is required is available over other lines of the applicant and highway operators. There has been no demand by shippers for service, but the branch has been retained as a possible alternate route. No such need has arisen, however. In light of the fact that it has no value for transportation purposes, its abandonment is warranted.

We find that the present and future public convenience and necessity permit abandonment by The Pennsylvania, Ohio and Detroit Railroad Company, and abandonment of operation by The Pennsylvania Railroad Company, lessee, of the line of railroad in Warren County, Ohio, described herein. On the understanding that before recording in its books the related journal entries to show retirement of the line from service, the applicants first shall submit, in duplicate, the entries for our consideration and approval, an appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provision will be made for the cancellation of tariffs.

COMMISSIONER ROGERS did not participate in the disposition of this proceeding.
Certificate issued permitting abandonment as to interstate and foreign commerce by the Lorain & Southern Railroad Company of its entire line of railroad in Lorain County, Ohio.

Arthur E. Tulk and Andrew P. Martin for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFFIE, ROGERS, AND MITCHELL

BY DIVISION 4:

The Lorain and Southern Railroad Company, on December 20, 1951, applied for permission to abandon its entire line of railroad, approximately 0.822 miles, together with 3.906 miles of sidings, all in South Amherst, Lorain County, Ohio. No representations have been made by State authorities and no objection to granting the application has been presented.

The applicant was incorporated and the line was constructed in 1903 by the Ohio Quarries Company, which company and its successor, the Cleveland Quarries Company, at all times have owned the applicant's entire capital stock, except directors' qualifying shares. The parent company will be referred to herein as the quarry company. The line's purpose was to provide trunk-line service to the quarry company, and to serve the general public at South Amherst. In Ohio Quarries Co. v. N. Y. C. R. R. Co., 92 I.C.C. 703, and in several earlier complaint proceedings, we found the applicant to be a common carrier subject to the Interstate Commerce Act.

The line connects with the Quarry Branch of the New York Central Railroad Company at a point in South Amherst, which village has a population of 1,018. There are no stations on the line. It performs switching movements between the New York Central and the plants and facilities on the line. It also performs intraplant switching for the quarry company. The state of maintenance of the line is fair. The present net salvage value of the equipment property and other materials is estimated to be $23,443, and the real estate is valued at $1,454.
Traffic over the line consists of carload freight only. During 1950 and 1951, in order, exclusive of cars handled in intraplant switching service, 628 and 830 cars of sandstone, and 56 and 39 cars of coal moved to or from the line. Of that traffic, 18 and 17 carloads, respectively, were received for patrons other than the quarry company. The amount of traffic moving over the line in recent years has decreased because of the use of trucks for shipping stone outbound, and coal and miscellaneous freight inbound. Effective November 13, 1951, the New York Central canceled its absorption of a part of the applicant's switching charges on interstate traffic. Upon abandonment of the line, the facilities will be acquired by the quarry company for use as a part of its plant trackage, and all loaded cars to and from the plant will be handled directly from that company's interchange track by the New York Central.

The applicant states that during each, except three, of the past 20 years operations of the line have resulted in losses. The income accounts for the past 5 years show deficits of $4,119, $16,603, $1,145 for 1957, 1950, and 1951, respectively, and income of $6,330 in 1948, and $9,058 in 1949. The applicant's balance sheet of December 31, 1951, shows assets of $58,951, including transportation property less depreciation $57,513, current assets $1,235, and pre-payments $203; liabilities include capital stock $100,000, miscellaneous accounts payable $93,701, other current liabilities $2,376, and earned surplus - unappropriated $137,126, representing the aggregate losses on the line during the period 1904-51.

It is apparent that the proposed abandonment will cause little, if any, inconvenience to the public. In these circumstances, continued operation of the line as a common carrier would impose an undue and unnecessary burden upon the applicant and upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment, as to interstate and foreign commerce, by The Lorain and Southern Railroad Company, of its entire line of railroad in Lorain County, Ohio, described herein. On the understanding that, before recording in its books the related journal entries to show the retirement of the line from service, The Lorain and Southern Railroad Company first shall submit, in duplicate, the entries for our consideration and approval, an appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provision will be made for the revocation of concurrences and powers of attorney and for the cancellation of tariffs.
Certificate issued permitting abandonment by the Erie Railroad Company of a portion of a branch line of railroad in the city of Youngstown, Mahoning County, Ohio.

F. G. Hoffman for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFFIE, JOHNSON, AND MITCHELL

BY DIVISION 4:

The Erie Railroad Company, on May 28, 1953, applied for permission to abandon that portion of its so-called Canal branch extending from milepost 1.60 about 250 feet southeast of the center line of Northwest Avenue, to milepost 3.70, about 100 feet northwest of the center line of Division Street, approximately 2.10 miles, in the city of Youngstown, Mahoning County, Ohio. No representations have been made by State authorities and no objection to the granting of the application has been presented.

The Canal branch was constructed by a predecessor of the applicant in 1881 for the purpose of providing additional track room in the Youngstown area. It has been operated by the applicant as a part of its system for many years. Originally, operations consisted principally of the movement of through trains to and from the Pittsburgh & Lake Erie Railroad in order to avoid congestion of traffic in the Youngstown and Brier Hill districts. However, such operations were discontinued more than 20 years ago and since that time the portion of the branch sought to be abandoned, hereinafter called the segment, has been used principally for car-storage purposes.

The segment is entirely within the city limits of Youngstown. No stations are located thereon. In former years, the segment served two industries but neither of them is now dependent upon it for transportation purposes. No traffic has been handled thereover for the past 2 years and the applicant states that there are no prospects of any traffic in the future. As the result of deferred maintenance, over 90
percent of the rail, ties, and other track material has deteriorated to
the extent that they are of no value except for scrap. The remainder
could be used for second-hand material. The salvage value of the seg-
ment, exclusive of land, is estimated by the applicant to be $17,555.

It is clear from the record that the segment no longer serves
any useful purpose and that continued maintenance and operation would
impose an undue and unnecessary burden upon the applicant and upon
interstate commerce.

We find that the present and future public convenience and
necessity permit abandonment by the Erie Railroad Company of the por-
tion of the branch line of railroad in the city of Youngstown,
Mahoning County, Ohio, described herein.

An appropriate certificate will be issued, effective from and
after 30 days from its date, in which suitable provision will be made
for the cancellation of tariffs, the submission of journal entries,
and compliance with valuation order No. 24.

COMMISSIONER MITCHELL did not participate in the disposition of
this proceeding.
Certificate issued permitting abandonment by the Chesapeake & Ohio Railway Company of its ferry across the Ohio River between New Richmond, Campbell County, Ky., and New Richmond, Clermont County, Ohio. Conditions prescribed.

Hevitt Biasett and Richard T. Wilson, Jr., for applicant.
W. P. Kennedy and A. E. Lyon for railway labor organizations.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAPPE, MITCHELL, AND CROSS

BY DIVISION 4:

The Chesapeake and Ohio Railway Company, on September 9, 1953, applied for permission to abandon its ferry across the Ohio River between New Richmond, Campbell County, Ky., and New Richmond, Clermont County, Ohio, approximately 1 mile. No representatives have been made by State authorities, and no objection to the application has been presented by users of the ferry. An application to abandon this ferry was denied by us in Chesapeake & O. Ry. Co. Ferry Abandonment, 267 I.C.C. 788, decided April 8, 1948. Points named herein are in Ohio, unless otherwise shown.

The Railway Labor Executives Association, and the Brotherhood of Railroad Trainmen filed protests against the application contending that its approval would adversely affect carrier employees. The applicant and representatives of these organizations subsequently advised us that each would accept the imposition of conditions for the protection of employees who might be affected adversely, similar to the conditions contained in Chicago B. & Q. R. Co. Abandonment, 257 I.C.C. 700. Our certificate herein will be issued subject to these conditions.

New Richmond, Ky., population 10, is an agency station on the south bank of the Ohio River, at milepost 642.3 on the applicant's main line between Riverton, Ky., and Cincinnati. On the opposite bank
of the river is New Richmond, Ohio, population 1,960. There are no railroad tracks located at or near the ferry terminal in Ohio. Under an arrangement with the operators of the ferry, the applicant transported freight across the river by means of the ferry from 1888 to 1901, when it acquired the ferry boat and franchise and performed the operation thereof. In 1926, the ferry equipment was sold to a company which operated it for the applicant until 1938. Since August 1, 1938, an individual has performed the ferry service as an agent of the applicant under contract.

The applicant asserts it is its understanding that the present contractor will continue operating the ferry if the abandonment of the applicant's service is effectuated. The applicant also states it is agreeable to take steps to transfer the ferry franchise to the operator, and at present will continue to operate the station and track facilities at New Richmond, Ky., and will provide rail service at that point.

A local passenger train in each direction daily, and a local freight train in each direction daily except Sunday provide service at the station in Kentucky. The ferry, which operates between 8:00 a.m. and noon, and between 1:00 p.m. and 6:00 p.m., meets the passenger trains, handles the freight traffic destined to or originated at the Ohio terminal, and makes any additional trips required to handle the bank-to-bank traffic which does not involve a prior or subsequent movement by railroad.

At New Richmond, Ohio, there are several small industries, including a woolen yarn factory, a foundry, a hosiery heel-knitting plant, and stores of dealers in various types of merchandise. None is dependent solely upon the applicant's rail-ferry service. The population of the affected area, including New Richmond, is estimated to be 8,862. Various motor carriers of property and passengers operate over highways at and near New Richmond and provide service throughout the area. Coal transported by barge on the Ohio River also is available at New Richmond. By highway, the nearest railroad points are west of New Richmond, consisting of team tracks of the Pennsylvania Railroad at or near Cincinnati, about 16 miles from New Richmond; Batavia and Williamsburg on the Norfolk & Western Railway 13 and 21 miles distant, respectively; and Newport, Ky., on the applicant's line 22 miles distant via a free bridge.

During 1951, 1952, and 1953, through May, in order, 896, 988, and 338 passengers used the ferry in local service, and it handled the lading of 4, 31, and 13 carloads of freight, and transported 176.2, 162.7 and 46.4 tons of less-than-carload freight. The freight which involved the greatest volume was lumber, 0, 5, 4 carloads, and wool and wool waste, 3, 17, 7 carloads. Of the tonnage shown, in each year 1951 and 1952, 1 carload of wool originated at the Ohio terminal, and the only other traffic from that side of the river
involved less-than-carload shipments equal to 8.3 tons in 1951, 17.9 tons in 1952, and 10.9 tons during the portion of 1953.

The financial results of operating the ferry during 1951, 1952, and the first 5 months of 1953, in order, are shown as follows (cents omitted): System revenues from passenger and freight traffic originating at or destined to New Richmond, to or from New Richmond, Ky., or points beyond, $12,791, $20,491, $8,753, of which the traffic local to the ferry, plus an assignment of revenues earned on the basis of the applicable published ferry rates, $7,549, $10,636, $3,959; expenses chargeable to the ferry $17,613, $21,849, $8,853, the component items thereof being compensation to the ferry operator $11,484, $12,581, $4,732, other transportation costs $3,506, $4,340, $1,725, of which $3,373, $4,205, $1,668 are charged as out-of-pocket costs of wages, supplies, stationery, and taxes incurred at the terminal at New Richmond, Ky.; and the cost of moving the traffic of the ferry to and from points beyond the Kentucky terminal on other parts of the applicant's system, on the basis of 50 percent of the revenues allocated to the system beyond the ferry, plus 50 percent of the revenues derived from traffic (mostly coal) shipped over the applicant's lines to New Richmond, Ky., and thereafter transported via the ferry as traffic local to it, $2,621, $4,927, $2,397; all of which shows system deficits resulting from operation of the ferry of $4,822, $1,358, $101.

An agreement of 1948, between the applicant and the ferry operator, provided for a guaranteed payment to the operator of $500 per month for the handling of up to 1,000 tons of freight, and $3 per ton for any excess, and permitted the operator to retain the bank-to-bank traffic charges up to $4,000 per year, and 50 percent of the excess over $4,000. Because of increased operating costs, the operator terminated the 1948 contract on May 22, 1953. Under a new agreement consummated July 2, 1953, to remain effective from May 22, 1953, until the application to abandon the ferry is decided, the applicant agreed to pay the ferry operator $400 per month for transporting the less-than-carload traffic moving on through rates to New Richmond, and $3 per ton for carload traffic, and to permit the operator to retain the entire bank-to-bank traffic receipts.

The return to questionnaire herein includes an exhibit which computes the financial results of operating the ferry on the basis of the rates of payment provided in the new contract, applied to the traffic handled during the years and portion of 1953 under consideration. For the amounts of compensation paid the ferry operator under the 1948 contract, $11,484, $12,581, $4,732, the applicant substituted $11,989, $15,487, $7,770, and accordingly arrived at system operating deficits of $5,327, $4,264, $3,139.

