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NOTICE OF APPEAL

(Filed Nov. 14, 1918)

NEW JERSEY SUPREME COURT

THE INHABITANTS OF THE CITY OF TRENTON AND EVERETT TOWNSEND, *Prosecutors*, vs. JOHN W. SLOCUM, ALFRED S. MARCH AND GEORGE F. WRIGHT, constituting the BOARD OF PUBLIC UTILITY COMMISSIONERS of the State of New Jersey and the Trenton and Mercer County Traction Corporation, *Defendents*.	ON CERTIORARI.

To Frank S. Katzenbach, Jr., and Edward M. Hunt, Esquires, Attorneys for the Trenton and Mercer County Traction Corporation, and L. Edward Herrmann, Esquire, Attorney for John W. Slocum, Alfred S. March and George F. Wright, constituting the Board of Public Utility Commissioners of the State of New Jersey:

Take notice, that the prosecutors' appeal to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause, on the following grounds:

1. Because the Board had no jurisdiction under the act entitled "An Act concerning Public Utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers,"

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(P. L. 1911, Chapter 195), to make the order of September 24, 1918, for the reason that the said order of September 24, 1918, impairs the obligations of the contracts theretofore made by the lessors of the defendant or their predecessors, by which it was agreed that the fare for the transportation of each passenger over the age of five years within the limits of the city of Trenton should be five cents, contrary to the Constitution of the United States of America and the State of New Jersey.

2. Because the Board had no jurisdiction or power under said act to make the order of September 24, 1918, because the defendant is obligated by a certain contract bearing date October 9, 1909, made between The Inhabitants of the City of Trenton and the Trenton Street Railway Company, to sell tickets at the rate of six for twenty-five cents.

3. Because the making of the order of September 24, 1918, impairs the obligation of a contract created by an ordinance entitled ("An Ordinance to provide for the sale of tickets by the Trenton Street Railway Company, passed October 9, 1909,") contrary to the Constitution of the United States of America and the State of New Jersey.

4. Because the order dated September 24, 1918, was made without any evidence before the Board of the value of the property of the defendant corporation situated in the City of Trenton, or considered as a whole, wherever situated.

5. Because the Board did not determine what was or is a fair rate of return upon the fair value of the property of the defendant corporation situated in the City of Trenton, or, considered as a whole, wherever situated.

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6. Because the Board ordered a charge of six cents where five cents is now charged, on and after October 15, 1918, and fixed as a just and reasonable charge to be imposed, observed and followed by the said defendant corporation on and after said fifteenth day of October, 1918, a charge of six cents where five cents is now charged, without determining that said amount or the total to be received by the defendant corporation because of said charge was or is a fair rate of return upon the fair value of the property of the said defendant corporation situated in the City of Trenton, or, considered as a whole, wherever situated.

7. Because the Board ordered said charge of six cents, as specified in the preceding paragraph hereof, without determining what was or is a fair rate of return upon the fair value of the defendant corporation's property situated in the City of Trenton, or, considered as a whole, whereever situated.

8. Because said order is illegal in that a large part of the alleged excess of operating expenses of said defendant corporation over its receipts, upon which alleged excess the finding of said Board was based, consisted of fixed charges, such as interest upon various kinds of indebtedness and payments of rentals upon leased property; which fixed charges said Board had no power to use, in whole or in part, as the basis of fixing the rate in said order of September 24, 1918.

9. Because said order is illegal in that a large part of the excess of operating expenses over gross receipts of the said defendant corporation, upon which excess the finding of said Board was based, was caused by large losses sustained by the said defendant corporation in operating car lines outside the limits of the City of Trenton, and

which loss said defendant corporation can not legally be permitted to recoup by increasing its rates of fare within the City of Trenton.

10. Because said order is illegal, because said Board therein fixed a rate to be charged in the City of Trenton without determining whether the rate so fixed was or is just and reasonable, as required by law.

11. Because said order is illegal in that it was not based upon any valuation of the defendant corporation's property devoted to the public use in the City of Trenton, or elsewhere, nor upon any legal basis, criterion or reason, and was an arbitrary and illusory act on the part of the members of said Board.

12. Because the Board permitted the defendant corporation to withdraw the sale of tickets at the rate of six for twenty-five cents and the flat cash fare of five cents and ordered fixed as a just and reasonable charge to be imposed and followed on and after October 15, 1918, by the defendant corporation, an emergency tariff providing for a flat fare of six cents in each existing zone for each passenger over five years of age.

CHAS. E. BIRD
GEORGE L. RECORD,

Attorneys for and Counsel with Prosecutors.

[ENDORSED]

Service of a copy of the Within Notice of Appeal is hereby acknowledged this 6th day of November, 1918.

FRANK S. KATZENBACH, JR.,
L. EDWARD HERRMANN,
Counsel of Defendants.

RULE AFFIRMING ORDER

(Entered Oct. 22, 1918)

THE INHABITANTS OF THE CITY OF TRENTON AND EVERETT TOWNSEND, *Prosecutors*, VS. TRENTON & MERCER COUNTY TRACTION CORPORATION, et als, *Defendants*.	UPON CERTIORARI. RULE AFFIRMING.

This cause coming on before the Court upon the return of the Writ of Certiorari in this cause, which brings up for review an order of the Board of Public Utility Commissioners, bearing date September 24, 1918, in the matter of the application of the said Trenton & Mercer County Traction Corporation for an increase of fare, and the reasons filed by the Prosecutors for the reversal of the said order having been read, and the return to said Writ, including the order, and report and proceedings of said Board having been inspected, and the argument of George L. Record and Charles E. Bird, of counsel with the Prosecutors, and L. Edward Herrmann, counsel for the Board of Public Utility Commissioners, and Frank S. Katzenbach, Jr. and Edward M. Hunt, of counsel with the said Trenton & Mercer County Traction Corporation, having been heard, and the Court having considered said reasons, return, order, report, proceedings and arguments, and being of the opinion that said order brought up for review should be affirmed.

It is ordered that said order so brought up for review by the Writ of Certiorari allowed in this cause be and the same is hereby in all things affirmed with costs; and that the said order and proceedings brought up for review by said Writ be and they are hereby remitted to the Board of Public Utility Commissioners.

Entered October 22, 1918.

On motion of Frank S. Katzenbach, Jr., Attorney for Respondent, Trenton & Mercer County Traction Corporation.

CLERK'S CERTIFICATE

I, ENOCH L. JOHNSON, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal and also a copy of the judgment entered in the above-stated cause as the same remains on file and of record in my office.

In testimony whereof I have set my hand and the seal of said Court at
[SEAL] Trenton, this 15th day of November, A. D. nineteen hundred and eighteen.

ENOCH L. JOHNSON,

Clerk.

OPINION

(Filed Oct. 18, 1918)

NEW JERSEY SUPREME COURT

THE INHABITANTS OF THE CITY OF TRENTON AND EVERETT TOWNSEND, *Prosecutors*, vs. TRENTON AND MERCER COUNTY TRACTION CORPORATION, et al., *Defendants.*	CERTIORARI.

Argued Oct. 16, 1918. Decided Oct. , 1918.

George L. Record, Esq., (Charles E. Bird with him) for prosecutors.

Frank S. Katzenbach, Jr., Esq., (Edward M. Hunt, Esq., with him) for Traction Corporation.

