APPENDIX J

Comparison of restated costs of operation and proposed rates, minimum 28,000 pounds

Distance	Pipe		Machinery	
	Proposed Rates	Costs	Proposed Rates	Costs
	Cents	*Cents*	*Cents*	*Cents*
50 miles	25	17.3	80	[illegible]
100 miles	39	27.2	46	29
150 miles	51	37	58	[illegible]
200 miles	61	46.8	69	50.7
250 miles	67	56.6	80	[illegible]
300 miles	75	66.4	90	[illegible]
350 miles	83	76.3	100	[illegible]
400 miles	88	86	109	94
500 miles	98	105.7	128	[illegible]
600 miles	112	125.4	149	[illegible]
700 miles	154	145	168	[illegible]
800 miles	176	164.7	191	180.4
900 miles	197	184.3	213	202
1,000 miles	218	203.9	237	223.7

No. 31466

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY v. SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY ET AL.

Decided May 10, 1957

Failure and refusal of the Spokane, Portland & Seattle Railway Company and its system lines to join in the establishment of through routes and joint rates via Spokane, Wash., in connection with the complainant and its connections, the same as apply via Spokane and its parent lines, the Great Northern Railway Company and Northern Pacific Railway Company, found not to discriminate against the complainant or to result in undue preference or prejudice between shippers or localities, and the establishment of such routes and rates in connection with the complainant found not shown to be necessary or desirable in the public interest in order to provide adequate, and more efficient or more economic, transportation. Complaint dismissed.

Thomas H. Maguire, *R. K. Merrill*, *W. J. Quinn*, *Carson L. Taylor*, and *B. E. Lutterman* for complainant.

Fletcher Rockwood and *Charles A. Hart* for certain defendants and interveners.

Harry E. Boe, *Fred O. Steadry*, *Jordan J. Hillman*, *John Guandolo*, *Richard Musenbrock*, and *Russell B. James* for other defendants.

L. E. Torinus, *Edwin C. Matthias*, *Curtis H. Berg*, *R. Paul Tjossem*, *G. Zan Golden*, and *M. L. Countryman, Jr.*, for intervening railroads.

Charles B. Bowling, *Charles W. Bucy*, *Henry A. Cockrum*, and *J. L. Pease* for Secretary of Agriculture; *C. W. Ferguson* and *Thomas W. Dench* for the Oregon Public Utilities Commissioner; *C. L. Doherty* for the South Dakota Public Utilities Commission; and *John L. Fox* for the Idaho Public Utilities Commission interveners.

S. W. W. Carr, *Frank A. Emme*, *Henry Beck*, *Mark Houston*, *Paul K. Byers*, *R. T. Titus*, *Calvin L. Blaine*, *Charles E. Blaine*, and *Lee J. Quasey* for other interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the report proposed by the examiner were filed by the complainant, certain defendants, and certain interveners, and the issues were orally argued. Our conclusions differ in part from those recommended. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

The complainant, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter sometimes called the Milwaukee, is a common carrier by railroad operating in interstate commerce within the States of Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, Missouri, and Nebraska. By complaint filed on February 26, 1954, as amended on August 27, 1954, it alleges that the refusal of the Spokane, Portland and Seattle Railway Company, hereinafter called the S. P. & S.; the Oregon Electric Railway Company, hereinafter called the Oregon Electric; and the Oregon Trunk Railway, hereinafter called the Oregon Trunk, generally referred to collectively as the S. P. & S., except where otherwise indicated, and the other defendants, sometimes referred to as connections, to establish and maintain competitive through routes and joint through rates and charges[1] applicable to freight traffic of whatsoever nature moving between points on the S. P. & S., on the one hand, and points throughout the United States generally east of Spokane, Wash., and Canada and Mexico, on the other, in connection with the complainant through Spokane, referred to herein as the Spokane gateway, results in violations of sections 1 (4) and 3 (1) and (4) of the Interstate Commerce Act, and deprives the public and the complainant of the use of available and reasonable through routes and reasonable and nondiscriminatory through rates which are necessary and desirable in the public interest.

The complainant asks us to require the defendants to establish through routes and joint rates via Spokane in connection with the complainant and its connections, applicable to freight traffic generally, together with all terminal services, allowances, transit, and other privileges including diversion and reconsignment, in connection therewith, where such do not already exist via the aforementioned gateway in connection with the complainant, on the same basis as may now or hereafter be available from and to S. P. & S. points over routes through the Spokane gateway in connection with the Great Northern Railway Company and the Northern Pacific Railway Company, sometimes herein referred to collectively as the northern lines and separately as the Great Northern and the Northern Pacific, respectively, and their connections.[2] The complainant also asks us to determine and prescribe just, reasonable, equitable, nonpreferential, and nonprejudicial divi-

[1] Rates and charges, and differences therein, are in amounts per 100 pounds, and are those in effect on May 1, 1954.

[2] Appendix A hereto shows the territorial application of joint through rates via Spokane, on various commodities and classes of traffic in connection with the S. P. & S., and the Northern lines. Appendix B shows the same in connection with the S. P. & S. and the Milwaukee.

sions of the joint rates and charges sought, in the event the defendants fail and refuse voluntarily to establish such divisions.

No evidence was submitted with respect to rates from or to Mexico, and such rates will not be considered.

The complainant asserts, in substance, that the purpose of the complaint is to preserve to its railroad the opportunity of at least soliciting traffic in which it feels it is entitled lawfully to share and to open up territory over its line now closed to shippers of commodities to and from the Pacific Northwest, and thereby to increase its revenues. It seeks the establishment of joint through rates from and to points served exclusively by it, as well as common points, and points reached by connecting lines.

Interveners in support of the complaint include the Secretary of Agriculture, the Western Forest Industries Association, the National Livestock Producers Association, the Chicago Producers Association, the American National Cattlemen's Association, the National Wool Growers Association, and the Traffic Bureau of Sioux Falls, S. Dak. The only interveners in opposition to the complaint are the Great Northern and the Northern Pacific, each of which owns 50 percent of the capital stock and bonds of the S. P. & S., and the operating and nonoperating labor organizations of those carriers. The Idaho Public Utilities Commission, the Oregon Public Utilities Commissioner, and the South Dakota Public Utilities Commission intervened, but offered no evidence and took no position[3] respecting the issues involved.

Motions.—Before proceeding to a discussion of the issues and the evidence relating thereto, it is necessary to consider certain motions made by the parties. The S. P. & S. lines were the only defendants named in the original complaint. The amended complaint, filed after the initial hearing at which evidence in support of the complainant was adduced, named 405 additional defendants, some[4] of which have participated actively in this proceeding. Collectively, these participants are called the w. t. l. lines. The record made at the initial hearing was allowed to stand subject to the right of the defendants and supporting interveners to cross-examine further the witnesses who had testified at that hearing. With one exception, those whom

[3] By letter dated October 18, 1955, addressed to us, the Public Utilities Commissioner of Oregon advised that he would support any decision which may alleviate the annual car shortages in that State, and which would afford additional transportation services and transit privileges for Oregon shippers. Under date of October 15, 1955, the Idaho Public Utilities Commission withdrew from the case.

[4] The Chicago and North Western Railway Company, hereinafter called the North Western, and its subsidiary, the Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington; The Minneapolis & St. Louis Railway Company; and the Chicago, Rock Island and Pacific Railroad Company, hereinafter called the Rock Island, and its subsidiary, the Peoria Terminal Company.

the adverse parties desired to cross-examine further were made available for this purpose at subsequent hearings. The exception was witness Hemphill whose testimony relates to rates on lumber from Eugene, Oreg., to destinations east of Spokane. Becuase it was not possible to cross-examine this witness further, the defendants, on brief, move that his testimony be stricken. The complainant is willing that this testimony not be considered. The motion is sustained.

As stated, the complaint contains an allegation that section 3 (1) of the act has been violated. Prior to the initial hearing, the S. P. & S. filed a motion to strike that allegation from the complaint. The motion was made on the ground that a complainant railroad cannot raise in its own behalf an issue under section 3 (1) against another railroad. The motion was overruled by order dated July 20, 1954. After the amended complaint was filed, the initial defendants and interveners, as well as the newly added defendants, again moved to strike therefrom the section 3 (1) allegation, or in the alternative to make the allegation more definite and certain. These motions were overruled by order dated November 5, 1954. On brief, the defendants renew their motions to strike that allegation from the complaint, and they also move to strike all evidence received, objected to when offered, which would be relevant to that issue if properly before us.

In *Denver & R. G. W. R. Co.* v. *Union Pac. R. Co.*, 287 I. C. C. 611, 619, hereinafter referred to as the *Rio Grande* case, in dealing with a similar question, we said:

> We agree that complainant, a railroad, could not raise, in its own behalf, an issue under section 3 (1) against another railroad. Intervening shippers, however, have raised such an issue. Testimony, pro and con, was received on this issue and we think it has been fairly tendered here for decision.

A conclusion similar to the above was reached by us in *American Barge Line Co.* v. *Alabama, G. S. R. Co.*, 296 I. C. C. 247, 266. In view of the foregoing, the previous denial of defendants' motions to strike the allegation of section 3 (1) of the act from the complaint is affirmed, and the motions to strike the evidence relating to that issue are overruled.

Exhibits 112 and 113 of record, introduced by the railroad interveners in support of the defendants, contain lists of individual lumber mills and the capacity of each located at points in Washington, Oregon, Idaho, and Montana. Objection by the complainant to the receipt in evidence of these exhibits, upon the ground that the contents of the exhibits are not relevant to the issues in this proceeding since most of the mills shown are not located in S. P. & S. territory, was overruled by the examiner, and the exhibits were received in evidence. On brief, the complainant renews its objection and seeks

to have these exhibits and all testimony relating thereto stricken from the record. It is apparent that any evidence relating to the supply of lumber available to shippers and receivers from any source in the Pacific Northwest is relevant to the issues raised in this proceeding. The objection is overruled.

Routes.—Routes are available to and from points on the S. P. & S., via Spokane in connection with the complainant and its eastern connections, but generally shippers would have to pay combination rates if such routes were used. The maintenance of those rates produces higher charges than those resulting from the joint rates maintained by the S. P. & S. over routes via Spokane in connection with the northern lines. The higher rates and charges act as deterrents to shippers, and, in effect, close the Spokane gateway in a commercial sense insofar as the complainant is concerned. We are asked to require the establishment, through that gateway in connection with the complainant, of through routes and joint rates and charges which would remove the alleged unlawfulness.

The power to require the defendants to establish the through routes and joint rates sought is limited by section 15 (4) of the act, which provides that, except as provided in section 3 of the act, and except where one of the carriers is a water line, we may not require a railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (*a*) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (*b*) unless we find that the through route proposed is needed in order to provide adequate, and more efficient or more economic, transportation. The foregoing provisions are subject to the further proviso that in prescribing through routes, we shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (*a*) and (*b*), give reasonable preference to the carrier by railroad which originates the traffic. This section also provides that no through route and joint rates applicable thereto shall be required by us for the purpose of assisting any carrier that would participate therein to meet its financial needs.

The defendants contend that as the principal stated objective of the complainant in filing the complaint was to increase its revenues, we should dismiss the complaint, on that ground alone, in view of the provision of section 15(4) referred to above. As the complainant has not sought to support the complaint on the basis of its revenue needs, this contention is without merit. In reaching our conclusions herein, no consideration has been given to the financial needs of the complainant.

Certain interveners in support of the complaint contend that because the routes over which joint rates are sought are open to traffic at combination rates, and, as previously shown, in certain instances, at joint through rates, we are not called upon to require the establishment of through routes, and that thus the limitations upon our power to do so in section 15(4) of the act are not applicable and need not be considered. They insist that our principal task here is to determine whether the through rates resulting from the presently applicable combination rates over such through routes are in violation of sections 1 and 3 of the act as alleged. The complainant and supporting interveners argue that there is public need for joint rates via the Spokane gateway, in connection with the S. P. & S. and the complainant, equal to the joint rates now maintained via that gateway over the competitive routes composed of the S. P. & S. and the northern lines.

The first question for determination, therefore, is whether or not the present routes via the Spokane gateway composed of the lines of the S. P. & S. and the complainant constitute "through routes" as that term is used in section 15(3) and (4) of the act. As above stated and as testified by numerous shippers in this proceeding, the Spokane-gateway routes, insofar as the complainant's lines are concerned, with the exceptions listed in appendix B,[5] are not considered as open or through routes commercially, but as routes that are effectually closed to shippers because of the higher combination rates which apply thereover. A finding that such routes should be opened to shippers on a commercial basis by establishing the competitive joint rates sought would result in the establishment of such routes as effective through routes.

In the *Rio Grande* case, a proceeding involving the question, among others, whether or not through rates existed via Ogden, Utah, in connection with the Denver & Rio Grande Western Railroad Company and the Union Pacific Railroad Company under circumstances somewhat similar to those herein considered, we said, at page 616:

In *Thompson* v. *United States*, 343 U. S. 549, decided June 2, 1952, the Supreme Court considered the question of the content of the term "through route" as used in the act, upon an appeal from a decision of a lower court sustaining our order in *Omaha Grain Exc. of Omaha, Nebr.* v. *Missouri Pac. R. Co.*, 278 I. C. C. 519. Therein, we had affirmed a prior finding of division 2

[5] Since the date of the original hearing, June 1954, rates from and to additional points have been approved by the S. P. & S. on forest products via Spokane in connection with the S. P. & S. and the Milwaukee. As a result thereof, there has been published or approved a full line of joint through rates on those products from all points on the S. P. & S. to all local points and some common points on the lines of the Milwaukee east of Spokane.

that a through route on grain from points on the Central branch of the Missouri Pacific Railroad Company in Kansas, Concordia and west thereof (Lenora, Kans., was used as a typical origin), to Omaha, Nebr., and Council Bluffs, Iowa, in connection with the line of the Chicago, Burlington & Quincy Railroad Company beyond Concordia, was already in existence and therefore did not have to be established preliminary to the exercise of our power to prescribe reasonable rates under sections 1 and 15(1) of the act. The Court held:

"In short, the test of the existence of a 'through route' is whether the participating carriers hold themselves out as offering through transportation service. Through carriage implies the existence of a through route whatever the form of the rates charged for the through service.

"In this case there is no evidence that any through transportation service has ever been offered from Lenora to Omaha via the Burlington. The carriers' course of business negatives the existence of any such through route. * * * Through service to points short of Omaha cannot be used as evidence of the existence of a through route to Omaha * * *. Since there is admittedly no evidence that the Missouri Pacific ever offered through transportation service over the route in question, the Commission's order is without evidentiary support under the accepted tests for determining the existence of a through route."