The applicant will retain the station and track facilities on the Kentucky side of the river, and apparently would effect no immediate savings in the cost of their operation if the ferry were abandoned.
If those expenses of $3,373, $4,205, $1,668 are to be eliminated following abandonment of the operation of the ferry, the resulting effect upon the applicant's system, under the terms of the 1948 agreement would be shown as $1,449 deficit in 1951, $2,847 profit in 1952, and $1,567 profit in the first 5 months of 1953; and under the terms of the 1953 agreement, there would be deficits of $1,954, $59, and $1,525.

The applicant states that the plants and merchants near the ferry use privately owned trucks or public motor carriers; that several dealers use truck service exclusively; that a coal dealer receives 5,000 tons of coal per year by barge; and that the wool yarn factory, the ferry's principal patron, is able to receive its inbound wool on the Pennsylvania Railroad siding and other rail points. Judging from past experience, the applicant estimates that in the future, the tonnages available to the ferry and the revenues therefrom, will not exceed the traffic handled during 1952, but that, as shown, the cost to the applicant of providing the ferry service will increase.

The record is clear that the applicant's ferry service no longer is a medium of transportation necessary to the shippers in the area surrounding New Richmond. The further operation of the ferry in conjunction with the applicant's railroad service on the Kentucky side of the river is not justified by the volume of traffic which the public provides. Furthermore, because the ferry operation will be continued by the present agent of the applicant, abandonment of the service by the applicant will cause little, if any, inconvenience to the public. In these circumstances, we conclude that continued operation by the applicant would impose an undue burden upon the applicant and upon interstate commerce.

Subject to the conditions for the protection of employees mentioned hereinbefore, we find that the present and future public convenience and necessity permit abandonment by The Chesapeake and Ohio Railway Company of its ferry across the Ohio River between New Richmond, Campbell County, Ky., and New Richmond, Clermont County, Ohio, described herein. An appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provision will be made for the cancellation of tariffs, the submission of journal entries, and compliance with valuation order No. 24.
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18340

NEW YORK CENTRAL RAILROAD COMPANY ABANDONMENT

Submitted December 14, 1953 Decided December 22, 1953

Certificate issued permitting abandonment by the New York Central Railroad Company of a portion of its Alliance branch line in Jefferson County, Ohio.

R. R. Pierce for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFFIE, MITCHELL, AND CROSS

BY DIVISION 4:

The New York Central Railroad Company on November 24, 1953, applied for permission to abandon the portion of its Alliance branch line extending in a northerly direction from Dillonsvale to the end of the line at Smithfield, 4.42 miles, in Jefferson County, Ohio. Of the trackage in question, 5,100 lineal feet at Dillonsvale will be retained by the applicant as a spur to continue serving a mine of the Dry Fork Coal Company. No representations have been made by State authorities and no objection to the granting of the application has been offered.

The line proposed to be abandoned, herein referred to as the line, was built to develop coal acreage in the area. Construction commenced in 1901 by the Dillonsvale & Smithfield Railway Company and was completed to its present length by the United States Coal Company in 1922. It subsequently was purchased by a subsidiary of the applicant, and, in 1952, was merged into the applicant company. Finance Docket No. 17700, New York Central R. Co. Merger, 282 I.C.C., (not printed in full), decided June 18, 1952.

There have been no operations over the line since 1947, and its maintenance has been curtailed. It would require complete rebuilding of the line in order to restore it to operational condition. The line's salvage value is estimated to be $17,800, after the cost of removing the material therein. Bradley, a nonagency station, with a population of 500, is about 4 miles by highway beyond Dillonsvale, served by the applicant and the New York, Chicago & St. Louis railroad. Smithfield, population 1,255, a nonagency station on the line, also receives service from the Pittsburgh & West Virginia Railroad.
During the past 6 years, the only traffic over the line has been the freight of the Dry Fork Coal Company's mine. As proposed by the applicant, spur-track rail service for that traffic will continue to be available after the line is abandoned. In May 1947, shipments were discontinued from the two other coal mines on the line. Those mines have been mined out and the tipples are being dismantled. The applicant states there is no likelihood of new industries being located on the line.

The record is clear that the line has served its purpose and no longer need be maintained for the use of the public. Its continued operation and maintenance, therefore, would not be useful, and would impose an undue and unnecessary burden upon the applicant and upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment by The New York Central Railroad Company of the portion of its Alliance branch line in Jefferson County, Ohio, described herein. An appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provision will be made for the cancellation of tariffs, the submission of journal entries, and compliance with valuation order No. 24.
Certificate issued permitting abandonment by the New York Central Railroad Company of a branch line of railroad in Athens and Morgan Counties, Ohio. Conditions prescribed.

Wesley A. Wilkinson for applicant.
Harold C. Heiss for Brotherhood of Locomotive Firemen and Enginemen.
W. P. Kennedy for Brotherhood of Railroad Trainmen.
R. D. Keiser for Black Diamond Coal Company.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFFIE, JOHNSON, AND CROSS

BY DIVISION 4:

The New York Central Railroad Company, on March 24, 1954, applied for permission to abandon a branch line of railroad extending in a general southeasterly direction from a junction with its main line at Palos to Lathrop, 15.89 miles, in Athens and Morgan Counties, Ohio. No representations have been made by State authorities and no formal protest has been presented by any shipper. The Brotherhood of Locomotive Firemen and Enginemen, the Railway Labor Executives' Association, and the Brotherhood of Railroad Trainmen originally opposed the application on the ground that the proposed abandonment would adversely affect carrier employees. However, their opposition subsequently was withdrawn upon the understanding that, if the application be granted, conditions for the protection of employees would be prescribed similar to those set forth in Chicago, B. & Q. R. Co. Abandonment, 257 I.C.C. 700. The applicant has no objection to the imposition of such conditions and they will be prescribed herein for the protection of all employees who may be adversely affected by the proposed abandonment. All points mentioned herein are in the State of Ohio.

The branch is a portion of a line of railroad which was constructed in 1890-91 between Marietta and Palos by the Marietta, Columbus & Cleveland Railroad for the purpose of serving coal mines in that territory. That carrier went into receivership in 1914. Later its
properties were conveyed to the Federal Valley Railroad Company, the
capital stock of which was acquired by the applicant in 1930. Federal
Valley R. Co. Control, 162 I.C.C. 156. The properties of the latter
were merged into the applicant in 1952, pursuant to our authorization
in Finance Docket No. 17700 New York Central R. Co. et al Merger, etc.,
decided June 18, 1952, 282 I.C.C. 813.

The territory tributary to the branch is devoted principally to
the production of coal by means of strip-mining processes. Other
industrial activities include farming and lumbering. No industrial
plants are located on the branch but there are a few business estab-
lishments engaged in handling local products and supplies. In former
years, the branch received its chief support from coal shipped by the
Black Diamond Coal Company from its mines at Lathrop. These mines
were closed on December 1, 1944, and the applicant states that there
is no prospect that operation will be resumed. By letter, dated
November 30, 1953, the Black Diamond Coal Company advised us that
there are many million tons of unmined coal in the territory tributary
to the branch and that it owns several thousand acres of coal land in
that territory. Thereafter, that company advised us that it did not
feel inclined to file a protest against the proposed abandonment.
Practically all the coal now mined in the territory is transported by
means of trucks. None has been shipped on the branch since July, 1953.

The branch is laid mostly with 90-100-pound rail. There is some
defered maintenance of track and structures. The net salvage value
is estimated by the applicant to be $75,320, including land valued at
$300. For the past 5 years, freight service on the branch has been
performed only as the needs of the shippers required. No passengers
or local freight are handled. Less-than-carload freight is negligible.
In former years the traffic consisted largely of lumber and coal, out-
bound, and feed and limestone, inbound. The number of carloads was
38 outbound and 213 inbound in 1952, and 32 outbound and 59 inbound in
1953. The inbound traffic handled in 1953 included 167 carloads of
iron pipe used for the construction of a pipe line.

Palos, where the branch connects with the main line, is a
community of about 40 inhabitants. The communities served by the
branch beyond Palos, and the population of each, are Bishopville, 33;
Federal, 7; Amesville, 269; and Lathrop, 55. All are nonagency sta-
tions. The tributary territory is well provided with improved high-
ways, one of which closely parallels the branch except for a distance
of about 4 miles on the northwest.

The financial results of operation of the branch for the years
1952 and 1953 are shown as follows: Revenues assigned to the branch,
mostly on a prorate basis, $8,695, $3,266; revenues accruing to the
applicant's system from the branch-line traffic, exclusive of those
assigned to the branch, $16,604, $10,156; total revenues, $25,299,
$13,422; operating expenses charged to the branch, $66,274, $48,724;
taxes, $4,576, $3,747; cost of moving the branch-line traffic over
system lines of the applicant beyond the branch, determined on the
basis of 50 percent of the gross system revenues after deducting
the portions thereof assigned to the branch, $8,302, $5,078; total
expenses including taxes, $79,152, $57,549; and net loss from the
standpoint of the applicant's system as a whole, $53,853, $44,127.
Computed in the same manner, the net loss is shown to have been
$4,742 for the first month of 1954.

From the facts of record in this proceeding, we conclude that
the application should be granted. It is clear that neither the
present nor prospective volume of traffic on the branch is sufficient
to warrant its retention, and that continued operation would impose
an undue and unnecessary burden upon the applicant and upon interstate
commerce.

Subject to the conditions for the protection of employees, pre-
viously mentioned, we find that the present and future public conven-
ience and necessity permit abandonment by The New York Central Railroad
Company of the branch line of railroad in Athens and Morgan Counties,
Ohio, described herein. An appropriate certificate will be issued,
effective from and after 30 days from its date, in which suitable
 provision will be made for the cancellation of tariffs, the submission
of journal entries, and compliance with valuation order No. 24.

COMMISSIONER CROSS did not participate in the disposition of
this proceeding.
Certificate issued permitting abandonment by the Wheeling & Lake Erie Railway Company and abandonment of operation by the New York, Chicago & St. Louis Railroad Company, lessee, of a portion of a branch line of railroad in Wayne County, Ohio.


REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFEE, JOHNSON, AND MITCHELL

BY DIVISION 4:

The Wheeling and Lake Erie Railway Company and The New York, Chicago and St. Louis Railroad Company, lessee, on June 14, 1954, filed a joint application in which the former seeks permission to abandon and the latter to abandon operation of that portion of the so-called Massillon branch extending southeasterly from milepost 1.39, located 1.39 miles east of Orrville Junction, through Burton City, to milepost 7.10, located 0.2 mile west of Dalton Station, a total distance of 5.71 miles, all in Wayne County, Ohio. No representations have been made by State authorities and no objection to the granting of the application has been presented.


The portion of the Massillon branch sought to be abandoned, hereinafter called the segment, was constructed by the Wheeling & Lake Erie Railway Company about 1881, as a part of its main line between Toledo, Ohio, and Wheeling, W. Va., known as the Toledo division. In 1908 or 1909, the so-called Bolivar-Orrville cutoff was constructed and placed in operation for main-line purposes. Thereafter, the segment became a part of the Massillon branch and was utilized principally to serve coal mines and brick plants. These industries are no longer in existence.
The segment, laid mostly with 70-80-pound rail, is said to be in fair condition. It extends through a farming territory which is sparsely populated. The only non-agency station between its termini is Burton City, a community of about 200 inhabitants. Freight traffic to and from Burton City is handled by a local train operated from Dalton, the south terminus of the segment, as the needs of the shippers require. The portion of the segment north of Burton City, approximately 2.5 miles, has not been operated during the past 5 years.

No industries are dependent upon the segment for transportation, but some farmers in the tributary territory receive an occasional carload of limestone. The volume of traffic was 1 carload of baled hay and 10 carloads of limestone in 1952, and 5 carloads of limestone in 1953. No traffic was handled during the first 5 months of 1954. The applicants show that maintenance and operation of the segment resulted in a system loss of $8,766 in 1952, $8,605 in 1953, and $3,248 during the first 5 months of 1954.

The net salvage value of the rail and other track material is estimated by the applicants to be $10,700.

The facts of record clearly indicate that neither the present nor prospective volume of traffic on the segment is sufficient to warrant its retention, and that continued maintenance and operation would impose an undue and unnecessary burden upon the applicants and upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment by The Wheeling and Lake Erie Railway Company and abandonment of operation by The New York, Chicago and St. Louis Railroad Company, lessee, of the portion of the branch line of railroad in Wayne County, Ohio, described herein. An appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provision will be made for the cancellation of tariffs, the submission of journal entries, and compliance with valuation order No. 24.
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 18735

NEW YORK CENTRAL RAILROAD COMPANY ABANDONMENT

Submitted December 20, 1954  Decided January 11, 1955

Certificate issued permitting abandonment by the New York Central Railroad Company of its line of railroad extending from Meigs to Rockville, in Meigs County, Ohio.