L. Edward Herrman, Esq., for Public Utility Commissioners.

SWAYZE, J:

Most of the points made in this case are sufficiently dealt with in the opinion in O'Brien vs. Public Service Railway Company. The only argument calling for remark is that the street railway lost $86,000 a year by its operation of suburban lines, and that this loss cannot be made up by profits on the operation of lines in the City of

Trenton. Whether the railway shall run some parts of its line at a loss, perhaps with a view to future development on future gain, perhaps with a view to greater public service, is a business question to be determined by the railway, subject to the control of the Public Utility Commission. It is settled that the correct legal test is the effect on the railway's entire line and not upon that part which was formerly a part of one of the consolidating roads. St. L. & San Francisco Railway vs. Gill, 156 U. S. 649, 665. The test has recently been applied in the case of a street railway. Puget Sound Traction Co. vs. Reynolds, 244 U. S. 574. A rule which would deprive suburban communities of street railway service might be much to the advantage of great cities like Trenton, but work harm to rural communities, and perhaps be to the disadvantage of the state as a whole. There is a general public interest in having thinly populated and relatively poor sections helped by the more densely populated and richer communities. Public roads are a good illustration. We can readily picture to ourselves the state of our roads if every mile depended for its upkeep upon the revenues traceable to that mile. The law as to railways is settled adversely to prosecutors' contention.

The order in this case must be affirmed with costs.

OPINION

(Filed Oct. 18, 1918)

NEW JERSEY SUPREME COURT

CHARLES F. X. O'BRIEN,
Prosecutor,
vs.
BOARD OF PUBLIC UTILITY COMMISSIONERS AND PUBLIC SERVICE RAILWAY COMPANY,
Defendants.

(TWO CASES)

CERTIORARI.

Argued Oct. 14, 1918. Decided Oct. 2, 1918.

George L. Record, Esq., and Marshall Van Winkle, Esq., for Prosecutor.

L. Edward Herrman, Esq., for Board of Utility Commissioners.

R. V. Lindabury, Esq., for Public Service Railway Company.

SWAYZE, J:

By an order of July 10, 1918, the Board of Public Utility Commissioners fixed as just and reasonable, a charge of one cent on all initial transfers issued by the Public Service Railway Company to its passengers, in addition to the charges theretofore exacted. Before this charge was to be collected the Railway Company was required to file with the Commissioners its acceptance of the terms of the order. This was done

By an order of September 25, the Board fixed as just and reasonable, a charge of seven cents where five was then charged, up to and including March 31, 1919, and six cents on and after April 1, 1919, in addition to the charge of one cent for each initial transfer. These charges were to be collected only in the event that prior to October 10, the Railway Company filed its acceptance in writing of the terms of the order. This was done.

The prosecutor is a resident, citizen, and owner of real estate in Jersey City, in which some of the lines of the railway run.

I held at the argument that the prosecutor has a standing to prosecute the writs. No objection was made when the writs were allowed or when argument was had as to the granting of a stay. Under those circumstances, it is too late to make the objection at final hearing after the return to the writ has been made. Even if the objection had been timely, it must have been overruled. The matter probably concerns every resident of the city, and an increase of street railway rates affects his pecuniary interest directly as a probable passenger and indirectly as interested in cheap urban transportation. If the question had been raised at the proper time I have no doubt Mr. O'Brien's interest could have been easily proved. It was not questioned but was taken for granted. I therefore overruled the objection.

The chief point made by the prosecutor is that the Board of Public Utility Commissioners was without jurisdiction to make the orders, since they were made without evidence of the value of the property of the Railway Company. The prosecutor assumes that the only power of the Board in respect to rates is to fix just and reasonable individual rates, after hearing upon notice, as provided in paragraph (c) of section 16 of the Public Utility Act. This section may properly be described as the section of the act which authorizes the Board to take proceedings adverse to the "public utility" and to require it to do what it

may not want to do. It is because the proceedings under that section are *in invitum*. that care is taken to provide for notice and a hearing, without which the proceedings would be without due process of law. If section 16 were the only section of the act applicable, there would be some force in the prosecutor's contention. There are other sections which prevent his narrow construction of the act. The scope of the act, as we have recently said, is very broad; it was meant to give full control of all public utilities to the board so far as could be done by legislation. Atlantic Coast Electric Ry. Co. vs. Board of Public Utility Comrs., 104 Atl. 218. The act provides not merely for proceedings *in invitum*, but by paragraph (h) of section 17, for agreement between the Board and the "public utility." That paragraph provides for an increase of rates by the "public utility" itself, authorizes the Board to hear and determine whether the increase is just and reasonable, and makes it the duty of the Board to approve the increase upon being satisfied that the same is just and reasonable. The difference in the two methods is fundamental. One is the method of litigation, long, expensive, unsatisfactory, necessarily too slow to afford prompt relief, and sure to do injustice by delay to one side or the other. The other we may call the method of agreement, or bargaining, if we choose; prompt and comparatively satisfactory, and resulting, if not always in abstract justice, yet in a determination, which in the hands of fairminded men, is likely to be acquiesced in. When we consider the well known object of this legislation, apparent in many sections of the act, we cannot believe that the legislature meant to limit the power of the Board to a power to make war on much of the most important business of the state. The difficulty meant to be remedied was the control by private corporations or individuals, necessarily monopolistic in character, of business affected with a public interest. The

aim of the legislature was to subject such corporations (or individuals if there were any in the same situation of monopolistic vantage), to public control so that a public board, charged with the interests of the public, might have a measure of control over the service to be rendered and the price to be paid therefor. Justice to all, as the policy of the state, is evinced in the act. The difficulty of securing justice through political or judicial methods is not necessarily inconsistent with the legislative policy. The readiest means to approximate that end is the method of agreement provided by paragraph (h) of section 17. The contrast between the method of section 16 and the method of section 17 could not be better shown than it is by making the Board the actor in section 16 (c), and making the "public utility" the actor in section 17 (h). It is of no consequence that in the present case the Public Service Railway Company began the proceedings by a petition asking the consent of the Board instead of itself increasing the rate and waiting for the Board to act upon some one's written complaint or on its own initiative. The essential thing meant to be secured by section 17 (h) was agreement between the "public utility" and the Board. No right could be lost by the petition, a method more polite or more politic as we choose to call it. In fact the exact method provided by section 17 (h) has been pursued in this case. The Railway has increased its rates. It has merely secured in advance the assurance that the Board will take no adverse action. If it should be considered important, the Board may now, being satisfied as it has already said, that the increase is just and reasonable, approve of the increase, and there would not be even an appearance of any but the statutory method. But neither its prior approval of the petition nor a subsequent order if the Board make one, is necessary to secure the same end. Paragraph (h) distinctly recognizes that the "public utility"

retains its power to increase rates; it gives the Board power to determine whether the increase is just and reasonable, but it does not compel the Board to act on its own initiative; if it does not, the increase is in effect unless some one makes a written complaint.

The evidence shows that the increase was only enough to enable the Railway to meet the increased expense forced upon it by the order of the War Labor Board of the Federal Government to increase wages. The increase permitted the Railway allowed nothing for return on large investments of capital. The Railway, if its petition had been denied, would have had ground to complain that the rate allowed was not just and reasonable. Since its petition was granted, it cannot complain. The prosecutor is in no position to complain. He did not venture to introduce evidence or to contradict the evidence offered on the part of the Railway. He contents himself with urging that there was no evidence of the value of the property of the Railway, and assumes that the justice and reasonableness of a rate can only be determined by first ascertaining the value of the property devoted to the public service. I am unable to follow his reasoning. The question of the reasonableness of a rate has always been regarded as complex and as largely a business question.