The Court cited with approval *Beaman Elevator Co.* v. *Chicago & N. W. Ry. Co.*, 155 I. C. C. 313, wherein the Commission held that proof of one shipment on a through bill of lading over a particular route was not sufficient to show the existence of a through route, because, as stated by the Court, "that one shipment was not representative of the carrier's course of business." It thus becomes necessary to determine whether the carriers in this proceeding "hold themselves out as offering through transportation service" from and to the points here concerned via the Ogden gateway as indicated by their "course of business" in respect of traffic over the routes in question.

In the above-cited proceeding the evidence showed that, in a representative year, 55 carload shipments of various commodities moved via Ogden on through bills of lading in connection with the Rio Grande and the Union Pacific, as compared with many thousands in the same year, from and to the same points, at joint rates over the Union Pacific routes. There was no indication that any of the defendants therein had ever solicited any traffic for routing over a Rio Grande route via Ogden by which a higher combination rate applied, or had ever used such a Rio Grande route except where called upon to do so by routing specified by the shipper or by a prior connecting carrier. In finding that there were no through routes, as that term is used in the act, over the Rio Grande via Ogden on the traffic involved therein, and that any order requiring the establishment of such routes, and joint rates over them, must be grounded upon findings, as specified in section 15, that the routes are necessary or desirable in the public interest, and are needed to provide adequate, and more efficient or more economic, transportation, it was stated that so far as the record therein showed "the carriers' course of business" was to use the Union Pacific routes except where specifically called upon to use the Rio Grande routes, and that the shipments mentioned which moved over the Rio Grande routes must be regarded as of an isolated nature and as falling in the same category as the shipment held insufficient to show the existence of a through route in *Beaman Elevator Co.* v. *Chicago & N. W. Ry. Co.*, 155 I. C. C. 313, cited with approval by the Supreme Court in *Thompson* v. *United States*, 343 U. S. 549.

The Supreme Court in *United States* v. *Denver & R. G. W. R. Co.*, 351 U. S. 321, in reversing the judgment of one lower court which had upset our order in the *Rio Grande* case, and affirming the judgment of another lower court insofar as it affirmed our order in that case, stated in pertinent part, as follows:

> We adhere to the "holding out" test of the *Thompson* case. The evidence before the Commission was not such as to compel it to find that the Union Pacific held itself out as offering through service over the Rio Grande lines.

In the instant proceeding, the evidence shows that during 1952, which may be accepted as a representative year, 493 carload shipments were made, on through bills of lading, from origins on the S. P. & S. via Spokane in connection with the S. P. & S. and the Milwaukee to destinations on the Milwaukee, and 4 carload shipments were made from S. P. & S. points via Spokane, over the lines of those carriers, to points on the Milwaukee's connections. The commodities shipped included gasoline and other petroleum products, livestock, forest products, and miscellaneous commodities.

During the same year, 16 carload shipments were made on through bills of lading, in connection with the S. P. & S. and the Milwaukee via Spokane, to destinations on the S. P. & S. Six of these shipments originated at points on the Milwaukee and the remainder at points on its connections. The shipments consisted of livestock, chemicals, motor vehicles, furniture, candy and confectionery, soap, and cleaning and washing compounds. Thus, during the representative year 513 carload shipments, both eastbound and westbound, were interchanged at Spokane between the S. P. & S. and the Milwaukee, as compared with many thousands in the same year interchanged there between the S. P. & S. and the northern lines at joint through rates.

The record indicates that the foregoing 513 shipments moved at joint through rates. There is no indication that any traffic has ever been solicited for routing via Spokane over a Milwaukee-S. P. & S. route by which a higher combination rate applied, or has ever moved over such a route. As pointed out, the joint through rates via Spokane in connection with the S. P. & S. and the Milwaukee apply primarily from and to local points on the lines of the latter. With the exception of the traffic referred to which moved on such rates, "the carriers' course of business" has been and is to use routes via Spokane

composed of the S. P. & S. and the Great Northern or the S. P. & S. and the Northern Pacific. In 1952, the Milwaukee handled 6,384 carloads of freight which either originated or terminated on the lines of the S. P. & S., but, with the exception of the 513 shipments referred to, the interchanges were made at points east of Spokane, mainly at Minneapolis, St. Paul, or Minnesota Transfer, Minn., hereinafter called the Twin Cities.

In view of the foregoing, we find that, with the exceptions above mentioned, there are no through routes, as that term is used in the act, between the areas comprised in the complaint, in connection with the S. P. & S. system and the Milwaukee via Spokane.[6]

Physical location of the railroads concerned.—The eastern termini of the tracks of the S. P. & S. are at Marshall Junction, Wash., southwest of the Spokane city limits, where it connects with the Northern Pacific, and at Fort Wright, Wash., west of said limits, where it connects with the Great Northern. The S. P. & S. operates trains over the separate tracks of these carriers to and from their respective freight and passenger terminals at Spokane under an agreement entered into in 1910. The agreement also provides that the northern lines will perform certain terminal services for the S. P. & S. at Spokane, including the transfer of cars to and from other lines. Any cars moving via Spokane between the S. P. & S. and the Milwaukee are switched by the Northern Pacific between its freight terminal and the Milwaukee interchange tracks.

From those eastern termini near Spokane, a line of the S. P. & S. extends southwesterly 369 miles, along the north bank of the Snake and Columbia Rivers, through the State of Washington to Vancouver, Wash., where it crosses the Columbia and Willamette Rivers and enters Portland, Oreg. Another line of the S. P. & S., called the Astoria line, extends from Portland northwesterly along the south bank of the lower Columbia River to the port of Astoria, Oreg., located at the mouth of that river, thence southerly along the Pacific coast to Seaside, Oreg., a total distance of about 118 miles. These are the main lines of the S. P. & S. There is one S. P. & S. branch line in the State of Washington which extends northeasterly from Lyle through Klickitat to Goldendale, about 42 miles, and another short branch line in the State of Oregon which extends from United Junction, on the Astoria line, through Veronia to Keasey.

[6] The complainant in its exceptions to the proposed report took no exception to the above finding as proposed therein, but, in its reply to the exceptions filed by the defendants and supporting interveners, it argues that through routes already exist. On January 22, 1957, the defendants filed a motion to strike the aforesaid portion of the complainant's reply, to which the complainant replied. Obviously, this matter is in no sense a reply to any matter contained in the exceptions of the defendants and supporting interveners. The motion is sustained.

The line of the Oregon Trunk extends from Wishram, Wash., its junction with the S. P. & S., southerly along the Deschutes River to Bend, Oreg. Its trackage is operated jointly with the Union Pacific. It has no branch lines. The Oregon Electric is located wholly within the State of Oregon. Its main line extends from Portland in a general southerly direction along the Willamette River to Eugene, about 143 miles. It has a branch line extending from Forest Grove Junction to Forest Grove, about 11 miles. Another branch line, known as the Santiam branch, extends along the Santiam River from Albany to Foster, about 32 miles, and a branch off that line, called the Sweet Home branch, extends from Sweet Home to Dollar, 16 miles. The lines of the S. P. & S. and its subsidiaries approximate 950 miles in length.

The Milwaukee, which owns and operates about 10,600 miles of railroad, serves the North Pacific coast ports on Puget Sound in the State of Washington, and its lines in western Washington extend south to Longview. It does not serve Portland or any other point in Oregon. Although it serves Spokane, the main line of its Pacific coast extension bypasses that point and extends eastwardly through Marengo, Wash., Plummer Junction, Idaho, Butte, Mont., Aberdeen, S. Dak., and the Twin Cities to Chicago, Ill. It also has a line which extends south and east of Chicago through Terre Haute, Ind., to Westport, Ind., where it connects with the lines of the New York Central Railroad Company. From Aberdeen it has a line extending southward through Mitchell and Yankton, S. Dak., which, together with other Milwaukee branch lines, serves points in Iowa and Nebraska, including Omaha. The Milwaukee also serves Kansas City, Mo. These lines provide routes between the Pacific Northwest, on the one hand, and the Southwest and East, on the other, which do not require operation through the Twin Cities. The Milwaukee also has a network of secondary main and branch lines in South Dakota, Iowa, Minnesota, and Wisconsin. It reaches the head of the Great Lakes over the rails of the Northern Pacific from St. Paul to Duluth, Minn., and Superior, Wis.

The Northern Pacific and the Great Northern each serves the North Pacific coast ports in Washington and also Portland. Each operates through the northern tier of States between the North Pacific coast on the west and the Twin Cities and head of the Great Lakes on the east. The Great Northern also serves eastern South Dakota and Sioux City, Iowa, and has operating rights over the S. P. & S. and Oregon Trunk which, in connection with its own lines south of Bend, enable this carrier to reach Bieber, Calif., where it connects with the lines of The Western Pacific Railroad Company. Between them the northern lines serve the larger cities in northern Idaho, Montana,

North Dakota, South Dakota, and Minnesota, many of which are also served by the Milwaukee. Both northern lines connect with the Burlington at Laurel, Mont., where traffic is interchanged. Between the Pacific Northwest, on the one hand, and the Southeast, the Southwest, and western Iowa, on the other, the routes of the northern lines via Laurel and the Burlington are shorter than routes via the Twin Cities gateway.

Spokane is on the main transcontinental routes of the northern lines. Each of those lines has its own main-line route between Spokane and Portland via Auburn, Wash., in the case of the Northern Pacific and via Everett, Wash., in the case of the Great Northern. As indicated, a main line of the S. P. & S. extends from a point near Spokane to Portland.

The w. t. l. lines serve the Twin Cities area. As the Twin Cities gateway is the eastern terminus of the northern lines, each of the w. t. l. lines exchanges with those carriers at that gateway traffic that is destined to points east or west thereof. The w. t. l. lines and their connections, defendents herein, reach points throughout official, southern, and southwestern territories.

Carriers operated under common management or control.—The complainant contends that, as the extreme easterly terminus of the lines of the S. P. & S. system is Spokane, the establishment of the routes and joint through rates sought via that point would not deprive those defendants of any portion of their line haul and that, therefore, the provisions of section 15(4) of the act are not here applicable. On the other hand, the S. P. & S. and the northern lines contend that the matters hereinafter stated show that the former are operated in conjunction and under common management or control with the latter, and that if the complainant herein prevails, the northern lines in conjunction with the S. P. &. S. would be short hauled without their consent, in contravention of the act.

Both the stock and the bonds of the S. P. & S. are owned in equal shares by the Great Northern and the Northern Pacific. The Oregon Electric and the Oregon Trunk are wholly owned by the S. P. & S., except for qualifying shares of the latter's stock. The outstanding securities of the S. P. & S. consist of stock of the par value of $40,000,000, issued in 1910 and 1911, and 4-percent bonds, due in 1961, of the face value of $73,710,000. Neither the Oregon Electric nor the Oregon Trunk has any outstanding bonds. The former had some outstanding bonds owned by the S. P. & S. prior to March 31, 1953, but on that date they were canceled.

The investment of the S. P. & S. in road and equipment as of December 31, 1954, was $139,170,506, and the gross capital expenditures up to that date, without deduction for retirements, was $168,181,108.

The sources of these gross expenditures were $76,403,278 from the Great Northern and Northern Pacific ($38,201,639 each); outside capital (equipment obligations) $9,310,672, and the S. P. & S. from operations, $82,467,158. Most of the latter investment in road and equipment was made possible because the northern lines had not pressed for the payment of interest in default on the outstanding bonds of the S. P. & S. From 1926 to 1952, inclusive, the accrued and unpaid bond interest aggregated $79,465,638, and as of December 31, 1952, the northern lines canceled this amount in its entirety.

In addition to the cancellation of accrued interest on bonds, the northern lines have assisted the S. P. & S. financially in other ways. Over the years they made loans to it aggregating $13,708,310, which have been repaid in full. In 1938, for example, they advanced $550,000 to that carrier to enable it to pay taxes. The northern lines assert that such transactions show that the S. P. & S. has been dependent upon them from a financial standpoint, and that they in effect act as bankers for it.

The S. P. & S. has never paid any dividends on the par value of its capital stock of $40,000,000 owned by the northern lines. At an annual rate of 4 percent, the dividends, if paid, would have amounted to $1,600,000 a year, which from 1910 to 1955 would have aggregated $72,000,000. Considering that item, the bond interest canceled, and the advances previously mentioned, it appears that it has cost the northern lines approximately $218,000,000 to keep the S. P. & S. in operation since 1910.

The S. P. & S. is dependent, to a substantial extent, upon the northern lines for car supply. The S. P. & S. defendants own 2,063 boxcars, which are not sufficient for their needs. They order freight cars directly from the northern lines, each of which assumes the responsibility for furnishing half of the extra cars required by the S. P. & S.

From the beginning of the operation of the S. P. & S. in 1909 to the present time the management thereof has passed through three phases, the first of which extended to 1932. In that period the S. P. & S. had a separate president under whom there was a complete administrative organization at Portland, which functioned, at least from 1913, under direction of the northern lines. The instructions by the officials of the northern lines to the officials of the S. P. & S. covered everything from capital expenditures, including expansion projects, to traffic and operating matters. Instructions were sometimes sent to the officials of the S. P. & S. without any prior consultation with those officials.

The second management phase of the S. P. & S. extended from 1933 to 1940. In that period the positions of president and vice president

of the S. P. & S. were alternated each year between the presidents of the northern lines, so that in 1 year the president of the Great Northern was president of the S. P. & S. and the president of the Northern Pacific was vice president, and in the following year the latter became the president and the former the vice president of the S. P. & S. During that period there was a superintendent in charge of S. P. & S. operations, but each department head of the S. P. & S. each year reported to, and received instructions from, the corresponding department of the northern line whose president was also the president of the S. P. & S. for that year. There was then no official of the S. P. & S. in Portland in overall charge of S. P. & S. operations.

The third management phase of the S. P. & S. extends from 1940 to the present time. In that year the individual who had been superintendent at Portland in immediate charge of the S. P. & S. operating department was given the title of vice president, but the presidency and the system vice presidency were still held, as they are today, by the northern-line presidents who, as formerly, alternate each year in those positions. All questions which go to the northern lines from S. P. & S. departments are usually routed through the latter's vice president in Portland, but he does not act on any matter of importance without the authority or approval of the two presidents of the northern lines.