Wesley A. Wilkinson and Paul C. Hopkins for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS JOHNSON, MITCHELL AND CROSS.

BY DIVISION 4:

The New York Central Railroad Company on November 12, 1954, applied for permission to abandon that portion of its line of railroad extending from Meigs to Rockville, a distance of 3.66 miles, all in Meigs County, Ohio. No representations have been made by State authorities and no objection to the application has been offered. All points mentioned herein, are in Ohio unless otherwise indicated.

The segment to be abandoned is a portion of applicant's northerly route between Meigs and Hobson. It was constructed in 1882 by the Ohio Central Railroad Company for the purpose of serving the coal fields in southern Ohio and affording an outlet for coal from territory south of the Ohio River. The Toledo & Ohio Central Railway Company acquired it in 1938, and that company was merged with applicant on June 30, 1952. Applicant also has another route between Meigs and Hobson which runs to the south of, but roughly parallel to the route involved herein. This southerly line is more advantageous as to grade and is presently being used by applicant for the movement of all through traffic between the above mentioned points.

No passenger service has been rendered over the northerly route since June 2, 1950. No regularly scheduled freight service has been maintained for the past 5 years over the segment to be abandoned (Meigs to Rockville), but service is provided whenever there is traffic to move. No local or bridge traffic moves between these points. The only traffic handled on the line originates or terminates at Rutland and moves to or from points beyond the line.
Rutland has a population of approximately 554 according to the 1950 census as shown in Rand-McNally Atlas. It is a nonagency station located approximately 1 mile east of Meigs. If the authority is granted as requested herein, it is applicant's intention to dismantle the segment between Rutland and Rockville but to maintain that portion between Meigs and Rutland and operate it as a spur track, thus continuing service to shippers in Rutland.

The tributary territory served by the line is defined as Rutland Township which has an approximate population of 2,153, including the population of Rutland. Of the total number of miles (3.68) proposed to be abandoned, 3.1 miles are located within that township. Coal produced from strip mining operations in the territory is loaded by ramp at Rutland. Other than coal, the territory is devoted mostly to lumbering and farming, and the business establishments handle local products and supplies.

As indicated, the line in question has not been utilized for through transportation for many years and the only operating revenue derived therefrom is obtained from traffic originating at or destined to Rutland. Retention and operation of the line from Meigs to Rutland as a spur will allow applicant to continue an adequate service to shippers at this point. The line to be dismantled beyond Rutland as far as Rockville has a salvage value estimated to be $20,605. Cost of removal will be $11,830, making the net salvage value $8,775.

The proposed abandonment will have no effect upon applicant's operating income, but will result in a saving in taxes, maintenance, and other items of expense incurred in operating the line. Its continued operation as such would impose an undue and unnecessary burden upon applicant and upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment by The New York Central Railroad Company of that portion of its line extending from Meigs to Rockville in Meigs County, Ohio, described herein. An appropriate certificate will be issued effective from and after 30 days from its date, in which suitable provisions will be made for the cancellation of tariffs, the submission of journal entries, and compliance with valuation order No. 24.
Certificate issued (1) permitting abandonment by the Wheeling & Lake Erie Railway Company and abandonment of operation by the New York, Chicago & St. Louis Railroad Company of a portion of a branch line of railroad; and (2) authorizing the applicants to construct and operate, respectively, a connecting track, all in Stark County, Ohio. Condition prescribed.

Eugene M. Smith, Thomas O. Broker, and Charles D. Miller for applicants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS JOHNSON, ELLIOTT, AND TUGGLE.

BY DIVISION 4:

The Wheeling and Lake Erie Railway Company and The New York, Chicago and St. Louis Railroad Company, hereinafter sometimes individually referred to as Wheeling and Nickel Plate, respectively, and collectively as the applicants, on November 12, 1954, applied under section 1 (18) of the Interstate Commerce Act, as amended, for a certificate of public convenience and necessity (1) permitting Wheeling to abandon, and Nickel Plate to abandon operation under lease, of approximately 1.48 miles of track extending from survey station 1169 plus 81 to survey station 1247 plus 88 of the applicants' Massillon branch; and (2) authorizing the construction by Wheeling, and operation by Nickel Plate, of a connecting track, approximately 200 feet long, between the Massillon branch and the Cleveland division of the applicants, all in Stark County, Ohio. No representations have been made by State authorities, and no objection to granting the application has been presented. All points hereinafter mentioned are in Ohio.

Wheeling owns, and Nickel Plate operates under lease its so-called Wheeling & Lake Erie District, a line of railroad serving, among other points, Toledo, Terminal Junction, Cleveland, and Zanesville. The Toledo division of such district extends generally southeasterly across Ohio from Toledo to Terminal Junction. The Cleveland division of the same district extends in a general southerly direction from Cleveland
to Zanesville, and connects with the Toledo division at Harmon. The Massillon branch of the Toledo division extends, in part, from Harmon to Dalton, approximately 16 miles.

In the vicinity of Harmon, applicants' Cleveland division and the Massillon branch are parallel and only 14 feet from center line to center line for a distance of 1.48 miles. The intervening land between the tracks is owned by Wheeling, and both tracks are on the same right-of-way. Trains now moving over this portion of the Massillon branch will be operated over the adjacent and parallel Cleveland division main track and the connecting track to be constructed in the vicinity of survey station 1169 plus 81, on the Massillon branch, and milepost 72.11 on the Cleveland division. The railroad service presently afforded to shippers by Nickel Plate operating over the Wheeling under lease is an integral part of its system, and will not be changed as a result of the proposal.

Applicants challenge our jurisdiction in the premises on the ground that (1) under the proposal there is no abandonment as contemplated by section 1 (18), and (2) because the intent of the statute is to require railroads to procure our approval only in those instances where there is an abandonment of the physical property, or an abandonment of operation, which results in a cessation or curtailment of service to the public, and the statute does not require approval of the exercise of railroad management's discretion as to operation of a line of railroad where, as here, no such curtailment of service is involved.

We are unable to agree with applicants in this respect. The abandonment, as proposed, will result in the shortening of the Massillon branch, even though continued service to the public materially will not be affected. Although in close proximity to each other, the two tracks constitute portions of separate lines of railroad. There is no connection between them by which, under existing conditions, the adjacent tracks could be utilized interchangeably as a double track line between common points. Applicants state that prior to 1910, Massillon branch trains used the Cleveland division main track between Harmon and Run Junction, at which time the line herein sought to be abandoned was constructed by Wheeling for use as a main track for the Massillon branch and as an auxiliary track for the Cleveland division trains.

Section 1 (18) of the act provides that no carrier by railroad shall abandon all or any portion of a line of railroad, or the operation thereof, without a certificate from us. As stated above, the track proposed to be abandoned has been operated since 1910 in interstate and foreign commerce as a part of the branch. That trackage cannot be considered as one of a double track line between common points. Applicants how desire to establish a new connection between the parallel tracks and to abandon the eastern 1.48 miles of the Massillon branch, commencing at the point where the branch connects with the main line.
Under the circumstances, we are of the opinion that the applicants' proposal to eliminate the easterly end of the branch is subject to our jurisdiction under section 1 (18).

Wheeling was incorporated on December 14, 1916, and is now existing under and by virtue of the laws of Ohio. Wheeling, and its predecessors, operated lines of railroad since a date prior to the enactment of the Interstate Commerce Act, until December 1, 1949, when its railroad properties were leased to the Nickel Plate for a term of 99 years. See Wheeling & L. E. Ry. Co. Lease, 271 I.C.C. 713 and 275 I.C.C. 185. Nickel Plate was created as a consolidated corporation pursuant to an agreement and articles of consolidation dated December 28, 1922. It operates lines of railroad in the States of New York, Pennsylvania, Ohio, Indiana, Illinois, and Missouri.

With the construction of the connection as proposed, further maintenance and operation of that portion of the Massillon branch herein proposed to be abandoned no longer will be necessary. The net salvage value of the recoverable material in the line to be abandoned, based on current prices, is estimated by the applicants at $7,746.

Train service on the line to be abandoned consists of one switch run now operated between Brevster and Dalton for the purpose of serving various industries at Massillon and Dalton. Prior to 1953, there were two switch runs operated, but because of the decline in traffic from the territory, the service has been reduced to a single run. There are no stations, interchange points, or spurs on the track proposed to be abandoned.

It is apparent from the record that with the new connection and operation over the Cleveland division, the line to be abandoned will serve no public need, and that its continued maintenance and operation would impose an undue and unnecessary burden upon the applicants and upon interstate commerce.

We find that the present and future public convenience and necessity (1) permit abandonment by The Wheeling and Lake Erie Railway Company, and abandonment of operation by The New York, Chicago and St. Louis Railroad Company, of the portion of a branch line of railroad, and (2) require construction by the former and operation by the latter of a connecting track, all in Stark County, Ohio, described herein. An appropriate certificate will be issued which will provide that the abandonment herein permitted shall become effective as of the date operation is commenced over the track herein authorized to be constructed, but not sooner than 30 days from the date hereof, and that the construction authorized shall be commenced on or before June 1, 1955, and completed on or before December 31, 1955. The certificate will include suitable provisions with respect to tariffs, the submission of journal entries recording the retirement of the line permitted to be abandoned, and compliance with valuation order No. 24.
Certificate issued permitting abandonment by the Chesapeake & Ohio Railway Company of a branch line of railroad in Athens and Hocking Counties, Ohio.

Hewitt Bissell and David L. Farley, Jr., for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS JOHNSON, ELLIOTT, AND TUGGLE

BY DIVISION 4:

The Chesapeake and Ohio Railway Company, on December 29, 1954, applied for permission to abandon its so-called Snow Fork Subdivision extending from a connection with the Monday Creek Subdivision at or near Snow Fork Junction, northerly to the end of the line in the vicinity of Ward Junction, approximately 5.98 miles, including a line extending northeasterly from a connection at Orbiston Junction, a distance of 1.02 miles, all in Athens and Hocking Counties, Ohio. No representations have been made by State authorities, and no objection to granting the application has been presented.

The line proposed to be abandoned was constructed by a previous owner in two sections; the first segment, extending to Orbiston, was completed in 1877, and the second section, proceeding to a point near Murray City, was built in 1882. By deed and agreement dated May 1, 1930, all the properties and assets of the previous owner were conveyed to the applicant. Chesapeake & O. Ry. Co. Construction, 162 I.C.C. 323.

The line is maintained in a good, safe condition commensurate with the type and volume of traffic available for shipment over it. Because of the exceedingly light traffic handled over the line during the past several years, maintenance expenses have been kept to a minimum. The present maximum authorized speed is 30 miles per hour. The net salvage value of the recoverable material in the line is estimated by the applicant at $39,300.

Stations on the line are Buchtel at milepost 6, and Murray City at milepost 10 from Nelsonville. Both are nonagency stations.
According to the 1950 Federal census, Buchtel had a population of 569, and Murray City 752 persons. The population of each of these villages has declined since 1950. Neither is served by any other railroad, although both are within approximately 5 miles by highway from other lines of the applicant or the New York Central Railroad. Applicant estimates the total population of the territory tributary to the line at approximately 2,880 people. A comparison of the 1950 with the 1940 Federal census indicates that the population of this area declined about 20 percent. The 1950 census indicates a population decline of approximately 45 percent since 1920. Buchtel and Murray City are located on hard-surfaced State highways over which motor vehicle common carriers of passengers and property operate.

For many years, coal mining was the important industry in the territory served by the line. Prior to 1943, millions of tons of coal were produced by shaft mining for shipment to the Great Lakes region and throughout the central portion of the United States. Shortly after 1943, stripping operations started, and small strip mine operations which sprang up in the area depended almost entirely upon rail transportation for handling the coal to market. However, by 1952, all locations that could be profitably stripped were worked out, and the cost to mine the remaining coal in the area became prohibitive from a competitive standpoint. As a result, all the mines in the territory served by the line have discontinued operations, and the last carload of coal handled on the line moved July 21, 1952. Since then, only 14.4 tons of freight have been tendered to the applicant for transportation on the Snow Fork Subdivision. An out-of-pocket saving in operating expenses of approximately $7,000 a year will be effected by the proposed abandonment.

It is apparent from the record that public need for the line no longer exists, and that its continued maintenance and operation would impose an undue and unnecessary burden upon the applicant and upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment by The Chesapeake and Ohio Railway Company of the branch line of railroad in Athens and Hocking Counties, Ohio, described herein. An appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provision will be made for the cancellation of tariffs, the submission of journal entries, and compliance with valuation order No. 24.
Certificate issued permitting abandonment by the Cleveland & Pittsburgh Railroad Company and abandonment of operation by the Pennsylvania Railroad Company of a portion of a branch line of railroad in Tuscarawas County, Ohio.