Even in the narrower question of determining the value of the property, it has long been settled that the original cost of construction, the amount expended in permanent improvements, the amount and market value of bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration and are to be given such weight as may be just and right in each case. The reasonable worth of the services rendered is a maximum of the permissible rate

and a fair return on the value of the property is a minimum. Smyth vs. Ames, 169 U. S., 466. Such a standard is certainly a flexible one and sustains the view taken by this court in Public Service Co. vs. Public Utility Board (the gas rate case), 84 N. J. L., 463. We there said that a just and reasonable rate is rather a question of business judgment than one of legal formula, and must often be tentative since the exact result cannot be foretold; and that the real test of the justice and reasonableness of an individual rate is that it should be as low as possible and yet sufficient to induce the investment of capital in the business and its continuance therein. The opinion in that case was adopted by the Court of Errors and Appeals, 87 N. J. Law, 597, and is the law of the state. Under the tests as stated by the courts, the value of the property is relevant to the question of a reasonable rate, but not conclusive. The reasonableness of the rate is the result, to borrow a scientific expression, of a composition of forces, some of which were set forth in the cases cited. There are others. There can be no better evidence of the reasonableness of a rate than its general adoption by the municipalities of this and other states in ordinances granting consent to the location of street railways, over a long succession of years, with acquiescence by the public without question and, as far as we know, without complaint either by the public or the Boards of Utility Commissioners, while in the earlier days before public regulation came in vogue, the universal five cent fare had been most attractive to investors. It is true that changing times seem to have made the long accustomed rate of five cents unreasonably low, in view of the notorious fact that increasing burdens of expense have been imposed by public regulation and that the prices of everything and the wages of labor have increased. Five cents was certainly not on its face unreasonably high, since it was a standard rate, and there was an

entire absence of proof on the part of the prosecutor. It follows with the certainty of a geometrical axiom that the addition of just enough to meet the increased wages forced on the Railway Company by the War Labor Board, could not make unreasonably high what was not so before. The failure to allow any return on capital invested would, if this had been a case of the Board fixing a rate instead of a case of its approving a rate fixed by the Railway, have been a violation of the principle of the Gas Rate case that a just and reasonable rate must be sufficient to induce the investment of capital in the business and its continuance therein. It is argued by the prosecutor that the Board could not proceed without evidence or a hearing even under section 17 (h). In view of the fact that the same result would follow mere inaction on the part of the Board, I am unable to yield assent to the argument. It is at any rate beside the mark in the present case. Here there was evidence of the President of the Railway Company, and no evidence on the part of the prosecutor. I am unable to see how the Board could draw any other conclusion than it in fact drew. The question of the justice and reasonableness of a rate, is a question of inference from facts proven, rather than in itself a matter of proven fact. The question is common in the law. Three examples are enough. A landowner on a running stream may make a reasonable use of the running water. It is for a court or jury, using its best judgment, to decide what is a reasonable use. Our conduct must be that of a reasonably prudent man. What is reasonably prudent conduct is for the jury using its best judgment to decide. At common law and under the act of Congress known as the Sherman Act, a contract in restraint of trade is valid if the restraint is reasonable, invalid if it is unreasonable. It is for the court or jury as the case may be, to decide what is reasonable or unreasonable in the light of the evidence and the decided cases.

So in the question of a reasonable rate where there is evidence for and no evidence against the rate and no decided case holding the particular rate to be unreasonable, the tribunal whatever it may be, is compelled to the inference of reasonableness, as the Board was in this case. If any doubt were left, it would be removed by the suggestions made by counsel for the prosecutor as to the method by which the Railway might meet this increased expense for wages. One counsel suggested that the difficulty might be met by decreasing the service rendered. I do not doubt that the service might be reduced to such an extent that a five cent fare would suffice. But that was not the problem presented to the Board. Their problem was whether to approve the Railway's plan to keep the service up to the present standard and allow it the means to pay the increased wages with which the War Board had not provided it. The Board had the power to reduce the efficiency of the service but apparently preferred to keep up the service even at the cost of increasing the rate. This is a question of business policy. No one, except counsel for the prosecutor, now suggests that a reduction of efficiency would be tolerable or tolerated. This solution of the difficulty seems out of the question. We can hardly imagine the municipalities, whose interests are represented by the prosecutor, adopting their counsel's suggestion that the deficiency in revenue might be met by a reduction in the efficiency of the service. The other counsel suggested, with seeming seriousness and indifference to results, that relief could be found in the appointment of a receiver, and that if upon a valuation of the property a fare of five cents would result in adequate return on that value, it could make no difference what effect it might have, and that the Railway would only be in the position of one who had in the past made improvident bargains. This argument, however, overlooks the nature of the case and the issue presented.

No one asked that the Board determine what was a fair rate. The only issue was whether the increased expenses due to the action of the War Labor Board might properly be made up out of the proposed increased fare. The petitioner was the Public Service Railway Company and that company alone. If the proceedings were to be turned into one where the petitioner was to run the risk of business suicide, the interests of underlying companies would be affected; their contracts might be terminated, and it might even be impossible for them to earn a fair return on their investment. They would be entitled to notice and a hearing under section 16 (c). Evidently the present proceeding contemplates no such remedy as a receivership as suggested by counsel. Probably no such remedy was contemplated by the legislature. The failure to provide a procedure by which so drastic a remedy could be legally accomplished, indicates that when the legislature by section 17 gave the Board power by order in writing to require every public utility to furnish safe, adequate, and proper services and to keep and maintain its property and equipment in such condition as to enable it to do so, and by section 16 gave the Board power after hearing upon notice, to fix just and reasonable rates which should be imposed, observed, and followed thereafter by any public utility, it was contemplating orders to the operating public utility only. I do not say that if a reasonable rate drove the operating company into insolvency, that rate could not be established against the underlying companies. I only say that the present proceeding is not adapted for that purpose. The act contemplates a regulation of still existing public utilities for the benefit of the public, not their destruction. It was decided more than thirty years ago that the constitutional power was a power to regulate, not a power to destroy. Railroad Commission cases, 116 U. S. 307, 331. I am unable to agree with counsel for the prosecutor

either that the remedy for the needs of the Railway Company to meet the higher wages of its employes is to be found in a lessened efficiency of service or in a receivership. There is no suggestion that government aid is possible. There is no other source of revenue except fares. I think the granting of the Railway Company's petition was required by the evidence.

The contention of the prosecutor that the rates fixed by ordinances cannot be changed by the consent of both the Board and the Railway Company is disposed of, so far as this court is concerned, by the decision in Collingswood Sewerage Co. vs. Collingswood, 102 Atl., 901; and in Atlantic Coast Electric Ry. Co. vs. Board of Public Utility Comrs., 104 Atl. 218. The suggestion that the matter is one for the Legislature alone and not for the Public Utilities Commission is settled adversely to the prosecutor by the United States Supreme Court, (Railroad Commission Cases, cited above) and by constant practise in this and other states.

The orders brought up by these two writs must be affirmed with costs.

STIPULATION AND REASONS

(Filed Oct. 16, 1918)

NEW JERSEY SUPREME COURT

THE INHABITANTS OF THE CITY OF TRENTON, AND EVERETT TOWNSEND, *Prosecutors*, VS. JOHN W. SLOCUM, ALFRED S. MARCH AND GEORGE F. WRIGHT, constituting the BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY AND THE TRENTON AND MERCER COUNTY TRACTION CORPORATION, *Defendants*.	ON CERTIORARI. STIPULATION Between the Prosecutors and the Defendants, made this 14th day of October, 1918.

IT IS STIPULATED between the said parties as follows:

1. That the writ allowed in the above entitled cause shall be returned forthwith and the case brought on for final hearing before Mr. Justice Swayze, sitting as the Supreme Court at his Chambers, at the Court House, in the City of Newark, at 10:30 A. M., on Wednesday, October 16th, 1918.

2. That the reasons upon which the Prosecutors will relay on said hearing are and shall be regarded as follows:

(a) The Board of Public Utility Commissioners are without jurisdiction to make the order dated September 24th, 1918, mentioned in the writ.

(b) The order was made without any evidence before the Board of the value of the property of the defendant corporation situated in the City of Trenton, or considered as a whole wherever situated.

(c) The Board did not determine what was or is a fair rate of return upon the fair value of the property of the defendant corporation situated in the City of Trenton, or considered as a whole wherever situated.

(d) The Board ordered a charge of six cents where five cents is now charged, on and after October 15th, 1918, and fixed as a just and reasonable charge to be imposed, observed and followed by the said defendant corporation on and after said fifteenth day of October, 1918, a charge of six cents where five cents is now charged, without determining that said amount or the total to be received by the defendant corporation because of said charge was or is a fair rate of return upon the fair value of the property of the said defendant corporation situated in the City of Trenton, or considered as a whole wherever situated.