The S. P. & S. defendants observe corporate formalities by formal elections of the boards and officers thereof, but that action is taken only in accordance with specific directions of the northern lines as to the personnel of the boards and officers. The boards of those defendants are composed of the 2 northern lines' presidents, the northern lines' vice presidents in Seattle, and the S. P. & S. general counsel. The boards take no action other than to elect officers or, upon the direction of the northern lines, to adopt a resolution to support corporate action such as the filing of an application with this Commission. The executive committee of the S. P. & S., established in 1940, consists of the 2 presidents of the northern lines, with the 2 Seattle vice presidents designated as alternate members. It has never met formally, except once a year to ratify the execution of S. P. & S. documents which in that year had been executed by the northern lines' executives in their capacities as officers of the S. P. & S.

Some matters relating to the S. P. & S. are handled by the executive departments of the northern lines. Such matters are first brought to the attention of the two vice presidents in the executive departments and many are disposed of after discussions between them without submision to the presidents, and letters are sent out announcing the conclusions in the name of the president of the S. P. & S. The more important matters are referred to the two presidents for their disposition. Although in each year one northern-line president is the president of the S. P. & S. and the other is vice president, there is no difference in the authority exercised by each except in the title used in signing documents.

As to the control of traffic practices and policies of the S. P. & S. by the northern lines, the evidence shows that there is no essential difference in the control exercised by the latter over such matters as distinguished from nontraffic matters. Although the freight traffic practices and policies of the S. P. & S. are directed and controlled jointly by the traffic departments of the northern lines, the local officials of the S. P. & S. are authorized to act within the framework of policies determined by the northern lines without specific approval from the traffic departments of the latter on each question which arises.

Matters relating to S. P. & S. rates fall into these general categories: Rates and practices relating to S. P. & S. local territory, rates and practices on traffic other than transcontinental traffic, and rates and practices relating to transcontinental traffic. As to the first category, the S. P. & S., with minor exceptions, is permitted, without specific approval in advance, to place such matters on the North Pacific Coast Freight Bureau docket to be handled in the regular course. Rates which fall in the second category are not placed by the S. P. & S. on that docket without approval in advance by the northern lines. If a proposal in that category is opposed by representatives of both northern lines, the S. P. & S. follows the lead of the representatives of those lines. There are instances, however, where the representatives of the northern lines are not in agreement on a proposal. In such cases the S. P. & S., in accordance with the practice approved by the northern lines, is permitted to exercise its best judgment in voting. In the third category, which relates to transcontinental traffic, all matters pertaining thereto are handled for the S. P. & S. by the representatives of the northern lines at the Transcontinental Freight Bureau meetings.

The S. P. & S. has no off-line representatives soliciting traffic. All off-line solicitation is handled by representatives of the northern lines. All agents of the northern lines are direct agents of the S. P. & S. The latter has solicitors in its local territory who solicit traffic for movement over the northern lines, and they make no distinction between the two in their solicitation efforts. The choice as between the northern lines is left entirely to the shipper or consignee without any effort by the S. P. & S. to influence the choice. As each of the northern lines has competitive routes over its own rails as far as Portland to and from a major portion of the S. P. & S. territory and to and from California beyond the S. P. & S., it is apparent that the

northern lines have, through their own traffic solicitors, the power of life and death over the S. P. & S.

In the light of the foregoing, the S. P. & S. and the northern lines urge that the traffic policy of the former is controlled by the latter. They refer to *Blackshear Mfg. Co.* v. *Atlantic Coast Line R. Co.*, 87 I. C. C. 654, decided in 1924, hereinafter called the *Blackshear* case, regarded as a leading case on the question of what constitutes common management or control for the purpose of determining whether joint-line or single-line rates should be applied. Therein two distance scales of rates were prescribed. One was a single-line scale for application over a single line of railway "or over two or more lines under the same general management and control," and the other a joint-line scale which applied "only when the lines embraced in the route are not under common ownership or control." In explaining the phraseology thus used, the Commission stated, at page 664:

> It should be understood that where the term "carriers under the same management and control" is used in this report, it refers to carriers generally controlled through ownership, lease, or otherwise to the extent of controlling traffic policy, even though separate corporate entity may be maintained.

See also *John L. Humbard Construction Co.* v. *Southern Ry. Co.*, 161 I. C. C. 38, to the same effect.

In 7 separate proceedings, 3 of which were prior to the *Blackshear* case and 4 thereafter, this Commission commented that the S. P. & S. must be regarded, for ratemaking purposes, as a part of the Great Northern and Northern Pacific systems rather than as an independent line. The first of these proceedings was *Portland Chamber of Commerce* v. *Oregon & Nav. Co.*, 19 I. C. C. 265, decided in 1910, in which the following appears, at page 283:

> It [the S. P. & S.] was built by the Great Northern and Northern Pacific jointly for the purpose of relieving congestion, avoiding double tracking over the Cascade Monutains, and furnishing a road of low grades from western Washington to tidewater on the Pacific Coast. * * * So far as these proceedings are concerned, we believe the road must properly be considered a part of the Northern Pacific and Great Northern systems rather than as an independent line. It is used by the great Northern and Northern Pacific in the transportation of all business between coast and interior points which can be handled more cheaply over it than over the existing lines of the Great Northern or Northern Pacific.

In every proceeding wherein the question arose since 1910 and as late as 1952, in *Helix Milling Co., Inc.*, v. *Great Northern Ry. Co.*, 287 I. C. C. 77, we have adhered to the foregoing pronouncement; namely, that the S. P. & S., for ratemaking purposes, must be treated as a part of the systems of the northern lines rather than as an independent line.

The definition in the *Blackshear* case as to what constitutes "common management or control" in determining whether single-line or joint-line rate scales shall be prescribed has been applied also in interpreting this phrase as contained in section 15 (4) of the act in proceedings concerning discrimination and undue prejudice under section 3 (4) of the act, as well as the question of short hauling. In *Seaboard Air Line Ry. Recs.* v. *Carolina & N. W. Ry. Co.*, 204 I. C. C. 416, we stated, at page 420:

All of the outstanding bonds of the Carolina & Northwestern are owned by the Southern. * * * The Southern has the equitable title to and control of all of the preferred stock and about 99 percent of the common stock of the Carolina & Northwestern. The president of the Southern is also president of the Carolina & Northwestern. The comptrollers and treasurers of both carriers are the same. * * * The officials of the Carolina & Northwestern determine the policy to be adopted with regard to traffic matters local to that carrier, but in matters of common interest between the Southern and the Carolina & Northwestern the policy determined by the Southern prevails. It is apparent, therefore, that both carriers are operated under a common management and control.

Accordingly, it was concluded that the refusal of the Carolina and Northwestern Railway Company to participate with the Seaboard Air Line Railroad Company in joint rates the same as those in which it participated with the Southern Railway Company was not discriminatory or unduly prejudicial under section 3 (3) (now section 3 (4)) of the act. See also *Georgia & F. R.* v. *Atlantic Coast Line R. Co.*, 191 I. C. C. 489.

The definition in the *Blackshear* case was quoted with approval in *Alabama, T. & N. R. Corp.* v. *Southern Ry. Co.*, 148 I. C. C. 708, wherein it was held that the Southern, The Cincinnati, New Orleans and Texas Pacific Railway Company, and The Alabama Great Southern Railroad Company were under common management and control within the meaning of section 15 (4) of the act, and that the latter two carriers could not be required to establish a route with the complainant therein which would shorthaul the Southern. See also *Port of New York Authority* v. *Atchison, T. & S. F. Ry. Co.*, 144 I. C. C. 514, 519, and *Western Pac. R. Co.* v. *Northwestern Pac. R. Co.*, 191 I. C. C. 127, hereinafter called the *Western Pacific* case.

The complainant refers to a number of tariffs containing miscellaneous local distance scales of rates applicable from and to territory served by the S. P. & S. defendants, and shows that in the application of none of those scales is the rate for the combined hauls on the S. P. & S. and the Great Northern or the S. P. & S. and the Northern Pacific arrived at on a through distance basis, but, on the contrary, in each case, a combination of local rates of each carrier is the legally applicable charge. The mere voluntary publication of isolated distance scales of rates in this manner does not prove that

the S. P. & S. and the Great Northern or the S. P. & S. and the Northern Pacific should not be treated as single lines for ratemaking purposes. The above-mentioned proceedings show that they have been treated as such by this Commission. In *Caron & Campbell* v. *Director General*, 57 I. C. C. 474, the action of the Missouri Pacific Railroad Company in applying combination rates over different portions of its own system was not condemned.

The same tariffs which provide for the application of the combination rates between the S. P. & S. and each of the northern lines also provide for the application of similar combinations for movements between different segments of the S. P. & S. system itself; that is, between points on the Oregon Electric and points on the S. P. & S., and between points on the Oregon Trunk and points on the S. P. & S. There is no contention that the S. P. & S. system defendants are not under common management or control.

As to the important moving commodities herein, such as lumber eastbound, and grain and manufactured articles westbound, there are no combination rates between the S. P. & S. and either of the northern lines. It is true, as pointed out by the complainant, that, in dividing the revenues under the joint rates on such commodities, the S. P. & S. receives divisions separate from the divisions received by the northern lines. The record shows that the Oregon Electric and the Oregon Trunk also receive divisions separate from the S. P. & S.

The fact that the S. P. & S. has always had a separate vote and separate status from the northern lines on committees of the North Pacific Coast Freight Bureau is stressed by the complainant as indicating that the S. P. & S. defendants and the northern lines are not operated under common management or control. It is provided in the articles of organization and procedure of the bureau, which are incorporated in the western traffic agreement, approved by us under section 5a of the act on December 15, 1949, that where 2 or more carriers are under common management or control such carriers shall be considered as 1 member and have 1 vote. The record shows that from its organization, in 1920, until the adoption of the western traffic agreement, the bylaws of the bureau contained no provision relating to the voting powers of carriers under common management or control. On the assumption that the S. P. & S. has not had the right to vote since the adoption of that agreement, action has been taken by the northern lines to secure an amendment to the rule concerned so as to permit the S. P. & S. to vote. In the light of the evidence of record pertaining to the question of common management or control, heretofore discussed, this matter is not determinative of the issue raised in connection therewith.

The complainant further contends that the S. P. & S. cannot be regarded as under common management or control with the Great Northern, in considering traffic as to which the Great Northern has the long haul in conjunction with the S. P. & S., and at the same time under common management or control with the Northern Pacific, in considering traffic as to which that carrier has the long haul in conjunction with the S. P. & S. It is conceded by the complainant that the northern lines, through the executive committee of the S. P. & S., can exercise control of the latter, but it contends that as the northern lines themselves are not under common management they cannot qualify for exemption from shorthauling under the provisions of section 15 (4) of the act.

Among the many cases wherein this Commission has commented upon the status of the S. P. & S. is *Inland Empire Shippers League* v. *Director General*, 59 I. C. C. 321. Therein it was stated, at page 341:

the Spokane, Portland & Seattle is controlled jointly by the Great Northern and the Northern Pacific, and the vice president of the Northern Pacific testified that it is used by these companies "as they would use their own line."

Numerous cases support the view that a railroad can be considered the instrumentality of its competitive-carrier owners so that the former is under the common control of each. In *Russ Market Co.* v. *Northwestern Pac. R. Co.*, 171 I. C. C. 117, it was stated that the Northwestern Pacific Railroad Company was built, and is owned and operated, by the two systems named (the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company), and for all ratemaking purposes must be considered as part thereof. In *Des Moines Union Ry. Switching*, 231 I. C. C. 631, 637, the statement appears that it was the purpose of the proprietary companies from the beginning to construct and operate but one facility, instead of each building and maintaining its own facilities, and to construct and use those facilities in common so that each might have the benefit of them as fully as though it were the sole owner. In *Louisville & N. R. Co.* v. *United States*, 242 U. S. 60, the Supreme Court had under consideration the question of whether the Louisville and Nashville Railroad Company and The Nashville, Chattanooga & St. Louis Railway through their joint ownership of the Nashville Terminals were discriminating against the Tennessee Central Railway Company by requiring their joint agency to perform switching for each of them while refusing to permit it to switch for other lines. The Court said, beginning at page 72:

If the intent of the parties or the purpose of the arrangement was material in a case like this, obviously there was none to discriminate against the Tennessee Central Road. That road did not enter Nashville when the plan was formed, and the two appellants had a common interest, although competitors,

an interest that was also public and in which the city of Nashville shared. * * * if either carrier owned and used this terminal above, it could not be found to discriminate against the Tennessee Central by merely refusing to switch for it, that is, to move a car to or from a final or starting point from or to a point of interchange. We conceive that what is true of one owner would be equally true of two joint owners.

The record in the instant case points to a like conclusion; that is, that the common interest in the S. P. & S. of the Great Northern and the Northern Pacific, although competitors, is such that they jointly manage and control the S. P. & S. One fact stands out in this proceeding; namely, that it has always been the policy of the northern lines to preserve to themselves the long hauls on traffic originating or terminating on the S. P. & S. There is nothing of record to indicate that they have ever disagreed as to this. The considerations which led the northern lines into that policy determination are immaterial so long as the S. P. & S. has no choice except to follow directions. See *Seaboard Air Line Ry. Recs.* v. *Northwestern Ry. Co.*, *supra*.

We find that the S. P. & S. system lines are operated in conjunction with and under a common management and control with the northern lines, as that term is used in section 15 (4) of the act. We further find that the S. P. & S. is not unlawfully discriminating in its rates and charges between the northern lines and the Milwaukee.

It follows that any order requiring the establishment of routes in connection with the Milwaukee and the S. P. & S. via Spokane, and joint rates thereover, must be grounded upon findings, as specified in section 15, that the routes sought are necessary or desirable in the public interest, and are needed in order to provide adequate, and more efficient or more economic, transportation. Thus, the remaining issue in this proceeding is whether the Spokane gateway should be made available to shippers for routing, at joint rates and charges equal to those over competitive routes, of all traffic moving between points on the lines of the S. P. & S., on the one hand, and points generally east of Spokane, on the other, in connection with the Milwaukee. That issue falls within the limitations of section 15 (3) and (4).

Evidence in behalf of the complainant.—Complete track connections and interchange facilities between the complainant and the S. P. & S. have long been installed and in actual use at Spokane, and joint through rates and agreed divisions of such rates between these carriers have long been in effect via that gateway. As above mentioned, certain tracks of the northern lines are used in the interchange operations there. Freight traffic moving under such rates has been interchanged at Spokane for a number of years between these carriers, but only to the limited extent indicated above. All such traffic must either originate or terminate on the lines of the complainant, and no joint through rates apply via Spokane on traffic to or from the complainant's connections, with the single exception of export and import rates referred to in appendix B. Mainly combination rates apply, which are on a substantially higher level than the unrestricted joint through rates applicable via Spokane on all freight traffic there interchanged between the S. P. & S. and the northern lines. As stated, the record fails to disclose that any shipments have moved at combination rates.