Windsor F. Cousins for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MITCHELL, ARPAIA, AND WINCHELL

BY DIVISION 4:

The Cleveland and Pittsburgh Railroad Company and The Pennsylvania Railroad Company, on December 28, 1956, filed a joint application requesting permission for the former to abandon, and the latter to abandon operation of, a portion of the Tuscarawas branch line of railroad extending in a southeasterly direction from valuation station 1663+61 near New Philadelphia to the end of the branch at valuation station 1718+25, approximately 1.03 miles, in Tuscarawas County, Ohio. No representations have been made by any State authority and no objection to the granting of the application has been presented.

The segment to be abandoned is owned by the Cleveland & Pittsburgh and is operated by the Pennsylvania pursuant to a lease of the former company's properties, dated October 25, 1871. It was constructed in the year 1897 to transport coal from mines in the area. The portion of the Tuscarawas branch east of its present terminus was abandoned pursuant to authority granted in Finance Docket No. 14164, Cleveland & P. R. Co. et al. Abandonment, 254 I.C.C. 825 (not printed in full), decided June 2, 1943.

No maintenance has been performed on the segment for several years. Its restoration to an operable condition would entail expenditures of approximately $17,400. Its salvage value is estimated at $4,283 and the cost of removal at $5,624.

There are no stations on the segment. The area's coal mines, formerly the source of the segment's traffic, are depleted, and
agriculture is now the principal industry. The farmers utilize public highways and are not dependent upon the segment. No service has been performed on such line for the past 2 years.

The public will not be inconvenience by abandonment of the segment and no future need of it is in prospect. Its continued operation would impose an undue and unnecessary burden upon the applicants and upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment by The Cleveland and Pittsburgh Railroad Company, and abandonment of operation by The Pennsylvania Railroad Company, of that portion of the branch line of railroad in Tuscarawas County, Ohio, described herein. An appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provision will be made for the cancellation of tariffs, the submission of journal entries, and compliance with valuation order No. 24.
Certificate issued permitting abandonment by the Connecting Railway Company and the Pittsburgh, Fort Wayne & Chicago Railroad Company and abandonment of operation by the Pennsylvania Railroad Company of a portion of the Toledo branch line of railroad in Richland and Crawford Counties, Ohio.

Windsor F. Cousins and Charles E. Mechem for applicants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MITCHELL, ARPAIA, AND McPHERSON

BY DIVISION 4:

The Connecting Railway Company (Connecting), the Pittsburgh, Fort Wayne and Chicago Railroad Company (Pittsburgh), and The Pennsylvania Railroad Company (Pennsylvania), common carriers by railroad subject to the provisions of Part I of the Interstate Commerce Act, on May 28, 1958, jointly applied for permission for Connecting and Pittsburgh to abandon, and Pennsylvania to abandon operation of, a line of railroad owned by Connecting, with the exception of 0.36 mile at the south-eastern end owned by Pittsburgh, and operated by Pennsylvania as part of its Toledo branch, extending in a northwesterly direction from milepost 6.37, near Toledo Junction, to milepost 17, near Tiro, approximately 10.63 miles, in Richland and Crawford Counties, Ohio. No representations have been made by any State authority and no objection to the granting of the application has been presented. All points referred to herein are in Ohio.

Connecting's section of the line to be abandoned was constructed in 1873 and acquired by it in 1956. Pittsburgh's section was constructed in 1853 and acquired by that company in 1862. The line was operated by Pennsylvania for many years as the route for through traffic between points east of Toledo Junction and points on the Toledo branch north of Carrothers. Passenger and freight trains which formerly operated over the line are now routed over Pennsylvania's more convenient main line to Bucyrus, thence north to Carrothers, and the line is no longer required for through traffic.
The present maintenance of the line is adequate for its limited traffic, although continued operation would require an immediate expenditure of $159,168 for its rehabilitation. It is crossed at grade in 12 places by public highways. Only 2 of these crossings are equipped with automatic protective devices. Its net salvage value is estimated at $54,825.

The line does not connect with any other railroad. The only stations thereon, both nonagency are Vernon, population 100, and Bines, population 0. The former is located 5 miles by highway from Toledo Junction and the latter is 6-1/2 miles from Crestline, both on applicant's railroad. The territory tributary to the line is an agricultural region with a population of 440. The only industry is a power plant located on a private siding at Vernon. The area is traversed by 6 State highways over which motor-carrier service is rendered by 7 trucklines. The local farmers utilize motor trucks and are not dependent upon the line.

Regular freight service was discontinued in 1952 and all passenger service in April 1956. Only 4 carloads of freight (all in 1957) have been handled over the line since January 1, 1956. Operation of the line during the year 1957 resulted in a system deficit of $3,469.

It is apparent that the line is no longer serving any useful purpose and is being operated at a deficit. Its abandonment will enable the applicants to avoid an expenditure of a substantial amount for its reconstruction and will eliminate several potentially hazardous grade crossings. Under the circumstances, its rehabilitation and continued operation would impose an undue and unnecessary burden upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment by The Connecting Railway Company and the Pittsburgh, Fort Wayne and Chicago Railway Company and abandonment of operation by The Pennsylvania Railroad Company of a portion of the Toledo branch line of railroad in Richland and Crawford Counties, Ohio, described herein. An appropriate certificate will be issued, in which suitable provision will be made for the cancellation of tariffs and the submission of journal entries.

ARPAIA, Commissioner, being absent did not participate in this proceeding.
Certificate issued permitting abandonment by the Norfolk & Western Railway Company of a portion of a line of railroad in Adams County, Ohio. Conditions prescribed.

J. P. Fishwick, R. B. Clayton, and J. S. Shannon for applicant.


REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MITCHELL, ARPAIA, AND McPHERSON

BY DIVISION 4:

The Norfolk and Western Railway Company, a common carrier by railroad subject to the provisions of Part I of the Interstate Commerce Act, on July 25, 1958, applied under section 1(18) of the act for permission to abandon a portion of duplicate main line trackage extending in a general westerly direction from a point at the connection of the old Main Line and the new Main Line at Mineral Springs, Ohio, milepost 79.11, to a point just east of Plum Run, Ohio, at milepost 75.0, a distance of 4.11 miles, all in Adams County, Ohio. No representations have been made by any State authority. The Railway Labor Executives' Association opposed the application on the ground that the proposed abandonment would adversely affect the applicant's employees. The association was advised that, unless we were notified to the contrary, it would be assumed that the protest would be satisfied by the imposition of the same conditions for the protection of railway employees as were prescribed in Chicago, B. & Q. R. Co. Abandonment, 257 I.C.C. 700, in the event the application is granted. The applicant offered no objection to such conditions. Accordingly, they will be included, by reference, in our certificate herein. All points referred to are in Ohio.

The line sought to be abandoned was constructed in 1884 by The Cincinnati and Eastern Railway Company as part of its road between Cincinnati and Sciotoville, Ohio. In 1887, the line was acquired by The Ohio and North Western Railroad Company, and, subsequently, by The
The applicant acquired the line of the latter company in 1901 for the purpose of extending its railroad into Cincinnati, Ohio. In Finance Docket No. 248, Norfolk & Western Railway Company Construction, 261 I.C.C. 813, decided June 6, 1946, (not printed in full), we authorized the applicant to construct a second line which is generally parallel to the line herein sought to be abandoned, but which in some places is approximately two miles distant therefrom, and has fewer curves and superior grade than the old trackage. The new main line trackage was completed in November 1947, and since that time, the great bulk of passenger and freight traffic has moved over it.

The territory traversed by the line herein sought to be abandoned is inhabited by approximately 60 residents, most of whom are engaged in small-scale farming. No traffic is originated or terminated on the old line, and in a recent 60-day period it was used solely as storage track for empty hopper cars. Service will continue to be furnished at Mineral Springs as in the past, and it is the only station on the line. There is a county road which parallels the line into Mineral Springs, but there is no common carrier truck or bus service in this area.

Since the new line which was completed in 1947 provides an alternate route between Mineral Springs and Plum Run, and since no traffic is generated by the old line, the abandonment of the latter would have no adverse effect on the revenues of the applicant. The applicant states that "operating expenses likewise would not be affected," but it would seem that these expenses should be decreased by reason of the fact that the carrier would be relieved of the necessity of maintaining this trackage. The applicant has estimated the salvage value of the track sought to be abandoned at $142,080 and that railway tax accruals would be reduced by $2550 per year as a result of reduction in Ohio property taxes.

Because of the existence of a never and better route between the points involved, no traffic is generated on the line, nor has there been any demand for service thereover. Although the line is in fairly good condition, heavy expenditures would be required if the track is to be maintained for operating purposes. Under the circumstances further operation of the line would impose an undue and unnecessary burden upon interstate commerce.

Subject to the conditions for the protection of railway employees referred to, we find that the present and future public convenience and necessity permit the abandonment by the Norfolk and Western Railway Company of that portion of its line of railroad located in Adams County, Ohio, herein described. An appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provisions will be made for the cancellation of tariffs and the submission of journal entries.
Certificate issued permitting abandonment by the New York Central Railroad Company of a portion of its Buckingham branch line of railroad in Perry County, Ohio. Conditions prescribed.

Wesley A. Wilkinson and Paul C. Hopkins for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MITCHELL, ARPAIA, AND McPHERSON

BY DIVISION 4:

The New York Central Railroad Company, a common carrier by railroad subject to the provisions of Part I of the Interstate Commerce Act, on August 18, 1958, applied under section 1(18) of the act for permission to abandon that portion of its line of railroad known as the Buckingham branch extending from milepost 83.4 approximately 1 mile west of Drakes to milepost 88.2 at Shawnee, approximately 4.8 miles, all in Perry County, Ohio. No representations have been made by any State authority. The Railway Labor Executives' Association opposed the application on the ground that the proposed abandonment would adversely affect the applicant's employees. The association was advised that, unless we were notified to the contrary, it would be assumed that the protest would be satisfied by the imposition of the same conditions for the protection of railway employees as were prescribed in Chicago, B. & Q. R. Co. Abandonment, 257 I.C.C. 700, in the event the application is granted. The applicant offered no objection to such conditions. Accordingly, they will be included by reference, in our certificate herein. All points referred to are in Ohio.

The portion of line sought to be abandoned was originally constructed in 2 separate segments by 2 predecessors of applicant in 1882 and 1889 for the purpose of serving coal fields in the area. Title to both segments was acquired by The Toledo and Ohio Central Railroad Company in 1938, and that company was merged with applicant on June 30, 1952.
There has been some deferred maintenance of the tracks and structures, within the limits of safe operation. The net salvage value of the line is estimated to be $48,350.

The only station on the segment is the nonagency station of Shawnee located at milepost 88.1. Shawnee has a population of 1,145 according to the 1954 Rand-McNally Atlas. Here, applicant connects but does not interchange traffic with the Baltimore & Ohio Railroad Company (Baltimore & Ohio). The principal industry served by the segment, a brick and tile manufacturer is also located at this point. The company has its own side track and both applicant and the Baltimore & Ohio directly serve it. A hard-surfaced road, Ohio Highway No. 155 parallels the segment and connects Shawnee with Drakes. Several motor carriers serve the area.

No passenger service has been rendered during the past 5 years and freight service between Drakes and Shawnee has been provided only when necessary. During 1955, 1956 and 1957, the only freight carload traffic handled was brick and tile forwarded from the manufacturer in Shawnee, totaling 29, 30 and 8 cars respectively. The applicant shows that had abandonment of this portion of the line been permitted, the system would have had savings of $246, in 1955, a loss of $634 in 1956 and a saving of $2,857 in 1957.

The only freight traffic moving over the segment has been that forwarded by the brick and tile company at Shawnee. That company will continue to be served directly by the Baltimore and Ohio and has offered no objection to the instant proposal. The amount of traffic moved for it does not warrant continued operation of the line, and there appears to be no prospect of an increase in traffic in the foreseeable future. Under the circumstances continued operation of the segment would impose an undue and unnecessary burden upon interstate commerce.

Subject to the conditions for the protection of railway employees referred to, we find that the present and future public convenience and necessity permit the abandonment by the New York Central Railroad Company of the portion of its Buckingham branch line of railroad in Perry County, Ohio, described herein.

An appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provisions will be made for the cancellation of tariffs and the submission of journal entries.
1. Certificate issued permitting abandonment by the New York Central Railroad Company of a portion of its Alliance branch line of railroad in Trumbull County, Ohio.

2. Application of Erie Railroad Company for permission to abandon operation under trackage rights over the foregoing portion of the Alliance branch line of railroad dismissed.

Wesley A. Wilkinson and T. D. Caine for applicants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MITCHELL, ARPAIA, AND WALRATH

BY DIVISION 4:

The New York Central Railroad Company (Central) and the Erie Railroad Company (Erie), both common carriers by railroad subject to the provisions of Part I of the Interstate Commerce Act, on October 8, 1958, applied for permission for Central to abandon and Erie to abandon operation under trackage rights of a portion of Central's Alliance branch line of railroad extending from milepost 0.0, at Phalanx, to milepost 1.4, at Braceville, in Trumbull County, Ohio. No representations have been made by any State authority and no objection to the granting of the application has been presented. All points referred to herein are in Ohio.