(e) The Board ordered said charge of six cents, as specified in the preceding paragraph hereof, without determining what was or is a fair rate of return upon the fair value of the defendant corporation's property situated in the City of Trenton, or considered as a whole wherever situated.

(f) That said order is a violation of a number of ordinances enacted by the City of Trenton and other municipalities in the County of Mercer, which provide that passengers shall be carried on the lines operated by the defendant corpora-

tion for not more than a five cent fare. The defendant corporation is operating its railway system by virtue of these ordinances.

(g) That said order is illegal in that a large part of the alleged excess of operating expenses of said defendant corporation over its receipts, upon which alleged excess the finding of said Board was based, consisted of fixed charges, such as interest upon various kinds of indebtedness and payments of rentals upon leased property; which fixed charges said Board had no power to use, in whole or in part, as the basis of fixing the rate in said order of September 24, 1918.

(h) That said order is illegal in that a large part of the excess of operating expenses over gross receipts of the said defendant corporation, upon which excess the finding of said Board was based, was caused by large losses sustained by the said defendant corporation in operating car lines outside the limits of the City of Trenton, and which loss said defendant corporation can not legally be permitted to recoup by increasing its rates of fare within the City of Trenton.

(i) That said order is illegal in that a large part of the excess of operating expenses over gross receipts of the said defendant corporation was caused by bad management, poor service and inadequate equipment, and said corporation is not entitled to recoup the losses due to said causes by increasing the fares in the City of Trenton.

(j) That said order is illegal because said Board therein fixed a rate to be charged in the City of Trenton without determining whether the rate so fixed was or is just and reasonable, as required by law.

(k) That said order is illegal in that it was not based upon any valuation of the defendant corporation's property devoted to the public use in the City of Trenton, or elsewhere, nor upon any legal basis, criterion or reason, and was an arbi-

trary and illusory act on the part of the members of said Board.

(l) That said order is illegal in that it is in violation of Article IV of Section 7 of Paragraph 3 of the Constitution of the State of New Jersey.

(m) That said order is illegal in that it is in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(n) That the Board permitted the defendant corporation to withdraw the sale of tickets at the rate of six for twenty-five cents and the flat cash fare of five cents and ordered fixed as a just and reasonable charge to be imposed and followed on and after October 15, 1918, by the defendant corporation, an emergency tariff providing for a flat fare of six cents in each existing zone for each passenger over five years of age.

3. That said return shall contain the following:

(a) The findings, report and order of the Board, dated September 24th, 1918.

(b) The following portions of the transcript of testimony taken before the Board of Public Utility Commissioners in the proceedings resulting in said findings, report and order, namely: petition and exhibits annexed thereto; the testimony taken before the Board of Public Utility Commissioners upon said application of the Trenton and Mercer County Traction Corporation and the exhibits offered in evidence, together with the testimony taken in any other case (and exhibits) which was by stipulation made a part of the record in this case.

4. That said testimony and exhibits need not be printed in this Court and that in case of an appeal by either party the said exhibits and testimony need not be printed, but may be produced by either party and used on appeal as if printed in the record in extenso, unless otherwise ordered by the Court.

5. The following are ordinances or parts thereof, pertaining to this case: "An Ordinance to authorize the Trenton Horse Railroad Company to construct their road or track through the streets of the City of Trenton," passed July 28, 1863, section 11 of which ordinance reads as follows: "11. * * * and the fare for any distance within the city limits shall not exceed five (5) cents for each passenger."

"An Ordinance to authorize the Trenton Horse Railroad Company to build a horse railroad in Chambersburg," passed February 1, 1886, section 11 of which ordinance reads as follows: "11. * * * and the fare, for any distance within the borough limits shall not exceed five (5) cents for each passenger."

"An Ordinance to authorize the City Railway Company to lay their tracks in certain streets in the City of Trenton," passed February 1, 1876, section 11 of which ordinance reads as follows: "11. * * * and the fare for any distance within the city limits shall not exceed six (6) cents for each passenger."

"An Ordinance to authorize the City Railway Company to build a horse railroad in Chambersburg," passed January 24th, 1876, (amended by ordinance of June 5, 1876, by changing the word "five" and inserting the word "six," making it read, "six cents.") Section 11 of the said ordinance of January 24, 1876, read as follows: "11. * * * and the fare from one end to the other of the said city railway shall not exceed five cents for each passenger."

"An Ordinance to authorize the Trenton Passenger Railway Company, Consolidated, to use electric motors as the propelling power of its cars through certain streets and avenues in the City of Trenton, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," approved February 12, 1894, section 4 of which ordinance reads as follows: "4. No greater sum shall be charged

or received by said company as fare or toll for the carrying of passengers for any distance within the limits of the City of Trenton than five cents for each passenger over five years of age, and no sum shall be charged or received as fare or toll for the carrying of children under five years of age; the mayor is hereby empowered to revoke the license of any car which is not run in accordance with the provisions of this section."

"An Ordinance to authorize the Mulberry Street Passenger Railway Company to lay tracks and to use electric motors as the propelling power of its cars through a portion of Mulberry Street, in the City of Trenton, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," approved October 23, 1897, section 4 of which ordinance reads as follows: "4. No greater sum shall be charged or received by said company as fare or toll for the carrying of passengers than five cents for each passenger over five years of age, and no sum shall be charged or received as fare or toll for the carrying of children under five years of age; the mayor is hereby empowered to revoke the license of any car which is not run in accordance with the provisions of this section."

"An Ordinance to authorize the Pennington Avenue Passenger Railway Company to lay tracks and to use electric motors as the propelling power of its cars, through certain streets and avenues in the City of Trenton, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," approved December 22, 1897, section 4 of which ordinance reads as follows: "4. No greater sum shall be charged or received by said company as fare or toll for the carrying of passengers than five cents for each passenger over five years of age, and no sum shall be charged or received as fare or toll for the carrying of children under five years of age; the mayor is hereby empowered to revoke the license of any car which is not run in

accordance with the provisions of this section."

"An Ordinance to authorize the Trenton Street Railway Company to lay tracks and to use electric motors as the propelling power of its cars through Paul street and a portion of Brunswick Avenue, in the City of Trenton, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," passed February 8, 1894, section 2 of which ordinance reads as follows: "2. The permission to lay tracks and to erect poles on the streets designated * * * granted under all the terms and conditions of an ordinance passed * * * on February eighth, one thousand eight hundred and ninety-four, * * * *"

"An Ordinance to authorize the Trenton Street Railway Company to lay tracks and to use electric motors as the propelling power of its cars through a portion of Mulberry Street, in the City of Trenton, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," passed February 8, 1894, section 2 of which ordinance reads as follows: "2. The permission to lay tracks and to erect poles on the street designated * * * granted under all the terms and conditions of an ordinance passed * * * on February eighth, one thousand eight hundred and ninety-four, * * *."

"An Ordinance to authorize the Mercer County Traction Company to construct, maintain and operate a street railway in, over and upon a certain street in the City of Trenton, and to use electric motors as the propelling power of its cars, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," approved October 11, 1901, section 6 of which ordinance reads as follows: "6. No greater sum shall be charged or received by such company as fare or toll for carrying of passengers than five cents for each passenger over five years of age, and no sum shall be charged or received

as fare or toll for the carrying of children under five years of age: * * *."

"An Ordinance to authorize the Mercer County Traction Company to construct, maintain and operate a street railway in, over and upon certain streets in the City of Trenton, and to use electric motors as the propelling power of its cars, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," approved October 11, 1901, section 6 of which ordinance reads as follows: "6. No greater sum shall be charged or received by said company as fare or toll for the carrying of passengers than five cents for each passenger over five years of age, and no sum shall be charged or received as fare or toll for the carrying of children under five years of age; * * *."