Because of the above situation, the complainant is restricted in its participation in freight traffic, either originating at or destined to points on the S. P. & S., except as described above, to the handling of such traffic between junctions of the complainant with the northern lines and their connections at points on and east of the Missouri River, and also at some points in Montana and points east and south thereof, hereinafter called eastern gateways, the principal one of which is at the Twin Cities.

The Milwaukee does not seek the establishment of joint rates from or to Spokane proper in connection with the S. P. & S., as an origin or destination line, as shipments to or from industries thereon are handled in switching service with the northern lines.

At the time of the complainant's extension to the Pacific coast, in 1909, and until recent years, the State of Washington was the center of lumber production in the Pacific Northwest. With large timber resources adjacent to its line, the complainant was able to handle all the timber consumed in its areas and to provide through routes for it, not only to local points on its line but also to points on its eastern connections. With the depletion of timber in Washington, the principal source thereof shifted to Oregon. The absence of joint through rates on lumber and forest products from S. P. & S. points in Oregon to points on the complainant's connections restricts shipments into the territory of the complainant, largely because of the lack of diversion privileges. Frequently lumber shipments are diverted in transit. A shipment destined to a point on the complainant's line, if diverted to a point on another line, would be subject to higher charges than if the joint through rates sought were in effect.

The complainant asserts that it has been at a further disadvantage respecting traffic to or from noncompetitive points on its lines west of the Missouri River for the reason that, in some instances, shippers, in order to obtain the lowest combination of local rates, must route their traffic via the nearest junction of either of the northern lines, thereby depriving the complainant of a substantial line haul. As to westbound traffic, which originates on the Milwaukee and its connections east of the Twin Cities and destined to points on the S. P. & S., the Milwaukee, because of the existing rate situation, must give

that traffic to the Great Northern or the Northern Pacific at the Twin Cities. These carriers obtain a haul thereon of almost 1,500 miles before delivering it to the S. P. & S. at Spokane. The Milwaukee wants to be in a position to solicit this traffic for the haul over its line from the Twin Cities to Spokane, as well as eastbound traffic from Spokane.

As previously mentioned, the Milwaukee, during 1952, handled 6,384 carloads of freight which either originated or terminated on the lines of the S. P. & S., and only 513 of those cars were interchanged at Spokane between the Milwaukee and the S. P. & S. The Milwaukee received $850,416.46 in revenue for its participation in the handling of this traffic. If all these cars had been interchanged at Spokane between the S. P. & S. and the Milwaukee, it is estimated that the latter would have received total revenue therefrom of $3,382,755.21, or an increase of $2,532,338.75. These estimates are made, the complainant asserts, to show that there is a substantial amount of revenue from traffic that it does not have the opportunity of soliciting because of the existing rate situation at Spokane. The complainant emphasizes that it does not seek exclusive joint through rates restricted to its line between eastern gateways and points east thereof on any traffic originating or terminating on the S. P. & S. and interchanged at Spokane.

The record shows that traffic which originates on the Milwaukee at points west of the Twin Cities destined to points east thereof is interchanged in substantial quantities with w. t. l. lines at that transfer point even in instances where the Milwaukee could possibly carry the traffic through to destination. In 1953, for example, 16,574 cars of lumber and forest products were brought to the Twin Cities by the Milwaukee. Based on studies made for 4 months of that year, it is estimated by the complainant that 4,503, or about 27 percent, of those cars were interchanged with four w. t. l. lines which actively participated in the proceeding.

There are at present joint through rates on various commodities and classes of traffic between points on the Milwaukee and connections and the Union Pacific and its connection in Oregon and Washington, and also between points on the former and connections and points on the Southern Pacific in Oregon, including Eugene and Salem, which are also reached by the Oregon Electric, but the rates on lumber eastbound do not apply to points on connecting lines south of a line extending from Chicago to Omaha, and the rates on other traffic both eastbound and westbound are restricted, with the exception of transcontinental export and import rates and as to westbound traffic moving over the Milwaukee in connection with the Union Pacific and the Southern Pacific via Marengo. These carriers do not permit milling or other transit privileges on lumber and related articles at points on their lines in connection with movements via Marengo and the Milwaukee. Also, the lumber rates via western junctions from Union Pacific and Southern Pacific origins to points in official territory are restricted to across lake routes north of Chicago. With minor exceptions, the Milwaukee is without eastbound rates via western junctions from Portland and other points on the Union Pacific or its connections to destinations generally in Nebraska, southern Iowa, southern Illinois, and south thereof, and also to southern territory. An insignificant volume of traffic is interchanged at Marengo for movement to official territory over across lake routes.

There are no physical difficulties in connection with the interchange of traffic moving in either direction between the Milwaukee and the S. P. & S. at Spokane. Cars from the S. P. & S. to the Milwaukee move with Northern Pacific cars to the Milwaukee at the Northern Pacific interchange yard, about 1.2 miles. Those from the Milwaukee to the S. P. & S. are delivered by the Milwaukee at the Northern Pacific yard during the period when the Northern Pacific is handling cars for the account of the S. P. & S. Any cars received by the Milwaukee from the S. P. & S., are taken to the former's yard in Spokane and placed in trains for eastbound movement.

The distances between Spokane and the Twin Cities over the Milwaukee, the Great Northern, and the Northern Pacific are 1,469, 1,454, and 1,496 miles, respectively. All three are standard transcontinental railroads with similar access through their connections to all parts of the United States.

Typical examples of the present carload rates over Milwaukee and S. P. & S. routes, as compared with those over the S. P. & S. and one northern line, or both, respectively, together with the respective distances are: On lumber from Eugene to Chicago, $1.245 and $1.115 for distances of 2,302 and 2,271 miles; on lumber from Portland to Pittsburgh, Pa., $1.555 and $1.29 for distances of 2,708 and 2,734 miles; on frozen strawberries from Portland to Pittsburgh, $2.78 and $1.75 for distances of 2,708 and 2,734 miles; on pears from Bingen-White Salmon, Wash., to Milwaukee, Wis., $2.67 and $1.84 for 2,092 and 2,062 miles; on agricultural implements from Rock Island, Ill., to Portland $3.17 and $2.47 for 2,179 and 2,155 miles; and on structural iron and steel from Chicago to Portland, $1.89 and $1.48 for 2,252 and 2,278 miles.

The Milwaukee operates 2 regularly scheduled freight trains between Tacoma, Wash., and Chicago, 1 eastbound and the other westbound, and there is regularly scheduled connecting service between Plummer Junction, on the main line of the Milwaukee southeast of Spokane, and Spokane for both trains. Additional main-line service is provided, as required, to meet traffic requirements. As of June 4, 1954, the Milwaukee owned 55,033 freight cars, the S. P. & S., 3,444, the Great Northern, 38,738, and the Northern Pacific, 37,086. The Milwaukee usually has sufficient cars on hand, not only to supply its own needs and the specific requests from connecting lines, but also to report excesses to the Association of American Railroads, hereinafter called the A. A. R.

The maximum grade, eastbound, on the line of the Milwaukee between Spokane and the Twin Cities is 1.7 percent, as compared with maximum grades of 1.8 percent on the Great Northern and 1.9 percent on the Northern Pacific. The maximum grades westbound for the Milwaukee, Great Northern, and Northern Pacific are 2.2, 1.0, and 2.2 percent, respectively. The operating conditions, mile for mile, on the respective routes are substantially similar.

Between Avery, Idaho, and Harlowton, Mont., 440 miles, and between Othello, Wash., and Seattle and Tacoma, approximately 225 miles, the line of the Milwaukee is electrified.

The Milwaukee acquired 12 additional electric locomotive units in 1950 and retired some units, so that the total units changed from 102 in 1950 to 105 in 1953. As of September 30, 1954, the Milwaukee's locomotive power was 60,741,353 pounds of starting tractive effort, which is a standard unit of comparison, as compared with 60,494,467 pounds as of September 30, 1943. The percentage of gross ton-miles operated on the Milwaukee lines, as a whole, by steam, diesel, and electric locomotives in 1943 was 86.7 percent steam, 6.5 percent diesel, and 6.8 percent electric. In 1954, the percentages were 7.7, 84.7, and 7.6 respectively. Upon completion of the delivery of 74 additional diesel locomotives on order, the Milwaukee will be completely dieselized on the portions of its line not covered by electric operation. Among its recent improvements or additions, the Milwaukee, in 1953, completed a 70-track hump classification yard with automatic switching and pushbutton speed control at Bensenville, Ill. In 1952 the same thing was done at its yard in Milwaukee, and in 1947 an extension of its St. Paul yard was completed. The cost of the foregoing was approximately $9,000,000.

From South Minneapolis, Minn., to Mobridge, the distance over the Milwaukee is 382 miles, of which 147 miles are under centralized traffic control. This type of control, which speeds up operation, is also in use on a portion of the Milwaukee's trackage in the Twin Cities area.

From the Twin Cities to the Pacific coast, the Milwaukee, in 1953, handled 11,439,631,000 gross ton-miles of all classes of freight traffic. In 1943, the total was 14,559,747,000, or 127.27 percent of the 1953 tonnage. The total Milwaukee freight gross ton-miles for 1953 were 36,730,763,000, as compared with 41,770,570,000 in 1943. The record indicates that the Milwaukee has adequate facilities for handling a greater amount of traffic than it now enjoys.

Transit.—The Milwaukee offers a large number of transit privileges at points on its line. These include the customary transit privileges such as stops for partial loading or unloading, storage, grading, packing, sorting, consolidating, concentration, milling, fabrication, assembling, and distributing of many commodities, and in the case of livestock, grazing, feeding, and trying the market, among others. Such privileges, considered valuable by certain shippers in marketing operations and permitting freer flow of traffic through the transit points, are available only when joint rates via the transit points are maintained. These privileges would become applicable automatically under the single-factor through rates sought in this proceeding. Below are shown instances where they could be used advantageously by shippers.

In the case of shipments of sheep originating at Washtucna, Wash., or some other local point on the S. P. & S., stopping in transit for summer grazing in the areas along the lines of the Milwaukee in northern Idaho would be permitted under the transit arrangement. Later, the sheep could be marketed in the Midwest or East, and the through rate from point of origin would apply. Shipments of lumber originating at points on the S. P. & S. might be stopped at St. Maries, Idaho, a local point on the Milwaukee, 63 miles east of Spokane, for the completion of loading or for further finishing, and shipped to off-line markets at joint through rates. A feed-mill operator at Spokane, with customers or branches on the S. P. & S., would be able to couple up credits representing movements of wheat or its products from Milwaukee points in Montana with soybean meal from Minnesota and corn from Iowa, for example, and secure protection of the balance of the through rates on the entire mixture, whereas under the present restricted application of rates such a shipper must forego the use of Milwaukee originated tonnage or be subjected to the local rate from Spokane to S. P. & S., destinations, which would result in transportation charges substantially higher than on grain originating at common and cross-country points on the northern lines in Montana. For example, the absence of the joint through rates sought prevents the use of the milling-in-transit privilege at Harlowton on wheat originating at Geraldine or numerous other Milwaukee stations in Montana when destined to Pasco and Goldendale, Wash., Astoria, Oreg., and numerous other local points on the S. P. & S.

It is a common practice to stop for partial unloading shipments of manufactured articles from the East to Pacific coast destinations at 2 or 3 intermediate points en route. There are many points in the intermediate territory, served exclusively by the Milwaukee, which

are now precluded from that privilege because of the restricted application of rates over the Milwaukee to S. P. & S. points. Higher combination rates would apply if a shipment were stopped at a Milwaukee point for the purpose mentioned.

There are many points in Montana which are common to the Milwaukee and to only one or the other of the northern lines. Great Falls is served by the Milwaukee and the Great Northern and is designated as an intermediate point for the purpose of stops in transit. Missoula, which is served by the Milwaukee and Northern Pacific, is also an intermediate point. Under Milwaukee tariffs, a shipment moving beyond Missoula may be stopped in transit at both Great Falls and Missoula. The same situation applies with respect to Lewiston, served by the Milwaukee and the Great Northern, and Bozeman, served by the Milwaukee and the Northern Pacific. The Milwaukee is in a position to combine shipments, Lewiston with Bozeman or Great Falls with Bozeman or Missoula, under the rates sought, and protect the through rates on transcontinental movements. Neither the Great Northern nor the Northern Pacific could do this.

On westbound transcontinentaal shipments, it is sometimes necessary for shippers to change the destination point en route. For instance, on a shipment initially consigned to Seattle, with stops at intermediate points on the Milwaukee, the competitive rate to that destination would be protected, but, should it become necessary also to stop at an S. P. & S. point, or to change the destination to an S. P. & S. point, the shipment would be subjected to a higher combination rate.

Among westbound transit privileges at stations served by the Milwaukee between Mobridge, S. Dak., and the Twin Cities, which would be available if the Spokane gateway were open on an equality of rates in connection with the Milwauke to S. P. &. S. territory, is the privilege of stopping to complete loading of dairy products, and the transiting of canned goods at Glencoe, Minn., a local station on the Milwaukee. Similar conditions obtain on eastbound shipments, such as lumber, fresh fruits and vegetables, and seeds. Transit privileges are especially valuable at small stations where full carloads cannot be handled economically. As to lumber, while there are through rates on lumber and lumber products via Spokane to various local points on the Milwaukee, a shipper who diverts a shipment to an off-line destination beyond the local point must pay freight charges at the higher combination rates. This situation acts as a deterrent to the establishment of plants for the milling or manufacturing of lumber at points on the Milwaukee. Between Spokane and Mobridge, S. Dak., the Milwaukee serves 315 local points.

The Secretary of Agriculture takes the position that the exclusion of the Milwaukee from full participation in the traffic moving to and from the S. P. & S. territory makes impossible the desired flexible and expeditious distribution of agricultural commodities and farm supplies by producers and shippers. The evidence shows that large quantities of agricultural commodities are produced in and distributed from the Pacific Northwest; that Oregon and Washington are surplus-producing areas for many of such commodities; and that Spokane is an important gateway for their distribution.