The line to be abandoned was constructed in 1877 and acquired by the applicant, through a process of corporate consolidations, on June 30, 1952. Erie obtained trackage rights over the line in 1905 under an agreement providing for the payment of rentals based on its actual use of the line. It terminated its operations, and the payment of rentals, on August 31, 1954. There is nothing to indicate that when such operation was terminated there was an intention to resume the operation at any time thereafter. Interchange between Central and Erie, which had been formerly accomplished at Phalanx, was transferred to Braceville on January 1, 1957. No service has been rendered or maintenance performed by Central since that date, but the track has been left in place. The net salvage value of the line is estimated by the applicants to be $20,798.
The only stations, both nonagency, are Phalanx, population 250, and Braceville, population 500. Both of these stations are merely interchange points with Erie and both are served by that railroad. Since there is no traffic handled over the line, the only effect of the abandonment upon Central's revenues will be an annual loss of $34 from lease rentals and an estimated savings of $600 in taxes and future maintenance.

The record herein indicates that Erie permanently terminated its operations over the line in August 1954. Its rentals were based on actual use, and it had no further obligations in respect to the line. Under such circumstances, no consideration will be given to that portion of the application requesting permission for Erie to abandon its trackage rights operation, and to that extent, the application will be dismissed. See Chesapeake & O. Ry. Co. Operation, 221 I.C.C. 623.

It is apparent that the line has served the purpose for which it was intended and that there is no prospect of future public need for its maintenance and retention in service. Under the circumstances, its continued operation would impose an undue and unnecessary burden upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment by The New York Central Railroad Company of a portion of its Alliance branch line of railroad in Trumbull County, Ohio, described herein. An appropriate certificate will be issued effective from and after 30 days from its date, in which suitable provision will be made for the cancellation of tariffs and the submission of journal entries.
Certificate issued permitting abandonment as to interstate and foreign commerce by the Springfield Suburban Railroad Company of its entire line of railroad, all in Clark County, Ohio. Condition prescribed.

T. D. Caine for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MITCHELL, ARPAIA, AND WALRATH

BY DIVISION 4:

The Springfield Suburban Railroad Company, a common carrier by railroad subject to the provisions of Part I of the Interstate Commerce Act, as amended, applied for permission on December 24, 1958, to abandon its entire line of railroad, extending from a point on West Washington Street between Wittenberg and Center Streets, through Maitland to Mad River, approximately 3 miles, all in Clark County, Ohio. No representations have been made by any State authority. The Railway Labor Executives' Association protested the application on the grounds that the proposed abandonment would adversely affect railway employees. The abandonment proposed herein contemplates the discontinuance of all railroad operations by applicant. We have held in prior proceedings of this nature that no conditions for the protection of railway employees would be imposed where an entire railroad is permitted to be abandoned. See Missouri & A. Ry. Co. Receivers Abandonment, 271 I.C.C. 171 (183-184) and cases cited therein. All points referred to herein are in Ohio unless otherwise specified.

The line was originally constructed in 1903-04 as part of an electric interurban company known as The Springfield, Troy and Piqua Railway Company and as such was exempt from the act under the provisions of section 1(22). However, about 1922, this company was abandoned and sold as scrap, the rights, franchises and property being acquired by a group that incorporated said properties as The Springfield Suburban Railroad Company on February 8, 1923. In 1925 it was reorganized and later (1930) obtained by the Pennroad
Corporation, which in turn sold the entire capital stock to the Pennsylvania Railroad and Erie Railroad Companies. See Detroit, T. & I. R. Co. Control, 275 I.C.C. 455, decided May 2, 1950. Subsequently, the interest of the Pennsylvania Railroad Company was acquired by the Detroit, Toledo & Ironton Railroad Company. See Finance Docket No. 17535, Springfield Suburban Railroad Company, Control, 282 I.C.C. 809 (not printed in full), decided December 13, 1951. It changed from electric to diesel in 1946 but is still classed as an electric railway.

The line is located mostly within Springfield, Ohio. The general condition of the tracks outside of streets is fair for the type of power and traffic moving over it. There is considerable track laid with 60 pound rail which would probably be too light if heavier locomotives were used. Rather heavy tie renewals will be needed during the next 5 years. While the tracks in the streets are in need of no major repairs, the maintenance of the pavement is a major recurring expense for which applicant is responsible. Some work also will have to be done on the timber portion of the bridge across Buck Creek within the next few years and the bridge south of State Highway 70 is in poor condition. The latter bridge is not presently being used.

The gross salvage value of the tracks is estimated to be $52,911 and cost of recovery including the subsequent repaving of certain streets in which a portion of the track is laid is estimated to be $48,373, making the estimated net salvage value of the recoverable materials $4,538. Value of lands, buildings and equipment is estimated to be an additional $68,821.

Applicant connects with the Detroit, Toledo & Ironton Railroad Company at Bechtel Avenue in Springfield and at Maitland. Connection is also made at Maitland with the Erie Railroad. Another connection is made at Washington Street, Springfield, with the New York Central and with the Pennsylvania Railroad Company through either the Detroit, Toledo & Ironton or the New York Central as intermediate switching lines.

Springfield is a city with a population of 75,508. It is not only served by the 4 trunk line carriers mentioned and with which applicant connects, but by approximately 91 motor carriers. The only station on applicant's line is located within the city's corporate limits near Cedar Street. Applicant's only operation is the performance of a switching and terminal service between its trunk line carrier connections and industries on its line. It presently performs such services on Monday, Wednesday and Friday of each week. There are now relatively few industries located along its tracks. The largest of these plants is the now vacant Crowell-Collier plant, a publishing company formerly contributing approximately 90 percent of the traffic
which applicant handled. This concern discontinued its business in Springfield in 1957, and since that time the owners of the plant property have been unable to sell or lease it. Diversion of freight to motor carriers has also contributed to the decrease in applicant's traffic during recent years. The carloads and the tons of less-than carload freight handled by the applicant for the trunk line carriers during 1956, 1957, and the first 10 months of 1958 are shown as follows: 1956- 4,582 cars, 1,538 tons; 1957- 864 cars, 1,068 tons; and 1958- 320 cars, 0 tons. Operation of the line during the foregoing periods have resulted in net income of $25,596 and net deficits of $20,898 and $29,300.

As shown, although applicant operated the line at a profit in 1956 it has suffered deficits in 1957 and 1958, primarily because of its loss of traffic formerly furnished by the publishing company. While other shippers remain on the line their combined contribution of traffic to applicant approximates only 30 cars per month, and there are no prospects in the foreseeable future for an increase in freight tonnage whereby applicant might recoup the deficits presently sustained. In view of the availability of service from the remaining rail carriers and the numerous motor carriers serving Springfield, approval of the proposed abandonment would not materially affect transportation service to the public. Applicant also reports that it has received an offer from the Detroit, Toledo & Ironton Railroad Company to purchase the line for its net salvage value ($73,359) contingent upon our approval of the instant application. It has further agreed that upon conveyance and transfer of the properties, it will commence a new operation which will provide the few remaining industries now served by applicant with an uninterrupted rail switching service as may be necessary. As heretofore stated, the Detroit, Toledo & Ironton Railroad Company presently has physical track connection with applicant near Bechtel Street and no new construction will be necessary to accomplish the switching service. Under the circumstances, we will impose a condition in our certificate that applicant shall sell any part of the line, track and appurtenant facilities to any responsible person, firm, or corporation offering, prior to the effective date of our certificate (30 days from its date), to purchase same for continued operation and willing to pay not less than the fair net salvage value of the property sought to be acquired. In the event any person acquires any portion of the line of railroad pursuant to the foregoing condition, it is assumed that such person will give consideration to the filing of an appropriate application under section 1(18) of the act.

Subject to the foregoing condition, we find that the present and future public convenience and necessity permit abandonment, as to interstate and foreign commerce, by The Springfield Suburban Railroad
Company of its entire line of railroad in Clark County, Ohio, described herein. An appropriate certificate will be issued, effective from and after 30 days from its date, in which suitable provision will be made for the revocation of concurrences and powers of attorney, the cancellation of tariffs applicable to interstate and foreign commerce, and the submission of journal entries.
BEFORE THE

INTERSTATE COMMERCE COMMISSION

In Re:

APPLICATION OF THE BALTIMORE AND OHIO )
RAILROAD COMPANY UNDER SECTION 1(18) ) Finance Docket
OF THE INTERSTATE COMMERCE ACT FOR A ) No. 20911
CERTIFICATE THAT THE PUBLIC CONVENIENCE AND NECESSITY PERMIT ABANDONMENT )
OF A PORTION OF THE HILLSBORO BRANCH )
IN CLINTON AND HIGHLAND COUNTIES, OHIO.)

APPLICATION

TO THE INTERSTATE COMMERCE COMMISSION:

Comes now The Baltimore and Ohio Railroad Company, Applicant, and makes Application pursuant to Sec. 1(18) of the Interstate Commerce Act for a certificate that the public convenience and necessity permit abandonment of a line of railroad owned and operated by Applicant.

Responsive to this Commission's Order of November 27, 1941, as amended (49 CFR 42, et seq), Applicant sets forth:

(a) Applicant's exact corporate name is: The Baltimore and Ohio Railroad Company.

(b) Applicant is a carrier by railroad subject to the Interstate Commerce Act.

(c) The line of railroad proposed to be abandoned is that portion of Applicant's Hillsboro Branch extending in an easterly direction from the main line of Applicant's Ohio Division at Blanchester, Clinton County, Ohio (Valuation Station 0 minus 176 feet) to Valuation Station 1068+47, near Hillsboro, Highland County, Ohio, a distance of 20.27 miles. Said line lies entirely within said Counties and State. Applicant has agreed, in the event of issuance of the certificate hereby sought and subject to the approval and authorization of this Commission, to sell the remainder of its Hillsboro Branch to Norfolk and Western Railway Company.

(d) Applicant seeks abandonment of the line (as hereinabove delimited) itself.
(e) Traffic accommodated by the line and Applicant’s system revenues therefrom do not permit its operation save at substantial loss.

(f) Correspondence regarding this Application should be addressed to:

F. E. Baukhages, General Solicitor,
The Baltimore and Ohio Railroad Company,
2 North Charles Street,
Baltimore 1, Maryland.

(g) Applicant was incorporated by the State of Maryland, Acts of 1826, Ch. 123.

(g) Abandonment of the line and the making and filing of this Application were authorized by Applicant’s President and Directors by resolutions adopted at their meeting on May 20, 1959.

(i) Applicant is not in receivership or bankruptcy.

(j) Attached hereto and made a part hereof is a situation map showing the line it is proposed to abandon and other material details.

WHEREFORE, Applicant prays that this Commission find that the public convenience and necessity permit the abandonment of the line of railroad hereinabove described, and issue its certificate to that effect.

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1 At the time of writing this case had not been finally reported by the Interstate Commerce Commission. However, the application for abandonment contains the pertinent data of the case.

Paul C. Hopkins for applicants.
George Howard Murphy and Louis E. Evans for protestants.
A. B. McLaughlin, Thomas C. Robinson, Harry Guy, P. J. Ryan, and James A. Whitacre for railway labor organization, protestants.

REPORT AND ORDER

RECOMMENDED BY NATHAN KLITENIC, HEARING EXAMINER

The Mahoning Coal Railroad Company and The New York Central Railroad Company, herein called Mahoning and the New York Central, respectively, common carriers by railroad subject to the provisions of Part I of the Interstate Commerce Act, by a joint application filed January 14, 1960, seek the issuance of a certificate of public convenience and necessity permitting (1) the abandonment by Mahoning of that portion of its line of railroad known as the High Grade Subdivision extending from Andover Junction to Brookfield Junction, Ohio\(^1\), a distance of 27.15 miles and (2) the abandonment of operation by the New York Central over the same segment of railroad. A hearing was held before the examiner, at which the application was opposed by the County Planning Commission of the County of Ashtabula, various shippers and consignees, the Kinsman Chamber of Commerce, and several railway labor organizations.