"An Ordinance to authorize the Mercer County Traction Company to construct, maintain and operate a street railway in, over and upon certain streets in the City of Trenton, and to use electric motors as the propelling power of its cars, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," approved January 13, 1902, section 6 of which ordinance reads as follows: "6. No greater sum shall be charged or received by said company as fare or toll for the carrying of passengers than five cents for each passenger over five years of age, and no sum shall be charged or received as fare or toll for the carrying of children under five years of age; * * *."

"An Ordinance to authorize the Mercer County Traction Company to construct, maintain and operate a street railway, in over and upon certain streets in the City of Trenton, and to use electric motors as the propelling power of its cars, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," passed March 15, 1904, section 6 of which ordinance reads as follows: "6. No greater sum shall be charged or received by said company as

fare or toll for the carrying of passengers than five cents for each passenger over five years of age, and no sum shall be charged or received as fare or toll for the carrying of children under five years of age; * * *."

"An Ordinance to authorize the Mercer County Traction Company to construct, maintain and operate a street railway in, over and upon certain streets in the City of Trenton, and to use electric motors as the propelling power of its cars, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," passed June 27, 1904, section 6 of which ordinance reads as follows: "6. No greater sum shall be charged and received by said company as fare or toll for the carrying of passengers than five cents for each passenger over five years of age, and no sum shall be charged or received as fare or toll for the carrying of children under five years of age; * * *."

"An Ordinance to authorize the Trenton, Hamilton and Ewing Traction Company to construct, maintain and operate a street railway in, over and upon certain streets in the City of Trenton, and to use electric motors as the propelling power of its cars, and to provide for the erection of poles and the stringing of wires thereon to supply electricity to the motors," passed December 5, 1905, section 6 of which ordinance reads as follows: "6. No greater sum shall be charged and received by said company as fare or toll for the carrying of passengers than five cents for each passenger over five years of age, and no sum shall be charged or received as fare or toll for the carrying of children under five years of age; * * *."

"An Ordinance to authorize the Trenton, Hamilton and Ewing Traction Company to construct, maintain and operate a street railway in, over and upon certain streets in the City of Trenton, and to use electric motors as the propelling power of its cars, and to provide for the erection of poles and the stringing of wires thereon to supply elec-

tricity to the motors," passed February 23, 1906, section 6 of which ordinance reads as follows: "6. No greater sum shall be charged and received by said company as fare or toll for the carrying of passengers, than five cents for each passenger over five years of age, and no sum shall be charged or received as fare or toll for the carrying of children under five years of age; * * *."

"An Ordinance to provide for the sale of tickets by the Trenton Street Railway Company," passed October 19, 1909, sections 1, 2 and 4 of which ordinance read as follows:

"Section 1. That from and after the passage of this ordinance the Trenton Street Railway Company be and it hereby is required to sell at all times upon all of the cars operated by said company, in the City of Trenton, tickets, at the rate of six tickets for twenty-five cents, which shall be good and valid (in lieu of the fare or toll which said company, by the several ordinances of this city, was heretofore authorized to charge or collect for the carrying of passengers) over any and all of the lines of the street railway operated by said company within the corporate limits of said city.

"Section 2. That no toll or fare shall be charged or received by the said company for the carrying of children under the age of five years, but that all children within the age aforesaid shall and may ride free of toll as heretofore.

* * *

"Section 4. That all ordinances and parts of ordinances inconsistent with the terms of this ordinance be and they hereby are repealed, and that this ordinance shall take effect immediately."

6. That the Trenton Horse Railroad Co., the City Railway Company, the Hamilton Township Street Railway Company, the South Clinton Avenue and Broad Street Railway Company, were merged into the Trenton Passenger Railway Company, by consolidation, by agreement bear-

ing date September 21, 1891; that the Trenton Passenger Railway Company, Consolidated, the Pennington Avenue Passenger Railway Company, the Mulberry Street Railway Company, and the Ewing Passenger Railway Company, were merged into the Trenton Street Railway Company, by consolidation, by agreement bearing date June 28, 1898; that the Trenton Street Railway Company, consolidated, the Mercer County Traction Company, and the Trenton, Hamilton and Ewing Traction Company were leased to the Trenton and Mercer County Traction Corporation, by leases dated October 15, 1910.

7. That the prosecutor, Everett Townsend, is a resident of the City of Trenton and has resided in such City for more than ten years last passed; that he frequently travels upon the street railway lines operated by the defendant corporation in the City of Trenton and other municipalities in the County of Mercer; and is affected by the making of said order because he will be compelled to pay an increased rate of fare by reason of the making thereof.

CHAS. E. BIRD,
GEORGE L. RECORD,
Attorneys for Prosecutors.

FRANK S. KATZENBACH, JR.,
EDWARD M. HUNT,
Attorneys for Defendant, the Trenton and Mercer County Traction Corporation.

L. EDWARD HERRMAN,
Attorney for the Board of Public Utility Commissioners of the State of New Jersey.

STIPULATION FOR APPEAL

(Filed Nov. 19, 1918)

NEW JERSEY SUPREME COURT

THE INHABITANTS OF THE CITY OF TRENTON, AND EVERETT TOWNSEND, *Prosecutors.* VS. JOHN W. SLOCUM, ALFRED S. MARCH AND GEORGE F. WRIGHT, constituting the BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE TRENTON AND MERCER COUNTY TRACTION CORPORATION, *Defendants,*	ON CERTIORARI. OF ORDER OF SEPTEMBER 24, 1918 STIPULATION.

The parties in the above entitled cause hereby stipulate as follows:

1. That they will unite in requesting Mr. Justice Swayze to decide the above entitled cause at an early date so as to give as much time as possible for the defeated party to prepare, to take and perfect an appeal to the Court of Errors and Appeals.

2. That whichever party is defeated in the Supreme Court will forthwith take an appeal to the Court of Errors and Appeals and that both parties will co-operate in every possible way to have the case perfected and heard at the ensuing term of the Court of Errors and Appeals on the preferential list of that Court.

3. That in consideration of the foregoing the defendant, the Trenton and Mercer County Traction Corporation, will continue its system of issuing receipts for six cents and nine cents as provided in the order of Mr. Justice Trenchard, made October 14, 1918, until the decision of the case on the appeal by the Court of Errors and Appeals.

Dated October 16, 1918.

CHAS. E. BIRD,
GEORGE L. RECORD,
Attorneys for Prosecutors.

FRANK S. KATZENBACH, JR.,
EDWARD M. HUNT,
Attorneys for Defendants Trenton & Mercer County Traction Corporation.

WRIT OF CERTIORARI

(Returnable Oct. 17, 1918)

NEW JERSEY SUPREME COURT

THE INHABITANTS OF THE CITY OF TRENTON, AND EVERETT TOWNSEND, *Prosecutors.* VS. JOHN W. SLOCUM, ALFRED S. MARCH AND GEORGE F. WRIGHT, constituting the BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE TRENTON AND MERCER COUNTY TRACTION CORPORATION, *Defendants,*	ON CERTIORARI. WRIT OF CERTIORARI.

NEW JERSEY, ss.

The State of New Jersey to John W. Slocum, Alfred S. March and George F.
[SEAL] *Wright, constituting the Board of Public Utility Commissioners of the State of New Jersey;*

GREETING:

We being willing for certain reasons to be certified of and concerning a certain order of the Board of Public Utility Commissioners, made on

the twenty-fourth day of September, 1918, in the matter of permitting the Trenton and Mercer County Traction Corporation to withdraw the sale of tickets at the rate of six for twenty-five cents and the flat cash fare of five cents, and ordering fixed as a just and reasonable charge to be imposed and followed on and after the effective date of said order by the Trenton and Mercer County Traction Corporation, an emergency tariff providing for a flat fare of six cents in each existing zone for each passenger over five years of age, and all things touching and concerning the same; do command you and each of you that the said order, and all things touching and concerning the same, as fully as before you they appear and remain, you do certify and send over your seal to our Justices of our Supreme Court at Trenton, forthwith, that we may cause to be done thereon what according to law and the Constitution of New Jersey ought to be done.