From 1940 to 1950, the population of Washington increased 37 percent and that of Oregon by 39.6 percent. The number of cattle, calves, sheep, and lambs on farms in those States increased from 2,278,000 in 1950 to 3,490,000 in 1954. The sales of such important commodities as wheat, corn, and oats in 7 of the States in the considered area; namely, Iowa, Minnesota, Montana, Oregon, South Dakota, Washington, and Wisconsin, increased from 411,908,000 bushels in 1939 to 700,517,000 bushels in 1952. In Oregon and Washington, apples, pears, and potatoes produced for marketing increased from 44,487,000 bushels in 1939 to 54,325,000 bushels in 1952. During the same period vegetables and noncitrus fruits produced for commercial processing increased from 380,606 tons to 563,743 tons. In those 2 States poultry sales increased from 66,640,000 pounds in 1939 to 146,823,000 pounds in 1952. In the same period the production of cheese in the 7 States mentioned above increased from 419,869,000 pounds to 654,694,000 pounds. The production of lumber in Oregon and Washington increased from 9,008,803,000 board-feet in 1939 to 12,527,000,000 board-feet in 1952. The exports of agricultural products through the ports of Astoria, Portland, and Vancouver increased from 864,356 tons in 1939 to 1,851,487 tons in 1952.

In 1953 alone, 12,909 carloads of Oregon and Washington potatoes were shipped to 100 markets located throughout the United States, including numerous markets served by the Milwaukee. In the same year a total of 3,551 carloads of fruits and vegetables originated at points served by the S. P. & S., and it interchanged 5,015 carloads of products of agriculture at Spokane with the northern lines.

Both the main line and the Elk River branch of the Milwaukee traverse the St. Joe National Forest in Idaho, and the Forest Service has made 43 allotments for the grazing of cattle and sheep there, which comprise an area of 826,160 acres, having a carrying capacity of 24,900 sheep and 3,758 head of cattle. That the grazing areas are not being used to capacity is shown by the fact that in 1954 the aforementioned area had only about 8,000 head of sheep. Extensive logging operations in Idaho, in both the national forest and other areas, add to the grazing areas as the timber is removed. Greater utilization

of these areas for summer grazing, the evidence indicates, would increase the volume of movement of livestock on the Milwaukee to eastern feed lots, mainly in Iowa, Minnesota, and Illinois.

On its main line between Spokane and the Twin Cities the Milwaukee has major livestock feeding and watering facilities at Avery, Deer Lodge, Harleton, and Miles City, Mont., and Aberdeen and Montevideo, Minn. As of October 1954, the Milwaukee owned 2,581 single-deck and 738 double-deck stock cars.

Evidence on behalf of the defendants.—The S. P. & S. system defendants admit that they have refused to enter into a full line of joint rates with the Milwaukee at the Spokane gateway, but state that the Milwaukee's request for such rates has been declined at the direction of the northern lines.

All stations on the Oregon Trunk, except Wishram, Wash., are also stations on the Union Pacific. Many stations on the Oregon Electric, including Portland, are also stations on the Southern Pacific. The principal stations on the S. P. & S. proper in the Portland area are also served by either the Union Pacific or Southern Pacific, or both, as well as by the northern lines. The Union Pacific and Northern Pacific serve Kennewick, Wash., on the line of the S. P. & S., 151 miles southwest of Spokane. The Union Pacific also serves a number of smaller stations in Washington reached by the S. P. & S., and its line on the south bank of the Columbia River parallels the line of the S. P. & S., on the north bank for many miles.

Routes on traffic moving over the S. P. & S., between points on its lines and points generally east of Spokane, are designed to preserve to the northern lines their long hauls. With minor exceptions, heretofore mentioned, joint through rates apply only via Spokane in connection with the northern lines east of Spokane; via Pasco, Wash., 148 miles southwest of Spokane, in connection with the Northern Pacific east of Pasco; and via junctions in the Portland area and a northern line beyond. From and to common points on the S. P. & S. and the Southern Pacific, there are routes over the latter through various gateways, including Ogden, El Paso, Tex., and Portland. From and to common points on the S. P. & S. and the Union Pacific, there are routes in connection with the latter via Council Bluffs, Iowa, Kansas City, and Marengo, 62 miles west of Spokane over the Milwaukee, among other junctions.

In 1953, the Northern Pacific handled 37,907,214,000 gross ton-miles of all classes of traffic, as compared with 42,342,309,000 in 1943. The starting tractive effort of its motive power increased from 45,244,000 pounds to 48,601,000 pounds in 1953. While the decrease in the gross ton-miles of freight handled by the Great Northern from 1943 to 1953 has not been significant, there has been a the number of cars over that portion of its line over which S. P. & S. traffic moves. During the period mentioned, its net investment in road and equipment showed a net increase of $180,625,510. The evidence shows that both northern lines have surplus capacity, and efficiently operated, and furnish good service to shippers over their lines. They provide numerous through freight trains each day between Spokane and the Twin Cities.

The distances over the existing routes of the S. P. & S. and one or the other of the northern lines are comparable with the distances over the routes sought by the Milwaukee. To illustrate, from Pasco, Wash., to numerous points east of Montana, the percentage of circuity over a Milwaukee route in no instance is in excess of 2 percent over the shortest northern-line route.

As to certain types of freight cars, such as 50-foot boxcars and refrigerator cars, the combined ownership of the northern lines is much greater than that of the Milwaukee. Although conceding that car ownership is not necessarily determinative of ability to supply cars, the northern lines insist that they are in a better position to supply the S. P. & S. lines with cars than are other carriers. They take into consideration the requirements of those lines in placing orders with the Car Service Division of the A. A. R., and in supplying those lines with cars the northern lines treat them the same as they do operating divisions on their own systems. The northern lines furnished the S. P. & S. with 18,149 cars in 1953 and 21,034 cars in 1954.

The only car shortages on the S. P. & S. in 1953 were in the heavily insulated and mechanical-type refrigerator cars, which occurred for brief periods in July and October, and in 50-foot boxcars for a 2-week period commencing the last of October. The only shortages in 1954 were in the same type of equipment. On June 23 there was a shortage of heavily insulated refrigerator cars. Beginning in November and extending until January 6, 1955, there was a shortage of 50-foot boxcars. An unusually large number of orders were placed with the S. P. & S., for this type of car during that period. This was occasioned by the inability of steamship lines, because of labor difficulties, to handle paper normally transported by them. The evidence tends to show that when car shortages occur on any railroad serving the Pacific Northwest there are car shortages in varying degrees on all railroads serving that area.

The S. P. & S. and the northern lines object to the establishment of the joint through rates sought upon the principal ground that routes composed of the S. P. & S. and the Milwaukee would short haul the existing routes composed of the S. P. & S. and the northern lines. The latter point out that, except for the fiscal year ended June 30, 1911, there was no year in which the net railway operating income of the S. P. & S. was as much as the accrued interest on its outstanding bonds, until 1941. This fact, they contend, demonstrates that the importance of the S. P. & S. project to them was not S. P. & S. revenues on local traffic but revenues on long-haul traffic. As mentioned above, it has cost the northern lines approximately $218,000,000 to keep the S. P. & S. in operation since 1910.

When the transcontinental railroads extended their lines to the North Pacific coast around the turn of the century, there were already in existence a number of short lines of railroad, many of which were independently operated, and as a transcontinental line acquired or secured control of a short line the rates of the latter were immediately restricted to the routes of the transcontinental line which acquired it. This practice has effectively confined the rates on traffic originating or terminating on each subsidiary to routes affording the parent line its maximum haul.

The Milwaukee is one of a number of intermediate carriers participating in routes from and to the above-mentioned Southern Pacific and Union Pacific points. On westbound traffic, the Milwaukee routes are unrestricted and apply via Marengo, thence Union Pacific, or Union Pacific to Portland and Southern Pacific beyond. On eastbound traffic, the Marengo routes on classes and commodities generally are restricted so as to apply only to destinations west of Chicago, north of the Milwaukee's Omaha-Chicago line, and only to destinations in official territory reached over car-ferry routes across Lake Michigan. The eastbound rates on lumber via Marengo are less restricted. They apply over the car-ferry routes to official territory east of the Illinois-Indiana State line, to destinations west thereof on and north of the Omaha-Chicago line, and to all Milwaukee stations west of Indiana. The Marengo gateway affords the Milwaukee its long haul, but, as previously noted, the movement via that gateway in connection with the Milwaukee is comparatively light. The Milwaukee also participates in routes without restriction between the Union Pacific and Southern Pacific points referred to and points in the United States east and south of the Missouri River as to traffic it interchanges at Omaha, Kansas City, and other western trunkline gateways.

As indicated, there have been published or approved a full line of joint through rates on forest products from S. P. & S. points to most points on the Milwaukee east of Spokane, and a very limited number of joint through rates on other commodities between S. P. & S. points and Milwaukee local territory west of the Twin Cities. Whenever there is an application indicating a need therefor, the northern lines are agreeable to the establishment of additional joint through rates, between the S. P. & S. and the Milwaukee on other classes and commodities to and from Milwaukee local territory.

Eastbound forest products moving to destinations beyond the Milwaukee and the northern lines, on which one of the latter lines serves as an intermediate carrier, constitute the principal traffic involved herein. In 1953, such movement of those commodities amounted to 25,541 carloads, and the movement thereof to all destinations, including points served by the Milwaukee, aggregated 31,821 carloads, on which the northern lines received revenue of $11,347,163. Approximately 88 percent of the forest-products traffic which the Milwaukee would be able to solicit terminates in official, southern, and western trunkline territories. All traffic interchanged in that year between the northern lines and the S. P. & S. moving both eastbound and westbound, totaled 53,923 carloads, and the revenue which accrued thereon to the northern lines was $21,959,415. In the event the joint competitive rates sought were established, this traffic potentially would be available for Milwaukee solicitation.

The vice president in charge of traffic of the Great Northern testified that each of the northern lines would probably lose more than $3,500,000 annually in revenue from traffic originating and terminating on the S. P. & S. if the rates sought were made effective. The basis for this estimate is his survey of the traffic and revenues concerned, his experience in meeting the competition of the Milwaukee and other railroads, and in making surveys and estimates for many years. The foregoing possible revenue loss of $21,959,415 to the northern lines is far in excess of the amount of approximately $2,500,000, previously referred to, estimated by the Milwaukee. However, that estimate was based on the freight traffic which moved in some line-haul service over the Milwaukee. It did not take into consideration any traffic moved between S. P. & S. points and points east of Spokane over the northern lines and their connections other than the Milwaukee, nor traffic which the northern lines handled to and from stations on their own lines which are also reached by the Milwaukee.

The w. t. l. lines furnished estimates of the possible loss of traffic to them in the event that the joint routes and rates sought were made effective. They emphasize the fact that the considered traffic now handled by the northern lines must be interchanged at the Twin Cities, except such traffic as may be interchanged between those lines and the Burlington at Laurel and between the Great Northern and the Burlington at Sioux City, and the further fact that the Milwaukee is able, from a physical standpoint, to handle traffic over its own lines between points on the S. P. & S. and Chicago and certain points east thereof. Presently, the Milwaukee competes with the w. t. l. lines for

traffic which the northern lines cannot handle east of the Twin Cities.

All the traffic which the w. t. l. lines presently interchange with the northern lines is now subject to Milwaukee solicitation, but those lines fear that if the joint rates sought became effective the Milwaukee would be able to obtain eastbound traffic at Spokane, for example, for hauls beyond the Twin Cities, thereby reducing the tonnage available for their solicitation at that gateway. They state that the possibility of a 2-line rather than a 3-line haul from S. P. & S. origins would give the Milwaukee a definite solicitation advantage over the northern lines. The Milwaukee would also be in a position to solicit traffic at points east of the Twin Cities, destined to points on the S. P. & S., for movement over its line direct to Spokane. The estimated annual value to these lines of the potential traffic which each stands to lose is in excess of $900,000 for the North Western, $908,653 for the Burlington, $355,441 for the Rock Island, and $282,290 for the Minneapolis & St. Louis.

In 1954, the Milwaukee received about 5,000 cars of eastbound freight at the Twin Cities on which the northern lines had received the long haul. It is estimated by the Milwaukee that it has given to the w. t. l. lines at the Twin Cities, because of shipper routing, more than 20 percent of the traffic which it has originated, or received at western junctions, and could have hauled further. It is the complainant's desire that the routing of traffic east of the eastern gateways remain free and open to all carriers serving such gateways to the same extent as now prevails.

To show that the northern lines cannot afford to lose any portion of the traffic they are now handling, attention is invited to the rate of return on net investment of each in recent years. The Northern Pacific showed a net return of only 2.19 percent in 1953. Its rate of return has been less than 3 percent in 7 of the 9 years beginning with 1946 and ending with 1954. A loss in freight revenue of $3,500,000 annually would enable it to reduce operating expenses only by an estimated $46,000. Less traffic in substantially the same number of trains, which it states would be required, would result in a less efficient and less economical operation. In 1953 the rate of return of the Great Northern was 4.10 percent. During the 9 years from 1946 to 1954, inclusive, its rate of return has ranged from a low of 3.46 percent in 1949 to a high of 4.65 percent in 1948. Should this carrier's freight revenue be reduced by $3,500,000 a year, it would be able to eliminate some of its eastbound trains, but the resulting reduction in operating expenses has not been estimated.

Evidence was submitted by representatives of employees of the northern lines for the purpose of showing the effect upon them if there were a diversion to the Milwaukee of any portion of the traffic now handled by the northern lines. Based on 1954 average figures the employees of the northern lines number approximately 51,000. They consist of about 11,000 operating employees and 40,000 nonoperating employees. The evidence is to the effect that any one of these employees has substantial cause to fear that if the Milwaukee prevails in this proceeding either his seniority rights will be affected adversely, or, in the case of an employee with little seniority, that his job will be placed in jeopardy.

Should each of the northern lines lose freight revenue in the estimated amount of $3,500,000 annually, it was predicted that at least 1,063 nonoperating employees of these lines would be laid off. The job losses for operating employees was not estimated, but it was stated that the losses in that category would be substantial. The evidence shows that the northern lines pay out about 50 percent of each revenue dollar in salaries and wages, and that when business declines employees are eliminated so as to maintain the proportion at approximately 50 percent.