The segment of line proposed to be abandoned forms a part of Mahoning's single track, Youngstown branch high grade main-line hereinafter sometimes called the High Grade segment or line, extending

\(^1\) All points mentioned herein are in Ohio, except where otherwise indicated.
from Ashtabula Harbor, at the shore of Lake Erie, to Youngstown, via Carson, Jefferson, Dorset, Andover, Latimer, Tyrrell, and Brookfield. Construction of the involved Brookfield-Andover segment of railroad was completed by Mahoning during 1871, at which time The Lake Shore and Michigan Southern Railway Company leased the property for a term and, subsequently, in perpetuity, under an agreement of July 1, 1884. The New York Central, which was created as a result of a consolidation of the foregoing lessee company and others under an agreement of December 23, 1914, at that time, acquired all rights and assumed all obligations under the lease. The Mahoning also has a low grade branch of double track railroad hereinafter sometimes called the Low Grade segment, branch or line, generally paralleling the segment proposed to be abandoned, and which begins at the junction point of Carson and extends to Brookfield Junction, via Dorset, Wick, and Latimer, the latter another junction point. Pursuant to a lease of the Low Grade line and the entire Youngstown branch high grade line properties, operations thereon are conducted by the New York Central. The latter controls Mahoning through ownership of a majority of its outstanding capital stock.

The area through which the involved Andover Junction-Brookfield Junction segment runs is primarily agricultural in nature and sparsely settled. About 8 miles of the line are in Ashtabula County, and on which are located the communities of Andover and Williamsfield, population\(^2\) 1,102 persons and 150 persons, respectively. The remaining 19 miles of road are in Trumbull County, and on which are located Kinsman, Vernon, Johnston, Fowler, Vienna, and Brookfield, having populations of 990, 150, 100, 250, 633, and 900 persons, respectively. An agency station is located at Andover and non-agency stations are at Williamsfield, Kinsman, Fowler, Tyrrell, and Brookfield. A team track is maintained at each of the foregoing stations. Freight service is provided by the one regularly operated Ashtabula-Youngstown local, serving south from Andover to Brookfield on Monday, Wednesday, and Friday, and northbound on the three alternate days, performing switching at various side tracks en route. A passenger night train also operating between Ashtabula and Youngstown, travels over but a portion of the involved segment; namely, between Andover and Latimer Junction, serving Andover only. This train will be rerouted over the Low Grade line at no additional cost. Since July 1, 1956, the passenger service has been rendered by one train daily in each direction, prior thereto, or from about 1952, similar service was carried on by two trains daily in each direction, and at an even earlier year six trains daily were operated. The reduction in the number of trains operated reflects the decline in passenger traffic.

As later discussed in greater detail, the proposed abandonment will not result in the elimination of rail freight service by the New York Central at Brookfield and Andover, nor will it affect the less-carload service presently afforded any point on the segment. In connection with the remaining four stations on the involved segment, the number of business concerns principally affected, in carload traffic, are two located at Williamsfield, two at Kinsman, one at Fowler, two at Tyrrell, and also at the latter point, the United States Air Force, 79th Fighter Group. There are no local movements of freight; that is, shipments originating at and destined to points on the involved segment. All transportation service being afforded stations on the segment involves traffic movements which either originate thereon for delivery to destinations beyond or, conversely, for delivery at points on the line from off-line origins, except that Kinsman and Fowler generate no outbound traffic. In operations, at the four stations named, the traffic transported by the New York Central during the years 1957, 1958, and 1959, aggregated about 394 carloads, 304 carloads, and 263 carloads, respectively. Additional carloads hauled during the same three years were not enumerated but were characterized by the New York Central as being but a very few. In any event, of the foregoing number, specifically set forth, 90 percent of the cars hauled during each of the years 1957 and 1958, and 96 percent of the cars during 1959, represent service performed for the business concerns referred to above. No data was presented for the Air Force. It does not oppose the application. The New York Central also hauls over the High Grade line some through cars between Youngstown and Ashtabula. Other operations not bearing directly upon service provided at points on the involved segment are later discussed. With respect to passenger operations, no local service was performed during 1958 and 1959. Passengers travelling to or from Andover, on the one hand, and, on the other, points beyond the involved segment during 1958 and 1959 aggregated 314 and 463 persons, respectively.

As seen, the High Grade segment proposed to be abandoned forms a physical part of the mainline as initially constructed. The Low Grade branch, presumably constructed at a later date, was built to accommodate the operations of heavy tonnage trains, principally of ore hauled from Ashtabula to Youngstown. It appears clear from the record that such ore traffic constitutes by far the principal tonnage hauled by the New York Central in the territory. In connection with such movements, pertinent physical comparisons of the applicable paralleling portions of the Low Grade and High Grade sections of road, specifically the separate segments lying between the connection points of Dorset Junction and Brookfield Junction, show the weight of rails to

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3 The examiner is mindful of the fact that there are separate sections of High Grade and Low Grade road between Carson and Dorset Junction and further, that his consideration includes a segment of
be 127 pounds on the Low Grade compared to 100 pounds and 105 pounds on the High Grade line. Of greater comparative significance between those segments is the fact that the Low Grade line of about 32.27 miles distance, is fairly level with slight curvature, while the High Grade line of about 35.20 miles in length, is made up of many grades with a considerable number of curves. For example, on the Low Grade line the controlling, or ruling, grade southbound (the direction of the ore movements) is a rise of 15.8 feet to the mile for a distance of 2.14 miles. Similar southbound rises in grade on other sections run for distances of 1 mile, 1.60 miles and 2.14 miles. There is also a descent in grade (or what is the ruling grade in northbound movements) of 15.8 feet to the mile for a distance of 1.92 miles. Otherwise, all remaining rises and descents in grade do not exceed 10.6 feet to the mile and there are 12 stretches of level road aggregating 7.29 miles. There are seven curves, two being one degree curves and all other thirty hundredths of one degree of less. On the High Grade segment, the ruling southbound grade is a rise of 42.2 feet to the mile for a distance of 1.17 miles. There also are a number of southbound rises in grade of from 25 feet to 37.7 feet per mile for a total of 11.31 miles. Level stretches are insignificant, totalling about 1.32 miles and, similarly, grades under 10 feet to the mile, (rises and descents) aggregate approximately 3.23 miles. Grades over 12 feet but under 22.7 feet per mile, and which are grades most comparable to those prevailing on the 32 mile length of above discussed Low Grade road, aggregate but 6.64 miles. Finally, there are 17 curves on the High Grade line of which 1 is under one degree, 11 are one degree, 2 are two degrees, and 3 are three degrees.

By reason of the above-described differences in grades and construction of the two segments of road, the New York Central finds that the High Grade segment is a more difficult road from an operating standpoint, and that, under similar operating conditions prevailing

High Grade road; namely, between Dorset Junction and Andover Junction, which is not embraced in the proposed abandonment. However, in the described ore movements over the section of road proposed to be abandoned, the New York Central may, and apparently actually elects to operate over the Carson-Dorset Junction Low Grade because of superior operating conditions, but to reach Andover Junction it must travel over the High Grade from Dorset Junction.

4 The actual ruling grade southbound on the entire Youngstown branch, and which grade would appear to control the tonnage hauled whether over high grade or low grade segments, is the stretch of road laying between Ashtabula and Carson. This segment totalling 3.76 miles contains successive grades in feet per mile of 58.0, 48.0, 54.9, 48.0, 44.9, and 62.3 feet, for distances of .71, .35, .23, .40, .55 and 1.52 miles, respectively.
on both segments, it takes more time to traverse the High Grade segment notwithstanding the more limited volume of tonnage which can be hauled thereover per train. In the latter connection, with power equipment comprised of a four-unit diesel, the New York Central is able to haul a train carrying 17,000 tons of ore (or of any commodity) over the Low Grade line as contrasted to but 10,000 tons over the High Grade line. The New York Central moves its ore trains over the High Grade line on the relatively few occasions when necessary to avoid delays on the Low Grade line and then only when the power unit on the train and the tonnage of the train permits the movement over the controlling grades on the High Grade line. There are also rather infrequent movements of ore trains (the "Osgood Extra") moving from Osgood, Pa., to Sharon, Pa.

In order to effectuate economies in operation over the involved High Grade line and over various periods of time, the New York Central installed a remote control of the Brookfield Junction interlock from Doughton Tower (the latter about 5 miles south of Brookfield Junction), and consolidated force at the two points; it obtained permission from the Public Service Commission of Ohio to discontinue agency stations at Brookfield, Kinsman, and Williamsfield; it consolidated the interlock at Andover Junction with the station at Andover, also combining forces at such points; and, as previously stated, decreased substantially the number of passenger trains in operation. Notwithstanding such efforts, the railroad finds that the available traffic will not support the operation, as detailed below, and that there are no immediate prospects for industrial or other developments which would produce an increased volume of traffic. In addition, it is the studied view of applicants that the High Grade segment proposed to be abandoned no longer is essential to the operations of the New York Central in the area involved and that, following the abandonment, all traffic presently being transported over the considered High Grade segment can be continued to be transported over the Low Grade line with greater efficiency and economy in the performance of the service.

The appendix attached hereto sets forth applicants' financial data showing the results of operations by the New York Central over the involved segments for a three year period and the net savings to be realized under the abandonment after giving consideration to certain increased costs resulting from continuing service over the Low Grade branch. Except to the extent indicated below, the carrier's allocations to operating expenses conforms with formulas and methods previously found by the Commission to be reasonable in considering similar factors of public convenience and necessity, and no detailed discussion of such charges is necessary. Summarized, the data contained in the Appendix shows that had the abandonment been effectuated during 1959, the New York Central would have lost revenues of $43,196
but it would have accomplished net savings of $24,761.\(^5\) Going a step further, and giving effect to the carrier's experienced estimate of what the normal cost of maintenance should have been on the involved segment as contrasted to the actual amount spent during 1959, less the additional amount required to maintain the Low Grade branch in a suitable condition for passenger operations, it would have realized a total saving of $35,605 for that year. In connection with the foregoing, although the New York Central asserts that maintenance on the involved High Grade segment has been deferred since 1958 and some additional expenditures are required to place the line in "first class" operating condition, it was unable to estimate the amount required.\(^6\) On the other hand, it did estimate that an additional $46,777 is required to rehabilitate the Low Grade branch to accommodate passenger trains. In the examiner's opinion, the foregoing amount properly should be considered as a part of the cost related to the proposed operations over the Low Grade branch, rather than, as computed by applicants, a deduction from salvage value of the line proposed to be abandoned. Applicants' final estimated savings of an additional $15,486 represents interest at 6 percent per annum on the total net salvage value, as set forth in the Appendix. The Commission declines to accept computed amounts of interest on salvage value as representing expenses in the operation of a line which it will consider in determining public convenience and necessity. Compare: New York Central R. Co. Abandonment, 254 I.C.C. 745 at 755. All circumstances considered, the record shows that operations over the segment proposed to be abandoned are conducted at a loss, although the estimated savings are somewhat overstated.

As stated before, the proposed abandonment will not result in the elimination of rail freight service presently being provided by the New York Central at Andover and Brookfield. The latter point will be

\(^5\) It should be noted that the revenues and expenses shown in the Appendix do not include those involved in the performance of "overhead" operations, i.e., movements of freight which do not originate or terminate on the involved segment, and which overhead traffic embraces not only the hauling of general freight but also the ore occasionally hauled over the involved segment from Ashtabula to Youngstown and in the Osgood Extra. The New York Central will continue to haul such overhead traffic over the Low Grade branch, either at no increase in cost or at such additional costs as are set forth in the Appendix.

\(^6\) The involved High Grade segment is a fully tied and ballasted section, having a speed of 40 miles per hour for freight and 59 miles per hour for passenger trains. During 1957, the New York Central spent about $19,000 more than its estimated amount required to maintain the line in first class operating condition. Inspection of the involved segment during April or May of 1959, disclosed that rails on curves were worn and needed replacement.
served as a station on the Low Grade branch and the former point will be served by the carrier’s "Oil City" branch local, which operates between Ashtabula and Stoneboro. Passenger service being provided at Andover over the involved High Grade segment would be continued at Dorset Junction over the Low Grade branch. Andover and Dorset Junction are about 9.2 miles apart and are connected by improved all-weather highways. The New York Central is of the opinion that the substituted passenger stop, at Dorset Junction, would continue to adequately accommodate the travelling public at Andover and no undue inconvenience would result. No portion of the travelling public appeared at the hearing in opposition to the proposed substituted stop. The New York Central proposes to continue to haul the freight now moving to and from points on the four remaining stations on the High Grade segment through stations it would serve on the Low Grade line as follows: Williamsfield traffic would be handled at Wick, 2.1 miles removed; Kinsman traffic at Gustavus, 2.5 miles removed; Fowler and Tyrrell from Brookfield, 6.7 miles and 3.8 miles removed, respectively. All of the foregoing stations are connected by improved, all-weather highways, and team tracks are maintained at Wick, Gustavus, and Brookfield. To haul the traffic, the Ashtabula-Youngstown local would be placed in service over the Low Grade branch and would be operated to the extent necessary. A less-carload service over the involved High Grade segment is presently provided by a motor carrier operation conducted by the New York Central between its Cleveland freight station and Stoneboro, and this service would remain unchanged as a result of an approval of the instant application. With the removal of all remaining bad order cars now stored on that part of the Low Grade branch between Dorset Junction and Latimore Junction, the New York Central is confident that it would be in a position to provide a more expeditious and efficient service in the territory. It asserts that industrial sites are available along the Low Grade branch and that they are equally as good as sites on the involved High Grade segment.