Witness, the Honorable William S. Gummere, Chief Justice of our Supreme Court, at Trenton, the fourteenth day of October, in the year of our Lord one thousand nine hundred and eighteen.

ENOCH L. JOHNSON,
Clerk.

CHAS. E. BIRD,
Attorney.

[ENDORSED]

NEW JERSEY SUPREME COURT

I allow this writ to apply as a stay of the order brought up on condition, however, that the case be brought on for final hearing before the Hon. Francis J. Swayze, Justice of the Supreme Court, at the Court House, in the City of Newark, on Wednesday, October 16th, 1918, at 10:30 A. M.,

provided that said stay shall not become operative in case the Trenton and Merder County Traction Corporation shall on or before October 14th, 1918, file a stipulation with the Clerk of this Court to offer to each passenger a receipt for any excess fare paid by said passenger over and above the rate of fare which said passenger would have paid prior to October 15th, 1918; in the event of the inability of the Trenton and Mercer County Traction Corporation to give such receipt, the passengers shall, until such receipts be offered, be carried for the same rates of fare now in effect; that the receipt where a passenger pays six cents for a single fare shall be in the following form:

This certifies that six cents has been received for one fare on the lines of the TRENTON & MERCER COUNTY TRACTION CORPORATION which is one cent in excess of the rate in effect prior to October 15th, 1918. Should the six cent fare be finally adjudged invalid, the excess of one cent will be refunded to the payer only, on presentation of this receipt at the office of the Company.

TRENTON & MERCER COUNTY
TRACTION CORPORATION,
E. M. HUNT, *Treasurer.*
000001 (Facsimile signature);

if the company sells five tickets for thirty cents, then to each payer there shall be offered a receipt in substantially the same form for nine cents; or, any modification of such receipts as counsel on both sides may agree on. Let it be sealed.

THOMAS W. TRENCHARD.
J. S. C.

40

RETURN OF WRIT

NEW JERSEY SUPREME COURT

(Filed Oct. 17, 1918)

THE INHABITANTS OF THE CITY OF TRENTON, AND EVERETT TOWNSEND, *Prosecutors*, VS. JOHN W. SLOCUM, ALFRED S. MARCH AND GEORGE F. WRIGHT, constituting the BOARD OF PUBLIC UTILITY COMMISSIONERS of the State of New Jersey and the Trenton and Mercer County Traction Corporation, *Defendants.*	ON CERTIORARI. RETURN OF WRIT

To the Honorable the Justices of the Supreme Court of the Judicature of New Jersey.

The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey a certain order made by this Board the Twenty-fourth day of September, A. D. Nineteen hundred and eighteen, together with the record and proceedings and the proofs before said Board, and findings and conclusions thereon, and all things touching and concerning the same as fully and entirely as before said Board they remain, as it is within commanded.

IN WITNESS WHEREOF the seal of said Board is hereto affixed, and certified by the subscriber.

ALFRED N. BARBER,
Secretary of the Board of Public Utility Commissioners of New Jersey.

REPORT

IN THE MATTER OF THE APPLICATION OF THE TRENTON AND MERCER COUNTY TRACTION CORPORATION FOR INCREASED RATES OF FARE.

F. S. Katzenbach and E. M. Hunt, for the Petitioner.
George L. Record and C. E. Bird, for the City of Trenton.
H. T. Satterthwaite, for Lawrence Township.
Alvin W. Sykes, for Hamilton Township.
C. R. Ruhlman, for Pennington.
E. C. Long, for Hopewell Township.

The petition alleges:

That the petitioner is a public utility corporation, duly organized under the laws of the State of New Jersey, and is the lessee of the properties of the Trenton Street Railway Company, the Mercer County Traction Company, the Trenton, Pennington and Hopewell Street Railway Company, and the Trenton, Hamilton and Ewing Traction Company, under leases dated October 15th, 1910, duly approved as being in the public interest by the Board of Public Utility Commissioners of the State of New Jersey by orders dated March 24th, 1911.

That the petitioner is now engaged in transporting passengers for hire in the following municipalities in this State, namely, the city of Trenton, the townships of Ewing, Princeton, Hamilton and Hopewell, and the boroughs of Princeton, Pennington and Hopewell, all in the county of Mercer.

That the company gave due notice in the newspapers of Trenton of its intention to increase its

fares by application to this Board for permission so to do.

That the petitioner desires and proposes to increase the rate of fare for the transportation of each single passenger over the age of five years within the city of Trenton, and likewise for the transportation of each single passenger over the age of five years in each of the fare zones on the suburban lines operated by the petitioner from five cents to six cents, and also to discontinue on all lines operated by it the sale of six tickets for twenty-five cents.

That the reason for the proposed increase is the need of additional revenue by the petitioner to meet (a) the increased costs of labor and materials required for the operation of said properties and necessary for the maintenance of way and structures, for the annual replacement of such property as has reached the end of its useful life; (b) increased taxes, and (c) decreasing revenues, all of which is more particularly shown in exhibits annexed to the petition.

That the petitioner has shown from the exhibits referred to in or attached to the petition that gross revenue from all sources at the present rate of fare for the year 1918 will not amount to more than $827,004.98, and will exceed the gross revenue for the year 1914, which was $776,548.46, by $50,456.52.

That the total operating expenses, expenditures for maintenance and replacement and assessed taxes for 1918 will amount to $688,381.14, and will exceed the expenditures made in 1914 for the same purpose, which were $497,941.71, by $190,-438.43.

That the statement marked "Exhibit G" attached to the petition shows the annual wages paid during each of the years from 1914 to 1917, inclusive, with estimated wages paid in each department for the year 1918.

That the estimate for the year 1918 was arrived at by taking the authorized number of employees

in each department from the grade of superintendent down on April 15th, 1918, and applying to them the wages paid on April 15th, 1918, for the total working days in 1918, with the exception of the statement covering wages paid to motormen and conductors. In the latter case the rate of wages paid by the petitioner to motormen and conductors in April, 1918, was applied to the number of car hours operated during 1917. This statement shows that the total wages to be paid to all employees from the rank of superintendent down for the year 1918 amounted to $402,244.33, and exceeded the amount of wages paid in 1914, which was $293,157.96, by $109,086.37.

That in case this appeal of the petitioner is granted for an increase in the fare charged for transportation of passengers, it is the desire of the petitioner to further increase the amount to be set aside annually for depreciation fund by $25,000, making the total annual appropriation for this purpose $175,000.

That "it is the desire of the petitioner, in case revenues are sufficiently increased by your granting the increase in the rate of fare herein applied for, to increase wages paid, particularly to motormen and conductors and to certain other employees up to the rank of superintendent, to the extent of $20,000 by which the annual amount at present needed to meet payroll expenditures will be increased by increasing the wages of certain employees below the rank of superintendent, especially motormen and conductors, in order that the standard wages may be more nearly that of those with whom it must compete in engaging employees." (Testimony was given that the increase already granted would aggregate $55,000, or $35,000 more than the $20,000 alleged in the petition to be in contemplation.)

That during the year 1917 the expenditures of the petitioner exceeded its revenue by the sum of $77,417.97; estimating receipts of the peti-

tioner for the year 1918, based upon the receipts for the first quarter of said calendar year, and basing the costs of operation upon present prices being paid for labor and materials, the deficit for the year 1918 will be $212,160.12, as shown by exhibits hereinbefore referred to. With the contemplated additions to capital expenditures, to depreciation appropriation and to wages indicated above, this deficit would be further increased for the year 1918 by $85,000, making the total deficit for the year 1918 at the present rate of fare, in case the additional expenditures are to be made, $297,160.12.

That the cost of all materials and labor required by the petitioner in the conduct of its business has increased by a large percentage over the cost of similar materials during previous years.