A discussion of the testimony offered by shippers and receivers of various commodities in support of and in opposition to the complainant, together with other evidence with respect thereto, may be summarized as follows:

Lumber and forest products.—The lumber industry is one of the most important in the Pacific Northwest, and large volumes of this traffic move from this area. The Western Forest Industries Association, whose members include loggers, sawmill operators, piling producers, remanufacturers, and wholesale distributors of lumber in several of the Western States, a number of which have plants on the lines of the S. P. & S., adduced evidence in support of the complainant. This evidence, in substance, is that the marketing of western lumber and forest products requires flexible and liberal routing, together with liberal transit privileges. Economical transportation costs, resulting from competitive through rates, are necessary because the production of these products in the Pacific Northwest greatly exceeds local needs and the bulk of it is marketed principally in the Midwest and East in competition with lumber produced in the South and elsewhere; the center of western lumber production is constantly shifting; the market is unpredictable with demand and prices fluctuating from day to day, thereby necessitating the diversion of cars from a weakening market to one of greater strength; and in recent years, retail lumberyards, the best customers of western lumber producers, have been replenishing their stocks at frequent intervals. To meet this demand and also to avoid cancellation of firm [7] orders

[7] A "firm" order shipment is one for which a sale has been made to the ultimate receiver before the car is billed out of the origin point. A "transit" shipment is one which is not sold prior to the billing from the point of origin.

by purchasers, when mills are sometimes prevented from making shipments when specified because of car shortage, there has developed the custom of loading and shipping so-called transit cars, which are billed to a convenient junction point in the Midwest or East. When a buyer is found, the seller, usually a wholesaler, diverts the transit car to the buyer's station.

The transit method of merchandising necessitates flexible routing, and shippers are reluctant to ship a transit car over a route which does not have competitive through rates. The members of the aforementioned association are not large enough to have their own sales organizations and must rely mainly upon wholesalers, such as those who engage in transit shipping, to sell their output. Presently, some wholesalers make no effort to sell lumber produced at mills on the S. P. & S. in Milwaukee territory because, if they ship via Spokane in connection with the Milwaukee, they cannot move the cars out of Milwaukee local-territory points without paying higher rates. Such points are called closed or pocket markets.

Persons actively engaged in the business of manufacturing or marketing lumber produced in the Pacific Northwest, and others who purchase such lumber, offered evidence which confirms, in the main, the evidence discussed above. Among these are four lumber wholesalers at Eugene. Their shipments eastward aggregate approximately 16,000 carloads annually, the major portion of which are sold in transit. During 1953, one of these wholesalers shipped about 2,000 carloads which were billed for partial unloading. These shippers purchase lumber in Oregon and Washington on the lines of the Oregon Electric and the S. P. & S. at points both common and local. They assert that unrestricted routing, with transit privileges including free diversion rights, over routes via Spokane in connection with the Milwaukee, would be helpful to them in the purchasing and marketing of lumber. The testimony of other lumber wholesalers, located at Portland, Seattle, and Tacoma, who purchase lumber at points on the S. P. & S. and ship a large number of transit cars eastward, is to the same effect respecting rate and transit restrictions. Certain purchasers of lumber at points in the Midwest desire the Milwaukee routes because they would afford single-line tracing of their cars.

A manufacturer and wholesaler of lumber located at St. Maries, Idaho, ships an average of 1,000 carloads of lumber per year from or through St. Maries. This company remanufactures and finishes lumber in transit, and also completes loading of lumber in transit. Because of the rate and transit restrictions, it is difficult for it to handle lumber which originates in Oregon on the S. P. & S., or on the

Oregon Trunk, regardless of whether it is routed over the S. P. & S. or the Union Pacific.

Representatives of 26 west-coast lumber shippers testified in support of the defendants. Eighteen of them represented manufacturers of lumber and other forest products with 30 plants, 21 of which are served by the S. P. & S., and 8 represented wholesalers. These concerns sell lumber principally, on a firm-order basis rather than on a transit basis. Although the evidence indicates that the pattern of marketing west-coast lumber has changed in recent years so that transit operators are now a large and increasing segment of the industry, most of the witnesses expressed disapproval of transit wholesalers of lumber. Some of them asserted that this method of marketing lumber reduces the car supply and tends to lower the market price of lumber.

The total volume of rail shipments from the plants of the 18 manufacturers of lumber is approximately 35,000 carloads annually, of which about 21,000 are from plants served either solely by the S. P. & S. or jointly by the S. P. & S. and 1 or more other rail carriers. These plants, three of which manufacture plywood, are distributed throughout S. P. & S. territory, except that none is served by the Oregon Trunk. The total lumber sales of the 8 wholesalers approximate 34,000 carloads a year.

Most of the above-mentioned lumber manufacturers and wholesalers engage to some extent in the practice of starting part loads from their plants with stops intermediate to complete loading, and also for partial unloading. Most of such stops are at points taking the same rate. These lumber shippers have had comparatively few carloads rejected that required diversion to other destinations. On the whole, the representatives of these shippers expressed satisfaction with the ability of the S. P. & S. to supply shippers with cars.

The defendants assert that there is no need for through routes and and joint rates which would permit a car of lumber originating on the S. P. & S. to move via Spokane thence over the Milwaukee for partial loading or unloading or for diversion at points on the Milwaukee when the final destination is on the lines of connecting carriers. They show that in 1953 only 23 carloads of forest products, out of a total of 31,821 carloads delivered by the S. P. & S. to the northern lines, were stopped for partial unloading at points west of the Twin Cities, and all 23 cars were made empty at the Twin Cities or at points west thereof. They also point out that cars are sometimes billed for partial unloading at a point convenient for diversion to another destination without any intention of partial unloading at that point. This practice has been indulged in by the wholesaler who billed about 2,000 carloads for partial unloading in 1953. A somewhat similar pattern is shown for cars stopped to complete loading at points on the northern lines in 1953.

On and between September 1, 1954, and February 28, 1955, the Milwaukee transported 14,250 carloads of lumber and other forest products eastbound through Avery, Idaho. Apparently all or substantially all of these cars could have been stopped at St. Maries or other points for partial unloading or to complete loading, but the record fails to show how many, if any, were stopped for those purposes. Neither does it show how many of these were transit cars originally consigned to a destination on the Milwaukee and diverted to destinations on connecting lines.

Some of the shippers who testified in support of the complainant sometimes ship transit cars to a diversion point which is off the main line for the indicated purpose of slowing down the movement of the car until a sale can be made. The Milwaukee does not have internal routing restrictions, and some shipments have been consigned to Canton, S. Dak., for example, which is about 180 miles south of its mainline point of Aberdeen, and later diverted to the Twin Cities or Duluth. Canton, however, apparently would not be out of line on shipments diverted to points east and south thereof. The defendants contend that the principal reason why some shippers desire the S. P. & S.-Milwaukee route is that it would permit them to consign transit cars to points which would delay the movement thereof.

We have never condemned reasonable transit or diversion privileges, such as stopping for partial loading and unloading, the diversion of a car from one destination to another, stopping for milling or fabrication, or storage, where the nature and sale of a commodity require such privileges, but the improper use of freight cars has been looked upon with disfavor. While it is not within our province to pass upon the respective merits of the two methods of merchandising lumber; namely, firm sales and transit sales, the deliberate routing of traffic so as to slow the movement thereof is a practice which cannot be regarded as in the public interest.

Grain.—A wholesale grain dealer at Seattle buys corn from dealers in Minneapolis, Sioux City, and Omaha, as well as at country origins in the Midwest, which is sold in the Pacific Northwest. Generally, when a car is shipped from the origin point the ultimate destination is not known. In such instances the cars are usually billed for diversion to either Spokane or Seattle with the delivering carrier specified. If a shipment cannot be diverted from Spokane, for example, at the balance of a joint through rate from origin to destination, the buyer will either refuse the shipment or insist on a substantial discount. It is important to this company, therefore, to have widespread routes, Spokane and west, which will permit liberal use of transit privileges. The absence of joint through rates on westbound shipments of grain from Milwaukee origins to destinations on the S. P. & S. on traffic routed over the Milwaukee via Spokane tends to cause this company to limit the shipment of corn from Milwaukee origins to Spokane to that which may be disposed of at destinations on the Milwaukee, and this situation results in frequent shortages for such destinations. There are, however, joint through rates on corn from Milwaukee origins to destinations on the S. P. & S. on traffic routed over the Milwaukee to Terry, Mont., the Northern Pacific to Spokane, and the S. P. & S., which traffic may be diverted to such destinations at Spokane at the transit balance. Shipments from origins on the Milwaukee may also move over that carrier to Spokane and be diverted to many destinations on the Union Pacific when routed over the Milwaukee to Marengo without rate penalty when the inbound rate from the primary origin to Sioux City, for example, does not exceed 19.5 cents.

Evidence was offered by the Omaha Grain Exchange whose members do a general grain business in the terminal market of Omaha. Corn which originates on the Milwaukee and moves into the Omaha market for storage and subsequent movement may not be shipped to destinations on the S. P. & S. at joint through rates when routed over the Milwaukee via Spokane, but, as indicated, it could move under joint through rates when routed over the Milwaukee and the Northern Pacific via Terry. The testimony is to the effect that with more flexible routing, as herein sought, these grain dealers would be in a better position to compete with other midwestern markets, such as Minneapolis and Sioux City, but the record is somewhat vague in this respect.

It appears to be the general practice of the transcontinental carriers which bring the corn into Spokane to limit the use of transit balances to destinations on their respective lines. For example, corn moved over the Great Northern from Minneapolis to Spokane could not be diverted at joint through rates or rate balances to destinations on the Milwaukee or the Northern Pacific, and that which moved into Spokane over the Northern Pacific could not be diverted at transit balances to destinations on the Milwaukee or the Great Northern. Such shipments, however, could be diverted at Spokane to destinations on the respective lines of the inbound carrier or to destinations on the S. P. & S. under joint through rates. Representatives of two other grain dealers in Pacific Northwest territory testified that they have experienced no difficulties in handling their products over the present through routes and see no necessity for opening the routes sought.

Wheat growers in Milwaukee territory in Montana want the opportunity to ship their wheat to points on the S. P. & S., particularly

Astoria, at charges comparable with those paid by shippers on the Great Northern and Northern Pacific, and operators of grain elevators at Geraldine and White Sulphur Springs, Mont., state that under the present combination rates their wheat would sell for about 2 cents a bushel less than that of their competitors on the Northern Pacific. The S. P. & S. is willing to establish a through route and joint rates from the Milwaukee origins in Montana to Astoria if it is assured that the rates will be used and the Milwaukee will concur.

Fresh fruits and vegetables.—Testimony as to the desirability of the through routes and joint rates sought on fruits and vegetables was submitted by an officer of a company engaged in the sale and distribution of these commodities at Mitchell, S. Dak., and Sioux City, both located on the Milwaukee. This company obtains fresh fruits and vegetables from various parts of the country. It handles from 600 to 800 carloads a year, approximately 100 of which are shipped from the Pacific Northwest. An average of about one a week is rejected for various reasons. The rejected shipments must be resold and it is necessary, in order for the distributor to maintain good relations with suppliers and brokers, to have a wide territory to which these cars may be shipped.

Through routes and joint rates are in effect on these commodities from various origins on the Southern Pacific and the Union Pacific, many of which are common with the S. P. & S., over the Union Pacific to Marengo, Wash., and the Milwaukee beyond to both Mitchell and Sioux City, but shipments over this route cannot be diverted without rate penalty to destinations south of the Milwaukee's line from Omaha to Chicago. From origins on the S. P. & S., through routes and joint rates apply via Spokane, thence the Northern Pacific to Oakes, N. Dak., and the North Western and the Milwaukee, or via Spokane, thence the Great Northern to Willmar, Minn., and the Milwaukee, but these routes are said to be undesirable because of delays and circuity. There is, however, a through route and joint rates from S. P. & S. origins via Spokane, thence the Northern Pacific to Jamestown, N. Dak., thence the line of the Midland Continental Railroad to Edgeley, S. Dak., and the Milwaukee through Aberdeen to Mitchell and Sioux City, which is said to be as desirable in all respects as the route sought via Spokane, thence the Milwaukee.

Coal.—There is a coal mine at Roundup, Mont., a point on the Milwaukee, and coal is shipped from there to points in various States, including the State of Washington. Comparisons are made of the combination rates on coal applying from Roundup via Spokane to points on the S. P. & S. with the present joint through rates on coal from mines at Red Lodge, Mont., on the Northern Pacific. Although the distance to each point from Red Lodge is slightly longer than from Roundup, the combination rates from the latter are materially higher than the joint through rates from the former. The establishment of reasonable joint through rates from Roundup to points on the S. P. & S. would enable the operator there to enter this potential market on an even basis.

The operator of a wholesale fuel business at Portland whose distribution territory includes points on the S. P. & S. and the Oregon Electric in Washington and Oregon, is interested in developing markets for coal from various locations, but because of the present rate situation, it is not possible to do so with coal produced at Roundup. If it can be shown that there would be a movement from Roundup to points on the S. P. &. S., the latter states, on exceptions, that it is willing to join the Milwaukee in publishing the rates sought. Thus no further consideration need be given to the complaint as to this commodity.

Furniture.—A company at Seattle distributes school furniture and equipment, theater equipment, church furniture and equipment, and similar items, most of which comes from a manufacturer at Menominee, Mich. It also obtains these items from Jasper, Ind., Chicago and Aurora, Ill., Liberty, N. C., and Waco, Tex. It sells to buyers at points in various States, including points in Montana and S. P. & S. points in Washington and Oregon. This distributor never knows in advance of the actual receipt of orders just when or where deliveries are to be made. It has been dealing in theater equipment extensively in Montana for many years, and sales of school and church furniture are now being developed there, with the expectation of a substantial increase in the volume of business. Furniture and equipment have been sold at such S. P. & S. points as Camas and Pasco, Wash., and Rainier, Eugene, Albany, Salem, and numerous other points throughout the Willamette Valley in Oregon. The distributor deals extensively in part carloads and utilizes the privilege of stops for partial unloading. The bulk of the furniture shipped from Menominee starts in carload lots, which are frequently combined shipments for various stops en route. If the occasion were to arise, it would be a convenience for it to combine shipments to points in Montana on the Milwaukee with shipments to points on the S. P. & S., which it cannot do under the present rates.

The record shows the details concerning 35 carloads shipped on and between August 12, 1952, and November 11, 1954, from Menominee to the Pacific Northwest, which are representative of the carloads stopped for partial unloading in that period. Of these, only one carload was partially unloaded at a point served exclusively by the S. P. & S. This car was routed over the Milwaukee-Great Northern to Seattle where it was partially unloaded and the remainder moved to Rainier, Oreg. The traffic manager of a large manufacturer of school, theater, and church furniture at Grand Rapids, Mich., testified that his company makes shipments to destinations in Montana, Oregon, and Washington, and he has never experienced any difficulty in making stops in transit under the present rates and routes.