The Kinsman Chamber of Commerce, through its industrial development committee, seeks to attract industries to the Kinsman area. Up to the time of the hearing, however, the committee had not been successful in its efforts. The Chamber of Commerce points out that Kinsman is within "easy" trucking distance of various industrial points, such as Ashtabula, Conneaut, Cleveland, Youngstown, Akron, and Pittsburgh, Pa., among others. The Ashtabula County Planning Commission has rezoned the right-of-way along the involved High Grade segment as industrial and commercial, and also is interested in similar developments along the Low Grade branch. It recently established, about several months prior to the hearing, an industrial committee to encourage industrial development in the county, but the

7 The 1,900 bad order cars as of January 1, 1960, had been reduced to 1,300 as of the time of the hearing on May 6, 1960.
committee's plans and actions are not completely formulated. In effect, the County Commission requests that applicants withhold their requested abandonment until such time as its industrial committee gets into full operation and can achieve some result.

The group of concerns previously referred to as being primarily affected by the proposed abandonment, also appeared in opposition to the application; specifically, the Williamsfield Salvage Company and the Ashtabula County Farm Bureau, Cooperative Association, the latter a member of the Farm Bureau Cooperative Association, Inc., (FBCA), in connection with the Williamsfield station; the Trumbull County Farm Bureau Cooperative Association, also a FBCA member, and Willis Drum at the Kinsman station; Wade Griffin, doing business as Griffin's Mill, at Fowler; and a Branch of the Trumbull Cooperative and the Stambaugh Hardwood Lumber Company at Tyrrell. The FBCA organization is a purchasing, manufacturing, and marketing association dealing in such commodities as feed, fertilizer, farm supplies, petroleum products, grain, meals, coal, and building supplies. The member associations here involved maintain at their locations feed mixing and grind equipment, grain elevators, and warehouses, among other facilities.

Williamsfield Salvage processes scrap foam rubber, polyethylene and plastic foam, its principal account being a concern at Akron, which also supplies and ships the scrap to be processed. Motor common carrier service to and from Akron is available to Williamsfield Salvage, but it asserts that the supplier demands rail service because of lower rates, and that the latter would divert its business if rail service were not available. During 1959, Williamsfield Salvage received 17 carloads and shipped 20 carloads, all in connection with the Akron account, except for 2 carloads. Also during 1959, Williamsfield Salvage received 9 truckloads of rubber scrap from another account at Ashland with the outbound movement of the processed commodity shipped by rail. It has a rail siding at its plant and asserts that the cost of trucking to and from a team track would consume the profits derived from the processing operation. Its investment in building and machinery aggregates $36,000 and it is unable financially to relocate. Williamsfield Salvage utilizes coal to operate its equipment, about 1 truckload weekly during winter and 1 truckload biv weekly during the summer, a total of 216 tons having been consumed during 1959. It specifies and receives delivery by motor vehicle of all coal shipments because of the lower than rail rates. The Ashtabula farm cooperative during 1959 received 12 carloads of feed and shipped 8 carloads of wheat and one of soy beans. During the same year, all of its fertilizer, ordered through the FBCA, was shipped in by truck from Alliance. However, it advised that after July 1960, the foregoing source will no longer be available, and that the new source of supply will be at Mt. Gilead, a distance to Williamsfield of in excess of 100 miles. In the opinion of the farm cooperative, rail service will be required from Mt. Gilead. Small
tools, fencing, certain roofing materials, and small appliances are shipped from the FBCA headquarters at Jefferson transported by the cooperative's private truck. Compared to the volume of feed transported by rail, only a comparatively small volume of such items is transported by truck from Jefferson.

The Trumbull farm cooperative at Kinsman, during 1959, received the following carload shipments: 22 of coal, 2 of fertilizer (from Mt. Gilead), 14 of feeds and grain and 1 each of baler twine and seed potatoes. It also receives about 10 truckloads of coal per year. Fertilizer is transported from Alliance in the cooperative's private trucks. Willis Drum engages in the sale of lime which is shipped in coal hopper cars to the team track, unloaded by conveyors into his trucks, and taken directly to the farmer's field and spread. During 1956, 1957, 1958, and 1959, he received, from Gibsonburg, 2,142 tons, 3,701 tons, 1,617 tons, and 2,237 tons, respectively. Drum contends that transportation of lime by motor common carrier is too expensive. He objects to receiving shipments at points on the Low Grade branch, specifically at Gustavus, on the grounds of inadequate unloading space and lack of scales. There are no competitors in the immediate territory served by Drum, an area within a radius of 10 to 12 miles of Kinsman, the closest lime dealers being at Conneaut and Youngstown.

Wade Griffin, doing business as Griffin's Mill, operates a feed mill and coal yard. He has coal conveyors and bulk storage and warehouse facilities. His principal sources of supply are, for coal, Champion, Pa., and Holden, W. Va., for soybean meal, Painesville, for fertilizer, Sandusky, and for corn flakes, Danville, Ill. He sells coal to about 250 domestic users. Griffin stated that he received 60 carloads of coal during 1960; however, his exhibit of record showing the carloads of various commodities received by him during that year, embraces about 37 carloads of coal, and the difference is not explained. The exhibit also shows receipt of 5 carloads of fertilizer, 13 carloads of corn flakes, meal, feed, and grain, 2 carloads of oyster shells, and 1 carload of beet pulp. He also received about 20 truckloads of drain tile, apparently during 1959. Griffin contends that no major feed company has ever survived without rail service and that, in the event of the abandonment herein, it would not be possible for him to receive the commodities handled by him at another rail station to be trucked into his place of business. Specifically, he contends that the Brookfield team track is not large enough to accommodate his one carload of coal weekly (on the basis of 60 carloads yearly), although he has never attempted to so utilize that facility, and that, with respect to feed, it is impractical to reload that commodity.

The Stambaugh Harwood Lumber Company manufactures lumber from native hardwood logs. Its sources of supply lay in timber tracts generally within an area of 50 miles of the mill and all logs are
trucked into the mill. During the first year of its operations, from April 1959 through April 1960, it shipped 45 carloads of lumber and one of logs. The foregoing, however, represents no more than one-half of its outbound volume; approximately 50 to 60 percent of its production is shipped by motor vehicle. Stambaugh Lumber estimates that during its second year in operation, increased production should result in an outbound volume of about 60 carloads. Presumably, shipments by motor vehicle would increase proportionately. Additionally, in the event the anticipated sale of wood chips becomes economically feasible, such material presently is destroyed as waste, it would ship out about 2 carloads weekly, based on present production. It asserts that high grade logs in the present area is getting scarce and should the supply become exhausted, incoming movements of logs would be transported by rail because long distance movements by small truck is not economical. However, the witness for Stambaugh Lumber was unable to state the estimated length of time high grade logs would continue to be available in existing tracts and he conceded that, subject to various considerations, it becomes a matter of economics whether logs would be shipped long distances or the mill would be relocated. Presently, Stambaugh Lumber is located 0.5 miles from the Tyrrell team track. The carload service provided the Farm Cooperative at Tyrrell during 1959 consisted principally of the movement of coal, some 13 carloads, aggregate weight 650 tons. It also received 1 carload of fertilizer, of about 30 tons, from Mt. Gilead. During the same period, it received about 5 truckloads of coal. It supplies coal to about 125 to 150 domestic consumers. Carload shipments of coal are generally unloaded from the car into the trucks of the Farm Cooperative and delivered directly to the customer. Some coal is stored in the yard. With respect to taking delivery of fertilizer at any point on the Low Grade branch, the Farm Cooperative asserts that it would take its truck 8 trips to transport a 50 ton car and the profits derived from fertilizer sales would not permit such operations. It sells about 150 tons to 200 tons of fertilizer annually most of which is delivered to it by truck from the FBCA station at Alliance. With the contemplated discontinuance of Alliance as a fertilizer distribution point, the Farm Cooperative will have available others at Dayton, Maumee, and Mt. Gilead, with the latter being the most likely new source of supply.

As between the High Grade segment and the parallelizing Low Grade branch, the latter, for all practicable purposes, is the line over which is transported the main-line freight of the New York Central. The involved High Grade segment cannot be utilized for the movement of the greatest volume of such traffic, except at a substantial sacrifice in time and efficiency of operations, and at considerable increased costs. The reasons therefore have been fully discussed. In other significant respects, the two lines traverse a light traffic area and for the most part constitute an unnecessary duplication of facilities. In the examiner's opinion, the record supports applicants' determination that the involved High Grade segment is not necessary to
the operations of the New York Central and that the towns and individual users of service on such segment would suffer no undue hardship following the abandonment. As seen, the several industrial committees have no firm commitments of any kind for future industrial developments on the High Grade line. They are equally interested in the locating of industries along the Low Grade branch, where applicants maintain a superior road bed from all operating viewpoints, and over which, as a result of the abandonment, the New York Central would be in a position to render more efficient and economical services. With respect to the individual concerns involved, they all have motor carrier services available. Such motor carrier service is being utilized for reasons of economy or personal convenience notwithstanding that in general the commodities being transported are susceptible to equal, if not greater, efficiency in rail operations, although at a somewhat higher rate. Those concerns desire rail service primarily as a standby facility for use at such future time as the shifting sources of supply would make it the more advantageous form of transportation. It is noted that for the same reasons of economic advantage, certain concerns are already utilizing service of the New York Central. None of the foregoing reasons, however, are controlling of the issues involved. The application viewed in its proper light, proposes an abandonment of operations over the involved segment but not a corresponding abandonment of transportation services at stations thereon. In effect a rerouting of traffic is proposed under which the four High Grade line stations directly affected would continue to be served from nearby stations located on the Low Grade branch. Conceivably, the shift in service may cause certain concerns to suffer some inconvenience and a degree of increased costs. However, such results are far outweighed by the benefits which would accrue to applicants following the elimination of the burden of conducting operations at a loss over the involved High Grade segment and also, as a direct result of the abandonment, the substantially improved services which, as a group, all users of the services of the New York Central stand to receive.

Applicants assert that no employees would be adversely affected as a result of the abandonment. It states that crews now operating the Ashtabula-Youngstown local over the involved High Grade segment would be continued on the same train over the Low Grade segment and that, similarly, maintenance of way personnel presently employed on the involved High Grade segment also would be continued on the Low Grade branch. Neither is it contemplated that there will be any displacement of the crews on the "Wolverine" local presently operating over the Low Grade line and it also is pointed out that the existing passenger train will be continued on the Low Grade line. However, the various opposing labor organizations request that, as a condition to approval of the instant application, there be imposed the same conditions for protection of carrier employees as were prescribed in Chicago, G. & Q. R. Co. Abandonment, 257 I.C.C. 700. No objections were expressed by applicants, and such conditions will be included, by reference, in the recommended findings herein.
The examiner finds that, subject to the imposition of the above-referred to conditions for the protection of employees of The New York Central Railroad Company, the present and future public convenience and necessity permit abandonment by The Mahoning Coal Railroad Company of the segment of its line of railroad known as the High Grade Subdivision extending from Andover Junction to Brookfield Junction, Ohio, as described, herein and abandonment of operation thereof by The New York Central Railroad Company.

The examiner recommends that the appended certificate, in which suitable provisions have been made for the cancellation of tariffs and the submission of journal entries, be issued.
BEFORE THE
INTERSTATE COMMERCE COMMISSION

IN THE MATTER

of the

APPLICATION of THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY and THE NEW YORK CENTRAL RAILROAD COMPANY under Section 1 (18-20) of the Interstate Commerce Act for a certificate that the present and future public convenience and necessity permit the abandonment of a portion of the line, known as the Delaware Branch, between Ostrander and Mechanicsburg, in Delaware, Union and Champaign Counties, State of Ohio.

Finance Docket No. 21303

APPLICATION

TO THE INTERSTATE COMMERCE COMMISSION:

The two applicants, in conformity with Sections 42.1 et seq. of the Commission's order dated November 27, 1941, as amended May 26, 1952, respectfully represent:

(a) The exact corporate names of the applicants are:
"The Cleveland, Cincinnati, Chicago and St. Louis Railway Company" and "The New York Central Railroad Company."

(b) The applicant, The New York Central Railroad Company, hereinafter referred to as the "Central Company," is a carrier engaged in the transportation of passengers and property by railroad subject to the Interstate Commerce Act. The applicant, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, hereinafter referred to as the "Big Four," owns railroad properties which were leased to the Central Company on January 2, 1930, effective February 1, 1930, for 99 years from that date.