That the conditions giving rise to such increased costs still exist and such costs will continue to increase in the year 1918 over present costs.

That, allowing 10 per cent. decrease in the number of passengers to be carried during the next twelve months under those riding at the present rate of fare due to the proposed increase in rate of fare to six cents, the increase in revenue from transportation of passengers over the amount being received during the year 1918, at present rate of fare, will be $201,194.27.

Numerous hearings were held in the matter, beginning June 3d, and the case was argued on July 9th.

The Public Utility Statute provides that after this Board shall have considered an application for increase in fares "it shall be the duty of said Board to approve any such increase, change or alteration upon being *satisfied* that the same is just and reasonable."

In normal times, the criterion of reasonableness of any proposed schedule of rates is that

it should be sufficient to secure a fair return on the fair value of the property devoted to the use of the public provided the amount of any particular rate does not exceed the value of the service rendered. But these are abnormal times, and the standards which may be reasonable in normal times, may, if rigidly applied under war conditions now existing, result in a curtailment or entire suspension of the service of this utility just at the time when the National Government is exerting every effort to co-ordinate and strengthen all agencies employed in winning the war, not the least important of which are the street railway systems transporting citizens from home to place of employment.

As an indication, during the abnormal conditions now existing, of the necessity of prompt emergency relief to keep the petitioner functioning, we will quote the language used by the National War Labor Board in its award in the Cleveland case:

> "We have recommended to the President that special congressional legislation be enacted to enable some executive agency of the Federal Government to consider the very perilous financial condition of this and other electric street railways of the country, and raise fares in each case in which the circumstances require it. We believe it to be a war necessity justifying Federal interference. Should this be deemed unwise, however, we urge upon the local authorities and the people of the locality the pressing need for such an increase adequate to meet the added cost of operation.
>
> "This is not a question turning on the history of the relations between the local street railways and the municipalities in which they operate. The just claim for an increase in fares does not rest upon any right to a dividend upon capital long invested in the enterprise. *The increase in fare must be given be-*

cause of the immediate pressure for money receipts now to keep the street railways running so that they may meet the local and national demand for their service. Over capitalization, corrupt methods, exorbitant dividends in the past are not relevant to the question of policy in the present exigency. In justice the public should pay an adequate war compensation for a service which cannot be rendered except for war prices. The credit of these companies in floating bonds is gone. Their ability to borrow on short notes is most limited. In the face of added expenses which this and other awards of needed and fair compensation to their employees will involve, such credit will completely disappear. Bankruptcy, receiverships, and demoralization, with failure of service, must be the result. Hence our urgent recommendation on this head."

The Board has considered all the evidence and exhibits not only in the present case, but in the so-called strip ticket case and the preceding cases which have been made a part of this record.

Exhibit P-2 has been prepared by the company to show its estimates of the results of operation for the year 1918. That portion of this exhibit relating to 1917 and 1918 is given in Table I following:

Table I.

TRENTON AND MERCER COUNTY TRACTION CORPORATION. RESULTS OF OPERATION.

Ex. P-2.

	Year 1917	*Estimate for Year 1918*
Revenue from Transportation	$866,103.33	$814,137.13
Revenue from Operation other than Transportation	7,981.54	8,107.85
Total Operating Revenues	$874,084.87	$822,244.98

Operating Expenses exclusive of depreciation expenditures and taxes	$404,754.79	$450,388.53
Depreciation Expenditures	130,753.44	150,000.00
Taxes Assessed	87,992.61	87,992.61
Total Operating Expenses and Taxes	$623,500.84	$688,381.14
Net Operating Income	$250,584.03	$123,863.84
Non-Operating Income	6,472.96	4,760.00
Gross Corporate Income	$257,056.99	$138,623.84
Income Deductions (Income on Funded Debt, Rentals, Amortization Bond Discount)	308,245.91	318,554.91
Deficit	$ 51,188.92	$179,931.07
Cash Payments on Equipment Notes and on New Cars Purchased	10,000.00	16,000.00
Deficit	$ 61,188.92	$195,931.07
Road and Equipment and Rehabilitation Expenditures	16,229.05	16,229.05
Deficit	$ 77,417.97	$212,160.12
8 per cent. on $500,000 additional capital		$ 40,000.00
Increased depreciation fund		25,000.00
Increased wages of Conductors and Motormen		*20,000.00
Total deficit		$297,160.12
Increase due to 6-cent fare for 12 months		$201,194.27

* Original petition states $20,000; testimony indicates that annual wages totaling $55,000 have actually been allowed during the month of June.

In this exhibit the company includes, as if it were expense to be provided during the current year, cash payments on notes and on new cars amounting to $16,000, and $40,000 for interest on $500,000 of additional capital estimated to be required to put the company in perfect operating condition; it also includes $25,000 increase in depreciation fund and $20,000 which it proposes to add to the wages of conductors and motormen. As above noted, this $20,000 item has increased to $55,000 in the actual wage scale since granted to the men and now in oper-

ation. If the latter item be taken into consideration, the company's total deficit shown on Exhibit P-2 would be increased by $35,000 to a total of $332,160.12. A rigid analysis of this estimate would show a reduction of a considerable amount but not a sufficient reduction to bring the total down to the $201,194.27 which the company estimates would be produced by imposing a six-cent fare during a period of one calendar year.

In the present emergency the Board will not under these trying circumstances, determine from the record either the total amount of property on which the petitioner is entitled to fair return nor the rate of return applicable to said property nor whether the fixed charges are properly related to such fair return under normal conditions, but will base its conclusions in this matter upon the exigencies of the times and afford such relief as is necessary to permit the company to continue service. When the present emergency shall have passed, the Board will resume the consideration of the case.

The Board, therefore, finds and determines:

1. That, in the present abnormal times, an emergency exists, and that in order to render the public continuous safe, adequate and proper service, the Trenton and Mercer County Traction Corporation will be required to raise additional revenue to the amount of at least $201,-194 per annum, this being the amount estimated by the petitioner to be produced by the proposed tariff, and which estimate we find to be reasonably accurate.

Pending a final determination of the matter, the Board will permit the company to withdraw the sale of tickets at the rate of six for twenty-five cents and the flat cash fare of five cents, and to file in lieu thereof a war emergency tariff providing for a flat fare of six cents in each ex-

isting zone for each passenger over five years of age, on the following conditions:

2. Acceptance by the company of the increase herein allowed will be taken as a stipulation that abrogation or modification of the war increase may be made as and if conditions as indicated by operating results warrant.

3. The company shall promptly file with the Board for each calendar month, beginning with the month of November, 1918, during which the emergency surcharge is added to its rate schedule, a complete comparative income statement for 1917 and 1918 of its operations, showing revenue and revenue deductions, classified in accordance with the uniform system of accounts for street or traction railway utilities (first issue) prescribed by this Board, together with mileage, traffic and miscellaneous statistics, as required on page 35 of the form of annual report now required to be filed by the Board.

4. The Board will retain jurisdiction of the emergency or war increase as herein approved for the purpose of modifying or abrogating same as and if the conditions change.

An order will accordingly issue.
Dated September 24th, 1918.

ORDER

This matter having been duly heard, and the Board having this day made and filed a report stating its findings of fact and conclusions thereon, which report by reference thereto herein is made part hereof, hereby permits the company to withdraw the sale of tickets at the rate of six for twenty-five cents and the flat cash fare of five cents, and ORDERS FIXED as a just and reasonable charge to be imposed and followed on and after the effective date of this order by the Trenton and Mercer County Traction Corporation an emergency tariff providing for a flat fare of six cents in each existing zone for each passenger over five years of age; this charge to be collected by the said company only in the event that prior to October 15th, 1918, said company shall file said tariff and its acceptance thereof in writing upon the following conditions:

That the said Trenton and Mercer County Traction Corporation shall file with this Board for each calendar month beginning with the month of November, 1918, during which the emergency surcharge is added to its rate schedule, a complete comparative income statement for 1917 and 1918 of its operations, showing revenue and revenue deductions classified in accordance with the uniform system of accounts for street or traction railway utilities (first issue) prescribed by this Board, together with mileage traffic and miscellaneous statistics as required on page 35 of the form of annual report now required to be filed by the Board.