Agricultural implements.—A company at Racine, Wis., has been engaged in the manufacture and sale of agricultural implements, including tractors, for 112 years. It has a number of plants in the Midwest, some of which are served by the Milwaukee. It ships from 200 to 250 carloads a year to the Pacific Northwest, valued at from \$15,000 to \$25,000 per carload. It has dealers located in S. P. & S. territory and frequently avails itself of the privilege of stopping for partial unloading or storage in transit in connection with its shipments to that territory. The partial-unloading privilege is necessary in the distribution of these commodities to accommodate orders for less than carloads. It is stated that the proposed routes and rates would be of benefit to this company, which keeps a stock of its implements in warehouses at Spokane and Portland. If the through rates sought were in effect, it would be in a position to ship outbound to S. P. & S. points from Spokane carloads moving into that point over the Milwaukee as well as over the northern lines. Shipments destined to Spokane may now be stopped for partial unloading at points on the Milwaukee, and the same is true as to shipments routed over the Milwaukee to Marengo when the final destination is on the Union Pacific or the Southern Pacific.

Iron and steel grain bins.—A manufacturer and shipper of iron and steel grain bins, among other things, is located at Sioux Falls, on the rails of the Milwaukee. This concern is the largest manufacturer in the United States of diversified sheet steel farm equipment. In 1953 it used 16,000,000 pounds of iron and steel, and its estimated use thereof in 1954 was 24,000,000 pounds. Most of this company's inbound tonnage is moved by the Milwaukee, and most of its outbound tonnage moves out over that road under fabrication-in-transit privileges, which are more liberal than those published by the northern lines. The Great Northern, which also serves Sioux Falls, publishes limited transit privileges at that point on westbound and transcontinental iron and steel traffic when moving over certain routes through Snowden, Mont., or Fort Buford, N. Dak. The tariff covering such tonnage from origin territory east of Chicago provides routes through Sioux Falls on the Great Northern only when the movement into Sioux Falls is by the Illinois Central Railroad Company, or the Burlington to Sioux City and the Great Northern to Sioux Falls.

The witness for this manufacturer testified that these routes are not ordinarily used as it would be necessary, when shipping over the Great Northern to S. P. & S. points, for the company to determine in advance the number of carloads it might ship over this route and then order a sufficient number of carloads of iron and steel routed into Sioux Falls over the Illinois Central or the Burlington-Great Northern routes; that if too many carloads were ordered, the company would lose valuable transit privileges on the unused balances; and that, for all practical purposes, this company, because of the existing rate situation, cannot now ship to points on the S. P. & S. over any route and is thereby, to this extent, handicapped in the sale of its grain bins. One of this company's principal competitors is located at the Twin Cities and is able to ship over either of the northern lines to S. P. & S. points without routing restrictions on its inbound traffic.

The defendants assert, and it is not denied by the complainant, that iron or steel may be routed into Sioux Falls over the Illinois Central or the Burlington-Great Northern, may be fabricated thereat, and reshipped under the Milwaukee transit tariff to Pacific coast destinations over the Milwaukee direct or over that carrier in connection with the Union Pacific and the Southern Pacific, and many of the destinations on the latter two carriers are common with the S. P. & S. Thus, it is contended that there would not likely be a surplus of unused transit balances.

Livestock.—A livestock producer, engaged principally in sheep raising at Washtucna, Wash., the site of his winter range, testified in support of the complainant. His testimony is to the effect that sheep must be shifted from winter range to summer range in early May; that he sometimes "summer grazes" his sheep in the St. Maries' area which is local to the Milwaukee and at the completion of summer grazing, lambs are ready for market. His sheep are transported by the S. P. & S. to the summer range for grazing in transit, and in the autumn, when they are ready for market, they are shipped by rail to Chicago. There are no through rates from Washtucna to Chicago over the S. P. & S. and the Milwaukee, with grazing in transit, and the combination rates applicable thereon increase the freight charges by about $40 per car over the charges that would accrue at the joint through rates sought. The witness estimated that he would market about 10 carloads of lambs in 1954.

Evidence submitted on behalf of the Chicago Producers Commission Association indicates that the volume of sheep and lambs handled by this association annually totals from 1,300 to 1,800 carloads, which are received from many States, including Washington, Idaho, and Oregon, an important production area. This association is interested in greater production of sheep and lambs and the open-

ing up, for that purpose, of as many places as possible where feed is available. It has handled livestock produced in the Pacific Northwest for many years. Freight charges are deducted from the proceeds when livestock is sold at a public market, and are assumed by the producer.

There is much unused grazing land on both of the northern lines, as well as on the Milwaukee, and the defendants contend that the privilege of grazing in transit under joint through rates has little or nothing to do with the selection by sheep raisers of the location of summer ranges. To support this contention, it is shown that in 1954 the Great Northern moved 365 carloads through Spokane for summer grazing, and only 72 of these were from origins from which joint through rates applied to Chicago. Of the remainder, 127 carloads originated on the Northern Pacific, 158 on the Union Pacific, and 8 on the Milwaukee. In 1954, 599 carloads were shipped from summer-grazing areas on the Great Northern, and transit privileges were used on only 53 of these. It is admitted by a witness for an intervener supporting the complaint that the selection of a summer range is governed by the conditions which he believes will produce the best lambs rather than the availability of transit arrangements.

Producers of lambs located on the S. P. & S. can now graze in transit at ranges on either of the northern lines at joint through rates to Chicago, whereas those located on either of the northern lines or on the Milwaukee are restricted insofar as transit is concerned to shipments moved over the respective lines of the originating carrier.

Many carloads of hogs are shipped annually from Sioux Falls to the Pacific Northwest. In 1953, there were 189 carloads shipped over the Milwaukee to Seattle, 22 carloads over the North Western-Northern Pacific, and 4 over the Great Northern. In the same year, 394 carloads were shipped to Portland over the North Western-Northern Pacific and the Great Northern. The evidence indicates that there are certain advantages in shipping over each route. Shipments moved out over the North Western or the Great Northern leave Sioux Falls in the late afternoon, and those over the Milwaukee leave about 7 a. m., but there is no comparison of the time in transit over the respective routes or what it would approximate over a route of the Milwaukee-S. P. & S. to Portland.

On January 12, 1955, the Northern Pacific's train schedules were amended so that shipments from Sioux Falls over the North Western-Northern Pacific route to Seattle and Portland would be handled in about 24 hours' less than time, and stops for feed and water were reduced from 3 to 2. On and between January 12 and March 31, 1954, there were shipped from Sioux Falls over the North Western-Northern Pacific route 32 carloads to Portland, none to Seattle, and none to Salem, whereas in the same period in 1955, after the schedules were changed, that route handled 48 carloads to Portland, 119 carloads to Seattle, and 14 carloads to Salem. There is also a two-feed route from Sioux Falls to Portland over the Great Northern to Sioux City, thence the Burlington and the Union Pacific.

A representative of an organization composed of shippers and receivers of freight throughout the State of Montana testified that because of the absence of joint through rates in connection with the S. P. & S. and the Milwaukee, his clients do not have the full benefit of the transportation facilities of the latter. It is their position that, from a rate and service standpoint, there should be no different treatment of shippers and receivers of freight located at local points in Montana on the Milwaukee from that accorded those located at points on the northern lines. The testimony of a representative of shippers and receivers of freight in Kansas City was to the effect that under present day sales and merchandising methods, retailers and wholesale distributors are inclined to keep their inventories as low as possible, and that the present routing restrictions which eliminate stops on the Milwaukee in Montana where the balance of a carload might be destined to points on the S. P. & S. or to points in the East where the traffic originates on the S. P. & S. tend to divert traffic to motor carriers.

GENERAL DISCUSSION AND CONCLUSIONS

In support of its contentions that the combination rates assailed to or from points on its line, which are common with one or the other of the northern lines, or both, and from and to points on its connections, are unjust and unreasonable, the Milwaukee submitted a number of comparisons showing the differences in such rates and the competitive joint through rates on various commodities. Neither factor of the combination rates is assailed, but the aggregates of such factors are alleged to be unlawful to the extent that they exceed the competitive joint rates. The latter rates are the going rates on the traffic concerned and, except for authorized general increases therein, have been in effect for a long time. Many of these rates have been approved by us. There is no contention by the defendants that any of those rates is below a reasonable level, but in view of our conclusions herein, it is unnecessary to determine whether such rates would be reasonable for application over the routes sought. No rate comparisons were submitted by the Milwaukee in support of its allegation that the combination rates on freight traffic to and from local points on its lines are unreasonable, except on coal to S. P. & S. points from Roundup, previously mentioned.

With respect to the issue under section 15, the facts before us here

Pacific case, wherein the Western Pacific alleged that the failure of the defendants therein to join with it in the establishment and maintenance of joint rates between points in California on the line of the Northwestern Pacific Railroad Company, controlled by the Southern Pacific, on the one hand, and eastern defined groups, on the other hand, over routes in which the Western Pacific would be an intermediate participating carrier, was discriminatory and prejudicial, and that the combination rates between such points over such routes were unreasonable. Therein, division 2 said, at pages 136 and 137:

> In requesting the application of joint rates over its line complainant is not here as a shipper or receiver of traffic but solely as a carrier seeking to participate in traffic which, under the act, belongs, in the absence of emergency, to the Northwestern Pacific and Southern Pacific.

The instant complainant likewise is not here as a shipper or receiver of traffic, but solely as a carrier seeking to participate in traffic which the S. P. & S. and the northern lines refuse to relinquish.

The defendants emphasize the fact that the principal motivation of the Milwaukee in filing the instant complaint was to increase its revenues, and they assert that there is no public demand for the routes sought. They contend that shipper support was entirely inspired by Milwaukee solicitation, and that this is shown by the testimony which indicates that only one of the shipper witnesses had made a request for the Milwaukee route prior to the hearing herein. Several of these witnesses admitted that their appearance was the result of Milwaukee solicitation.

The record shows that both the Milwaukee and the S. P. & S. sought to interest the public in this controversy and to inform other persons, especially shippers, as to the merits of their respective views. A number of witnesses stated that they had discussed the controversy with representatives of both sides before appearing to testify. However, there is nothing of record to indicate that these witnesses, whether for or against the complainant, were improperly influenced, or that the interest of any of them in the subject matter of this proceeding had been stimulated in any questionable manner.

Since the decision in the *Western Pacific* case, section 15 (4) has been amended (in 1940), so that now the prohibition against short hauling is subject, not only to the exception that such inclusion of line must not make the through route unreasonably long as compared with another practicable through route which might otherwise be established, but to the additional exception that the short-hauling provision may be disregarded where the "through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation." Thus, where, as in the instant proceeding, we are asked to disregard the short-hauling provision, consideration must be given first to the adequacy of the transportation, and second, to the efficiency and economy of the transportation. In *Pennsylvania R. Co.* v. *United States*, 323 U. S. 588, the Supreme Court said that adequacy of transportation relates only to the interest of the shipping public, whereas the expressions "more efficient or more economic" transportation, as used in section 15 (4), "may well embrace both shippers' and carriers' interests, * * * that both interests should be considered and a fair balance found." These latter considerations are not determinative unless the existing routes can be found not to provide "adequate" transportation.

As previously stated, there is no contention by the complainant that the present routes of the defendants in connection with the northern lines are not adequate for the traffic involved, and no finding is requested by the complainant to that effect. Neither are we convinced that the testimony in behalf of shippers and receivers is sufficient to require that the through routes and joint rates, as sought by the complainant, be established.

It is said to be the general traffic policy of the carriers serving the Pacific Northwest, including the Milwaukee, not to apply their joint rates via all junctions, but, on the contrary, for each carrier to guard its own long haul, and that there are very few instances where this policy is departed from to permit transiting on another carrier's line at the same rates as apply over the originating carrier's long-haul route. Reference is made to *West Coast Lumber Mfrs. Assn.* v. *Tacoma E. R. Co.*, 45 I. C. C. 227, wherein the Milwaukee and its subsidiary the Tacoma Eastern Railroad were not required to reestablish joint rates via Tacoma in connection with the Northern Pacific on lumber and forest products destined to points east of the Missouri River; and to *Routing from Points on Spokane C. D. & P. Ry.*, 142 I. C. C. 230, wherein a proposal to cancel class and commodity rates from origins on the Spokane, Coeur d'Alene & Palouse Railway, at that time operated under a common management and control with the Great Northern, via Spokane in connection with the Milwaukee and the Northern Pacific on traffic destined to or east of the Missouri River cities, was found justified.

Many of the shippers who testified in behalf of the complainant with respect to lumber and forest products stated that they desired wide-open, unrestricted routing at competitive joint rates, particularly in connection with transit shipments. While this undoubtedly would be desirable from the shippers' viewpoint, there is no clear showing that it would be in the public interest or that it is needed to provide adequate and more efficient or more economic transportation. As indicated in footnote 5, supra, a full line of joint through rates on these products from all points on the S. P. & S. to all local and some

common points on the Milwaukee east of Spokane have been established or approved for application via Spokane. Joint through rates apply from S. P. & S. origins to destinations on the Milwaukee in Wisconsin, Illinois, Indiana, Missouri, substantially all of Iowa, and parts of Minnesota over routes via Spokane, thence either of the northern lines to the Twin Cities, and the Milwaukee beyond. Many of the origins served by the S. P. & S. system are also served by either the Union Pacific or the Southern Pacific, and from these origins joint rates apply via Marengo to most destinations on the Milwaukee and over lake routes beyond to destinations in official territory. In addition, from origins on the Union Pacific and Southern Pacific which, as indicated, include a large number of points on the S. P. & S. system, through routes and joint rates apply to substantially all points in the United States over the Union Pacific to Omaha, or over the Southern Pacific via Portland or Ogden and the Union Pacific, or over the Southern Pacific via El Paso, Tex., and connections beyond.

As indicated, there is open routing on corn from Milwaukee origins in the Midwest to S. P. & S. destinations over the Milwaukee to Terry, thence the Northern Pacific and the S. P. & S., and the S. P. & S. is willing to establish joint rates on wheat from origins on the Milwaukee in Montana to Astoria.

The production of fruits and vegetables at points served exclusively by the S. P. & S. is very small as compared with the total production in Oregon and Washington. In 1953, the carloads shipped from such origins on the S. P. & S. and those originated in Oregon and Washington were, respectively, apples, 44 and 19,839 carloads; cherries, zero and 1,179 carloads; pears, 244 and 9,265 carloads; potatoes, zero and 18,513 carloads; and onions, zero and 3,997 carloads. As indicated, joint rates are now in effect on fruits and vegetables from origins on the S. P. & S. to Mitchell and Sioux City over the lines of that carrier to Spokane, the Northern Pacific to Jamestown, the Midland Continental to Edgeley, and the Milwaukee beyond. As to coal from Roundup, the S. P. & S. is willing to establish the rates sought if it can be shown that there will be a movement to points on its lines.