(c) The portion of the line proposed to be abandoned extends from Milepost 122.97 at Ostrander to Milepost 145.76 at Mechanicsburg, State of Ohio, a distance of 22.79 miles. It is proposed to retain 2.94 miles of the line at Marysville as an industrial spur to serve existing industries.
(d) Abandonment of the line by the Big Four, and the operation thereof by the Central Company are sought.

(e) The applicants desire to abandon said line of railroad because the operation and maintenance thereof is no longer necessary for the present and future convenience of the public. The freight traffic to and from points on the line is insufficient to justify the continued operation, which is carried on at a loss, and there is no reason to expect any increase in traffic in the future.

(f) The name, title, and address of the applicants' counsel to whom correspondence in regard to this application should be addressed are as follows: Wesley A. Wilkinson, General Attorney, The New York Central Railroad Company, 1324 West 3rd Street, Cleveland 13, Ohio.

(g) The applicant, the Big Four, was organized and now exists under the laws of the States of Ohio and Indiana. It was created by consolidation of the Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, the Indianapolis and St. Louis Railway Company and the Cleveland, Indianapolis, St. Louis and Chicago Railway Company under Agreement of Consolidation dated March 19, 1869, filed in the offices of the Secretaries of State of Ohio and Indiana.

The applicant, the Central Company, was organized and exists under the laws of the States of New York, Pennsylvania, Ohio, Illinois, Indiana, and Michigan. It was created by the consolidation of The New York Central and Hudson River Railroad Company, The Lake Shore and Michigan Southern Railway Company, and others, under an agreement dated April 29, 1914, which was approved by orders of the regulatory commissions of the states having jurisdiction, and duly filed in the offices of the Secretaries of the several states of its incorporation. Applicant is authorized to operate and operates in the states of its incorporation and in the States of Kentucky, Massachusetts, Missouri, New Jersey and West Virginia and in the Dominion of Canada.

(h) The making and filing of this application were authorized on behalf of the applicant, the Big Four, by a resolution adopted by its Board of Directors at a meeting held in New York, New York, on September 7, 1960.

The making and filing of this application were authorized on behalf of the applicant, the Central Company, by a resolution adopted by its Board of Directors at a meeting held in New York, New York, on July 14, 1960.

(i) The applicants are not in receivership.

(j) A map showing the territory, railroads, water routes, and important points in the vicinity of the line proposed to be abandoned is attached hereto, made a part hereof, and marked "Exhibit 1."
The applicants do not desire a hearing upon this application unless the absence thereof will adversely affect the authorization of the abandonment of the line sought herein.

WHEREFORE, the applicants pray that the Interstate Commerce Commission issue a certificate under paragraphs (18) and (20), both inclusive, of Section 1 of the Interstate Commerce Act, that the present and future public convenience and necessity permit the abandonment of road and operation by the applicants of the line of railroad described in this application.


2 At the time of writing this case had not been formally reported by the Interstate Commerce Commission. However, the Application for Abandonment contains the pertinent data of the case.
Before
THE PUBLIC UTILITIES COMMISSION OF OHIO

Hearing date - May 2, 1955
Case No. 25,319

ATTORNEY EXAMINER'S REPORT

In the matter of the application of
The Bay Terminal Railroad Company
to withdraw its facilities from
service as a common carrier and to
abandon its lines and operations,
etc.

APPEARANCES:
Effler, Eastman, Stichter and Smith, by John R. Eastman, 240 Huron
Street, Toledo 4, Ohio.

SUMMARY OF THE RECORD:

From the testimony and exhibits offered at the hearing the
following appeared to be the facts in this case. This applicant is
a common carrier operating a railroad within the State of Ohio. The
applicant operates 5.7 miles of track, 2 miles of which is main track
and 3.7 miles of which is yard track. All of said trackage is located
in the City of Toledo, Lucas County, Ohio. The applicant's track
connects with the track of the New York Central Railroad, The Nickel
Plate Railroad and the Toledo Terminal Railroad Company, which company
operates a belt line in and about the City of Toledo. The applicant
at present serves three (3) shippers: The Sun Oil Company, The
Republic Steel Corporation and Hirzel Brothers. Hirzel Brothers
operates a greenhouse. There are industry tracks located into the
plants of The Sun Oil Company and The Republic Steel Corporation but
no such industry track connects the shipper Hirzel Brothers. Inbound
shipments to Hirzel Brothers are put on a switch track owned by the
applicant. All inbound shipments to Hirzel Brothers consist of cars
of coal which are unloaded from the switch track by a conveyor to
the shipper's greenhouse. The sole shipper of outbound commodities
located on the applicant's line is The Sun Oil Company, which company
ships petroleum and petroleum products in tank cars. Service furnished
to the other two industries is very small in nature. In the year 1954
Hirzel Brothers received 17 carloads of coal and Republic Steel
Corporation received 91 cars of ore. Outbound products of these two
shippers are all transported by motor vehicle. In this application
the applicant proposes to sell all of its right-of-way including its
main tracks and yard tracks to the Sun Oil Company. This Company will
then operate the same as its own plant facility. The Sun Oil Company
has agreed to make available to the Hirzel Brothers Greenhouse and to
Republic Steel Corporation its tracks and facilities in order to enable
them to continue to handle their deliveries by rail. An agreement has
been entered into by the Toledo Terminal Railroad Company, New York Central Railroad Company and The Nickel Plate Railroad Company whereby they will jointly switch cars over the tracks of this applicant after they are acquired by The Sun Oil Company and whereby the service will be continued to the Hirzel Brothers Company and the Republic Steel Corporation. This agreement has been entered into and approved and consented to by all parties. The applicant does not render any passenger service of any type and its traffic as to freight has been gradually reducing in past years because of a change in policies in the transportation of petroleum products. The Sun Oil Company receives all its crude oil through a pipeline and transports most of its refined petroleum products by pipeline, tanker or tank truck. The applicant feels that his freight will continue to decrease and move to other means of transportation. The applicant avers that from 1944 to 1953 it has been operating its line at a net loss of approximately $23,500.00. Applicant further feels that the withdrawal of facilities of the applicant from service as a common carrier will not adversely affect the service now being rendered to other industries on its line. Such industries will continue after the abandonment to receive the same service they are now receiving, by reason of the trackage arrangement with the Sun Oil Company. The applicant also introduced for the record copies of its application and exhibits before the Interstate Commerce Commission.

FINDING OF FACT:

From the testimony in this proceeding your Attorney Examiner finds the following facts:

(1) This application is in proper form and all technical requirements have been met.

(2) Application is brought under Section 4905.20 of the Revised Code.

(3) The proposed abandonment of service is reasonable having due regard to the welfare of the public and to the cost of operating the service which the applicant seeks to abandon.

(4) The three shippers affected by this application will experience no interruption in service and will, due to the arrangement for the use of the tracks in question, be able to enjoy the same type and character of service after the abandonment as they have been enjoying prior to the abandonment.

The granting of the application while it will not inconvenience any of the shippers will enable this applicant to avoid an operation which has been costly to it and has from 1944 to 1953, inclusive,
caused it to experience a net loss from such operations of approximately $23,500.00.

(5) The within application is in the public interest and the same should be granted.
Before
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the matter of the Application )
of the Toledo & Eastern Railroad ) No. 27,499
Company to abandon its line of )
railroad and the operation thereof) and to retire its facilities and )
services as a common carrier. )

FINDING AND ORDER

The Commission coming now to consider the above-entitled Application; the testimony adduced at the public hearing, held on March 25, 1958; the written Report of its Attorney Examiner, James L. Fullin, which Report is dated May 16, 1958; and being otherwise fully advised in the premises, hereby renders the following Opinion:

NATURE OF THE APPLICATION:

This is an Application filed in accordance with the provisions of Sections 4905.20 and 4905.21 of the Revised Code, wherein the Applicant seeks the authority of this Commission completely to abandon its line of railroad and all operations in connection therewith. This Applicant operates a line of electric railroad from Toledo, Ohio in a southeasterly direction to Clay Center, Ohio. In its operations, it serves only three shipper industries, which are served on a carload only basis.

RESUME OF THE RECORD:

The Commission hereby adopts as its own as if fully rewritten herein the "Resume of the Record" as the same is contained in the Examiner's written Report.

COMMISSION DISCUSSION:

The Commission hereby adopts as its own as if fully rewritten herein the "Examiner's Discussion" as the same is contained in his written Report. It hereby reiterates the following portions of that Discussion:

"In connection with other recent matters submitted to this Commission and, particularly, the several recent general applications for railroad freight rate increases, this Commission has been made aware of the background prompting the filing of this Application. The abandonment of service here being considered is a direct result of the pricing policies of Ohio railroads, which have annually prompted the railroads to seek increases in their freight rates. Such increases, particularly, in the transportation
of coal, have had their effect by way of making it increasingly difficult for the electric power companies in this state to secure coal for the production of electric energy without imposing additional and increased charges upon their customers. In an attempt to avoid these steady increases in transportation costs, all electric power companies in this state have sought various means of securing their coal by other than rail transportation. Some companies have met this challenge by installing pipe lines for the transportation of their coal at lower cost. Others are locating their generating facilities in the coal fields themselves and transporting the electric energy by wire. Still other electric utilities, such as the Toledo Edison, have sought to alleviate their transportation cost difficulties by resorting to transportation by water. In the case of Toledo Edison, so securing its coal has become so practical and successful that the Toledo Edison Company has virtually discontinued receiving coal via this Applicant railroad company. The Applicant, for its part, has, at least since 1947, and probably before that time, been utterly and completely dependent for its major source of revenue upon the transportation of coal for the Toledo Edison Company. Thus, the change in Toledo Edison operations outlined above has resulted in the complete removal of its principal revenue account. Faced with this situation and without sources of new business, the Applicant is compelled to seek the consent of this Commission to the abandonment of its total operations.

"It would appear that two of the three shippers, who are actively served by the Toledo and Eastern Railway Company presently can be adequately served by other Railroads without any disruption in their service. The third such company, the Gladiouso Coal & Supply Company, finds itself the innocent victim of this interplay of the complexities of our modern-day economic system to the extent that it now faces the loss of a transportation service upon which it has long relied."

ULTIMATE FINDINGS:

The Commission hereby adopts as its own as if fully rewritten herein the "Ultimate Findings" as the same are contained in the Examiner's written Report and hereby reiterates the following Findings:

(1) That the Commission has jurisdiction of this proceeding in accordance with the provisions of Section 4905.20 et seq. of the Revised Code;
(2) That the Applicant, an electric railway company, operating between Toledo, Ohio and Clay Center, Ohio seeks authority to abandon all of its lines and discontinue its operations;

(3) That the Applicant, which is a carload only railroad, has for a considerable period of time been entirely dependent for the major portion of its revenue upon that which it derived by transporting coal between the Nickel Plate Railroad junction and the City of Toledo and for the Toledo Edison Company;

(4) That, due to a change in the transportation policies of the Toledo Edison Company, whereby it now secures the major portion of its transportation by barge, this Applicant has lost the Toledo Edison account and no longer enjoys the revenue which accompanied it;

(5) That, because of the decline in revenue outlined in Findings Nos. (3) and (4) above, the Applicant is totally unable, financially, to continue its operations; and

(6) The proposed abandonment is reasonable, having due regard to the welfare of the public and the cost of operating the service involved.

ORDER

It is, therefore

ORDERED, That the Attorney Examiner's Report should be, and the same hereby is, adopted, to the extent set forth in this Order. It is, further

ORDERED, That the within Application should be, and the same hereby is, granted, and that the Applicant should be, and the same hereby is, authorized to discontinue all of its service and to abandon all of its operations and retire its facilities as a common carrier after thirty days written notice to each of its presently existing shippers. It is, further

ORDERED, That the Applicant be, and the same hereby is, required to file its final Annual Report and that upon the filing thereof the name of this Applicant be stricken from the list of common carriers and public utilities maintained by this Commission.
BIBLIOGRAPHY

Public Documents


Books


The Tax Institute. Tax Barriers to Trade. Philadelphia: The Tax Institute, 1941.


**Articles and Periodicals**


McAllister, Breck P. "Lord Hale and Business Affected With a Public Interest," 43 *Harvard Law Review*.


**Reports**


I, Frederick R. E. Durr, was born in Washington, D.C., July 16, 1921. I received my secondary-school education in the Lower Merion Township public schools in Ardmore, Pennsylvania. My undergraduate training was accomplished at the Pennsylvania State University and Marietta College, Marietta, Ohio, which granted me the Bachelor of Arts degree in 1949. From the University of Miami, Coral Gables, Florida, I received the Master of Arts degree in 1955. While in residence there I held the academic positions of Research Fellow and Research Assistant Professor. At Miami I was elected to the Order of Artus, honorary economics fraternity. I accomplished three years of post graduate work at the University of Kansas where I held the position of Research Associate in the Bureau of Business Research. I was appointed Instructor in the Department of Economics at The Ohio State University, a position I held for three years while completing the requirements for the Doctor of Philosophy degree.