There appears to be no real need for through routes and joint rates in connection with the Milwaukee via Spokane to destinations on the S. P. & S. on church and school furniture and equipment and theater equipment, since numerous routes are now available in connection with the northern lines, and shipments may now be stopped at points on the Milwaukee east or west of Spokane for partial unloading when the remainder of a carload is destined to a point served by the Milwaukee. Adequate routing also appears to be available in connection with westbound shipments of agricultural implements and grain bins.

Shipments of sheep from origins on the S. P. & S. may now be stopped for grazing in transit on either the Great Northern or the Northern Pacific at joint through rates, and the record is clear that the selection of a grazing area is not controlled by the presence or absence of grazing-in-transit privileges.

The record does not support a finding of undue preference and prejudice between shippers or localities. In a recent decision in *Union Pacific R. Co.* v. *United States*, 132 F. Supp. 72, a three-judge court stated, at page 80:

> The prohibition of section 3(1) is intended to prevent a carrier from giving preferences or advantages, over which the carrier has control, to one of the entities named and not to another. It does not apply to a situation such as this where the comparison of preferences or advantages or prejudices and disadvantages is between the entities named when they are located on the lines of different carriers not acting in concert or collusion.

In support of this statement, reference was made to *Central R. Co. of New Jersey* v. *United States*, 257 U. S. 247. The Supreme Court upheld the three-judge court's decision, in *Denver & R. G. W. R. Co.* v. *Union P. R. Co.*, 351 U. S. 321, but made no mention of the above observation. It stated, at page 335, that since our order was justified under section 15 (1), (3), and (4), there was no occasion to consider contentions raised under section 3(1) and (4). Moreover, the evidence before us is not convincing that any shipper or locality is disadvantaged by reason of the absence of the routes and rates sought in such a manner or to the extent necessary to support a finding of unlawfulness under section 3(1) of the act.

We conclude:

1. That the S. P. & S. system is operated under a common management and control with, and that its traffic policy is controlled by, the Great Northern and the Northern Pacific, and therefore must be considered as a part of the latter carrier systems.

2. That the failure and refusal of the S. P. & S. to join in the establishment of through routes and joint rates via Spokane in connection with the Milwaukee and its connections, the same as apply via Spokane in connection with the northern lines and their connections, does not result in discrimination against the Milwaukee, nor in undue preference or prejudice between shippers or localities.

3. That it is not shown to be necessary or desirable in the public interest, in order to provide adequate and more efficient or more economical transportation, to require the establishment of through routes and joint rates in connection with the S. P. & S. system and the Milwaukee and its connections via Spokane the same as apply in connection with the S. P. & S. system and the northern lines and their connections via Spokane.

Upon appropriate application therefor, the S. P. & S. will be expected, in accordance with its stipulation, to establish through routes and joint rates with the Milwaukee on coal and wheat from origins on the Milwaukee in Montana.

An order will be entered dismissing the complaint.

COMMISSIONER HUTCHINSON concurs in the result.

COMMISSIONERS FREAS, WINCHELL and MURPHY, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

The following shows the territorial application of joint through rates on various commodities and classes of traffic via Spokane, Wash., in connection with the S. P. & S. and the northern lines, between points on the S. P. & S. system lines and points generally east of Spokane on the Great Northern and the Northern Pacific or their connections

Applicable on—	Territorial application	
	To—	From—
General commodities	Points on the S. P. & S. system lines.	Eastern defined territories as described in TCFB Territorial Directory No. 5, Agent Prueter's I. C. C. No. 1548, also points in Canada.
Do	Eastern defined territories as described in TCFB Territorial Directory No. 5, Agent Prueter's I. C. C. No. 1548, also points in Canada.	Points on the S. P. & S. system lines.
Lumber, shingles, and other forest products.	Points in Eastern Canada	Do.
Do	Eastern United States points named in Agent Prueter's I. C. C. No. 1511.	Do.
Do	Points in North Dakota, South Dakota, Nebraska, Kansas, Texas, and other points named in Agent Prueter's I. C. C. No. 1474.	Do.
Do	Points in Minnesota, Wisconsin, Iowa, Illinois, et cetera, named in Agent Prueter's I. C. C. No. 1545.	Do.
Wool and mohair	Boston and Clinton, Mass., Baltimore, Md., Jamestown, N. Y., Newport News and Norfolk, Va., Philadelphia and Pittsburgh, Pa., Cleveland and Piqua, Ohio, Columbia City and La Porte, Ind., Eaton Rapids, Mich., Chicago, Ill., Louisville, Ky., Kansas City, Mo., Milwaukee, Wis., and St. Louis, Mo., and points taking the same rates.	Do.
	Between—	And—
Oil cake, vegetable oils and related articles.	Points on the S. P. & S. system lines.	Points in Arkansas, Illinois, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas.
Class rates	do	Eastern defined territories, as described in TCFB Territorial Directory No. 5, Agent Prueter's I. C. C. No. 1548.
Fresh fruits and vegetables	do	Eastern defined territories as described in TCFB Territorial Directory No. 5, Agent Prueter's I. C. C. No. 1548, and also to points in Canada.
Grain and grain products, hay, seeds, animal, or poultry feeds.	do.	Do.

Applicable on—	Territorial application	
	Between—	And—
Livestock	Points on the S. P. & S. system lines.	Points in North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Michigan, Wisconsin, Illinois, Indiana, Tennessee, and Mississippi.
General commodities	do	Points in Washington and Idaho, generally east of Spokane, Wash.
Class rates; general commodities.	do	Points in Montana, North Dakota, South Dakota, generally west of the Missouri River.
Grain and grain products	do	Points in Washington and Idaho, generally east of Spokane, Wash.
Potatoes, onions, and other vegetables.	do	Do.
Hay and straw	do	Do.
Grain and grain products	do	Points in Montana, North Dakota, South Dakota, generally west of the Missouri River.
	To—	From—
Petroleum and petroleum products.	Points in Washington and Idaho, generally east of Spokane, Wash.	Portland, Willbridge and Linnton, Oreg., Pasco and East Pasco, Wash.
Powder and high explosives	do	Portland and Trojan, Oreg.
	Between—	And—
Fresh fruits and vegetables	Points on the S. P. & S. system lines.	Points in Washington and Idaho, generally east of Spokane, Wash.
Lumber, shingles, and other forest products.	Points on the S. P. & S. system lines.	Points in Washington and Idaho, generally east of Spokane, Wash.
	To—	From—
Wool and mohair	Portland, Oreg	Points in Washington, generally east of Spokane, Wash., also Idaho and Montana.
	Between—	And—
Fresh fruits and vegetables	Points on the S. P. & S. system lines.	Points in Montana, North Dakota, South Dakota, generally west of the Missouri River.
Lumber, shingles, and other forest products.	do	Do.
Class rates	do	Points in Washington and Idaho, generally east of Spokane, Wash.
	To—	From—
Livestock	Portland, North Portland, Oreg., and points taking same rates.	Points in Washington and Idaho, generally east of Spokane, Wash.
	Between—	And—
Do	Points on the S. P. & S. system lines.	Points in Montana.
	To—	From—
Paper and paper articles	Points in Washington and Idaho, generally east of Spokane, Wash.	Points on the S. P. & S. system lines.
Salt	Stations in Washington and Idaho, generally east of Spokane, Wash., also Montana.	Portland, Oreg.
General commodities, l. c. l.	Points in Washington and Idaho, generally east of Spokane, Wash.	Portland, Oreg., and Vancouver, Wash.
Do	Points in Montana, North Dakota and South Dakota, generally west of the Missouri River.	Portland, Oreg., and Vancouver, Wash.
Grain and grain products	Points on the S. P. & S. system lines.	Sioux City, Iowa (routing: the Milwaukee to Terry, Mont.; Northern Pacific to Pasco or Spokane, Wash., and S. P. & S.).
Gypsum, plaster, and related articles.	do	Hanover, Mont. (routing: the Milwaukee and Great Northern to Spokane, Wash., and S. P. & S.) Heath, Mont. (routing: the Milwaukee to Lewiston, Mont.; Great Northern to Spokane, Wash., and S. P. & S.).

Applicable on—	Territorial application	
	To—	From—
Ore, concentrates and smelter products.	Portland, Oreg	Butte, Anaconda, and Black Eagle, Mont.
Grain and grain products	Points on the S. P. & S. system lines.	Sioux City, Iowa.
	Between —	And —
Ore, concentrates and smelter products.	Butte and Anaconda, Mont	East Portland, Portland, and St. Johns, Oreg.
	To —	From —
Grain and grain products	Points on the S. P. & S. system lines.	Sioux City, Iowa.
	Between —	And —
Sand and gravel (distance rates).	Points on S. P. & S. in Washington.	Points in Washington.

APPENDIX B

The following shows the territorial application of the present joint through rates on various commodities and classes of traffic via Spokane, Wash., in connection with the S. P. & S. and the Milwaukee, between points on the S. P. & S. system lines and points east of Spokane on the Milwaukee or its connections

Applicable on—	Territorial application	
	From—	To—
Lumber, shingles, and other forest products.	Points on the S. P. & S. system lines, except the Santiam branch of the Oregon Electric extending from Albany, Oreg., to Dollar and Foster, Oreg.	Points n the Milwaukee in South Dakota east of Mobridge, S. Dak., except Linton, Edgeley and Fargo, also to Omaha, Nebr.
Do	Points on the S. P. & S. system lines, except the Santiam branch.	Points served exclusively by the Milwaukee in Minnesota, Wisconsin, Iowa, Illinois (except the Terre Haute branch line), and Missouri; also some points common with other lines generally applicable through intermediate application of rate to local points beyond.
General commodities, export	Points in the United States generally east of the Missouri River and the States of Wyoming, Colorado, and New Mexico.	Astoria, East Portland, Linnton, Portland, St. Johns, Oreg., and Vancouver, Wash., when for export.
Do	Astoria, East Portland, Linnton, Portland, St. Johns, Oreg., and Vancouver, Wash.	Points in the United States generally east of the Missouri River and the States of Wyoming, Colorado, and New Mexico, also limited application to Montana.
	Between—	And—
General commodities	Portland and East Portland, Oreg	Stations on the Milwaukee in Washington and Idaho, Rathdrum, Idaho to Metaline Falls, Wash., inclusive.
	From—	To—
Pipe, sewer, and related articles.	Dishman, Wash	Bend, Oreg.
Plaster aggregate (Perlite)	Dent, Oreg	Metaline Falls, Wash.
Wallboard	St. Helens, Oreg	Dishman, Wash.
Petroleum and its products	East Pasco, Wash	Worley, Spirit Lake, St. Maries, Ermo, and Pocono, Idaho, and Greenacres and Metaline Falls, Wash.
Cement, portland	Metaline Falls, Wash	S. P. & S. system lines' points west of Spokane, Wash., to and including Portland, Oreg., and points south of Wisbram, Wash., to and including Bend, Oreg.

Applicable on—	Territorial application	
	From—	To—
Lumber and other forest products.	Stations on the S. P. & S. system lines.	Mobridge, S. Dak.
Do	Vernonia, Oreg.[1]	Points on the Milwaukee, Mobridge, S. Dak., and west thereof to and including Missoula, Mont., and also to W. S. S. & Y. P. Ry. points on the White Sulphur Springs & Yellowstone Park Railway Company.
	Between—	And—
Class rates	Portland and East Portland, Oreg., and Vancouver, Wash.	Points on the Milwaukee, Grand Junction, Idaho, to and including Metaline Falls, Wash.
Livestock [2]	Points on the S. P. & S. system lines.	Stations on C. M. ST. P. & P. R. in Washington east of Spokane, Idaho and Montana.
	From—	To—
	C. M. ST. P. & P. R.	
Plaster and related articles	Hanover, Mont Heath, Mont	Oregon Electric stations Millsboro to Eugene, Oreg., inclusive. Indices Nos. 50 to 660, inclusive of Agent A. P. Leland's I. C. C. A-33.
Petroleum and its products	Great Falls, Mont	S. P. & S. Ry. stations Hooper to Goldendale, Wash., inclusive. Indices Nos. 75 to 530, inclusive, of Agent A. P. Leland's I. C. C. A-33.
Petroleum crude oil	Baker, Mont	Willbridge, Oreg.
	Between—	And—
Sand and gravel (distance rates).[3]	Points on the S. P. & S. system lines in Washington.	Points on the Milwaukee in Washington.

[1] Published in compliance with order entered October 19, 1932, in *West Coast Lumbermen's Assn.* v. *Big Fork & I. F. Ry. Co.*, 188 I. C. C. 471.
[2] Published in compliance with the order entered June 8, 1931, in *Livestock, Western District Rates*, 176 I. C. C. 1.
[3] Applicable on intrastate traffic only.

INVESTIGATION AND SUSPENSION DOCKET No. M-8501

ACID FROM DETROIT, MICH., TO CLEVELAND, OHIO

Decided May 7, 1957

Proposed reduced truckload rate on phthalic anhydride acid from Detroit, Mich., to Cleveland, Ohio, found not shown to be just and reasonable. Suspended schedules ordered canceled, and proceeding discontinued.

G. H. Dilla for respondent.
Louis T. Duerinck and *John R. Quillman* for protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, MURPHY, AND MINOR

BY DIVISION 3:

Exceptions to the examiner's recommended report and order were filed by the respondent, and the rail protestants replied. Subsequent to service of the recommended report, a letter with two attachments in the nature of exhibits was received from a shipper witness who appeared in support of the respondent. Taken as whole the document could be construed as exceptions to the report and an effort to supplement the record. The protesting railroads move to strike this matter from the record. The material in question is not offered by a party to the proceeding, and constitutes an attempt to introduce evidence after the hearing was closed. The motion is granted. Exceptions and requested findings not specifically discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

By schedules filed to become effective on May 15, 1956, the respondent, Highway Express, Inc., proposes to establish a commodity rate of 36 cents,[1] minimum 24,000 pounds, on phthalic anhydride acid from Detroit, Mich., to Cleveland, Ohio, 170 miles, in lieu of the class 35 rate of 55 cents, minimum 20,000 pounds. Upon protests of the central-territory railroads and Central States Motor Freight Bureau, Inc., hereinafter called the bureau, the operation of the schedules was suspended until December 15, 1956, and the respondent voluntarily postponed the effective date to and including July 15, 1957.

On or about May 1, 1956, after the publication of the proposed rates, a general increase of 6 percent became effective, and the class rate is now 58 cents. At the hearing the respondent indicated a willingness to make a corresponding increase in the proposed rate to 39

[1] Rates are stated per 100 pounds.