This order shall become effective October 15th, 1918.

Dated September 24th, 1918.

PETITION FOR INCREASE IN RATES

(Filed May 10, 1918)

TO THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY

The Petition of the Trenton and Mercer County Traction Corporation respectfully shows that:

1. Your petitioner is a public utility corporation, duly organized under the laws of the State of New Jersey, and is the lessee of the properties of the Trenton Street Railway Company, The Mercer County Traction Company, the Trenton, Pennington and Hopewell Street Railway Company and the Trenton, Hamilton and Ewing Traction Company, under leases dated October 15th, 1910, duly approved as being in the public interest by the Board of Public Utility Commissioners of the State of New Jersey by orders dated March 24th, 1911; that said orders required the expenditure of upwards of $500,000. of new moneys by your petitioner for improvements to the property as a condition of the approval of said leases; that said expenditure was made.

2. Your petitioner is now engaged in transporting passengers for hire in the following municipalities in this state, namely: the City of Trenton, the Townships of Ewing, Princeton, Lawrence, Hamilton and Hopewell and the Boroughs of Princeton, Pennington and Hopewell, all in the County of Mercer.

3. Your petitioner proposes and desires to increase its rates for the transportation of pas-

sengers as hereinafter particularly set forth, and has given notice to this effect to those who would be affected by its intention to make such increase, change or alteration by publication, as notice of this petition in THE STATE GAZETTE and THE TRENTON TIMES, two newspapers published in the City of Trenton and circulated in the said City and in the other municipalities hereinbefore mentioned, and in the issues of said newspapers of May 10th, 1918.

4. Your petitioner desires and proposes to increase the rate of fare for the transportation of each single passenger over the age of 5 years within the City of Trenton and likewise for the transportation of each single passenger over the age of 5 years in each of the fare zones on the suburban lines operated by your petitioner from five cents to six cents, and also to discontinue on all lines operated by it the sale of six tickets for twenty-five cents.

5. The property of your petitioner is now being appraised in great detail and with exhaustive thoroughness by recognized and competent experts and the details and results of said appraisal will be ready for submission to your Board by May the twentieth, next.

6. Annexed hereto is a statement, marked "Exhibit A," which shows for the three years preceding the year 1917, the funded debt and other outstanding obligations and the amount of capital stock of your petitioner and its lessor Companies, the interest payments, and rentals, which are an obligation on your petitioner and which further shows that no dividend payments have been made on the capital stock of your petitioner.

7. The reason for the proposed increase is the need of additional revenue by your petitioner

to meet (a) the increased costs of labor and materials required for the operation of said properties and necessary for the maintenance of way and structures, for the annual replacement of such property as has reached the end of its useful life, (b) increased taxes and (c) decreasing revenues all of which is more particularly shown on statement marked "Exhibit B," annexed hereto which is in such form as will permit of the comparison of the revenues and expenditures for the year 1918, with the revenues and expenditures for the three years immediately preceding the said year 1917, namely: 1916, 1915 and 1914.

8. The revenues of your petitioner derived from the transportation of passengers have decreased for the first three months of 1918 as compared with the first three months of 1917 by sixteen thousand, two hundred and thirty-six dollars and thirty-six cents ($16,236.36) or by 7.61 per cent.

The estimated revenues from the transportation of passengers for the entire year 1918 were arrived at by decreasing the revenue for 1917 derived from transportation of passengers by six per cent.

The estimated revenues from "Operation Other Than Transportation" for the year 1918 were arrived at by preparing a statement annexed hereto and marked "Exhibit C" showing the revenues under this heading received during 1917 and estimated for 1918.

The estimated "Non-Operating Income" for the entire year 1918 was arrived at by preparing a statement annexed hereto and marked "Exhibit D," showing the actual Non-Operating Income for 1917 in detail and estimated Non-Operating Income for the year 1918.

9. The estimated operating expenses for 1918 were arrived at by applying to the quantities of

material and the car hours of labor, the prices for labor and material actually being paid by your petitioner during the first three months of 1918, and by taking the actual number of men employed in the car barn, track department, power house and line department in April and applying for the year 1918 to such employees the wages actually being paid in April, 1918, by your petitioner, all of which is shown in detail on exhibits, twenty-nine in number, attached hereto, and designated "Exhibits E." The conditions giving rise to such increased costs still exist and such costs will continue to increase.

10. The estimated expenditures for 1918 for maintenance, repair and replacement were arrived at by applying to the quantities of labor and material actually used in 1917, the rates actually being paid by your petitioner for such labor and material in April, 1918, all of which is shown in detail on exhibits, twenty-five in number, attached hereto and designated "Exhibits F." The conditions giving rise to such increased costs still exist and such costs will continue to increase.

11. The taxes for 1918 are estimated to be the same as for 1917.

12. The income deductions estimated for 1918 are those which your petitioner will be under obligation to pay during 1918.

13. The payments on Equipment Notes as estimated for 1918 are those which your petitioner will be under obligations to make during 1918.

14. Your petitioner has shown from the exhibits referred to above and hereto attached that gross revenue from all sources at the present rate of fare for the year 1918 will not amount to more than $827,004.98, and will exceed the gross

revenue for the year 1914, which was $776,548.46 by $50,456.52.

15. Exclusive of maintenance and replacement expenditures and taxes assessed, the operating expenses for 1918 will amount to $450,388.53 and will exceed the operating expenditures for 1914, which were $377,366.28 by $83,022.25.

16. Expenditures for maintenance and replacement for 1918 will amount to $150,000.00 and will exceed expenditures made for the same purpose during 1914, which were $69,603.89, by $80,396.11.

17. The taxes to be assessed in 1918, which were estimated at $87,992.61, will exceed the taxes assessed during 1914, which were $50,971.54, by $37,021.07.

18. Total operating expenses, expenditures for maintenance and replacement and assessed taxes for 1918 will amount to $688,381.14, and will exceed the expenditures made in 1914 for the same purposes, which were $497,941.71 by $190,-438.43.

19. By applying the prices paid for fuel during the first three months of 1918 to the tonnage consumed at the power house during the year 1917, the cost of fuel consumed at the Power House during 1918 will be $88,221.67, and will exceed the cost of fuel consumed at the Power House during 1914, which was $51,447.83 by $36,773.84.

20. The statement marked "Exhibit G" hereto attached shows the annual wages paid during each of the years from 1914 to 1917, inclusive, with estimated wages paid in each department for the year 1918.

The estimate for the year 1918 was arrived at by taking the authorized number of employees in each department from the grade of Superintendent down on April 15th, 1918, and applying to them the wages paid on April 15th, 1918, for the total working days in 1918, with the exception of the statement covering wages paid to motormen and conductors. In that case the rate of wages paid by your petitioner to motormen and conductors in April, 1918, was applied to the number of car hours operated during 1917. This statement shows that the total wages to be paid to all employees from the rank of Superintendent down for the year 1918 amounted to $402,244.33 and exceeded the amount of wages paid in 1914, which were $293,157.96, by $109,086.37.

21. It is the desire of your petitioner to make certain additions and betterments to its property devoted to the public use. For this purpose it will be necessary to make expenditures over a reasonable period of time amounting to $500,000.00. Return on this expenditure at 8% will amount to $40,000.00.

22. In case this appeal of your petitioner is granted for an increase in the fare charged for transportation of passengers, it is the desire of your petitioner to further increase the amount to be set aside annually for Depreciation Fund by $25,000.00 making the total annual appropriation for this purpose $175,000.00.

23. It is the desire of your petitioner, in case revenues are sufficiently increased by your granting the increase in the rate of fare herein applied for, to increase wages paid, particularly to motormen and conductors and to certain other employees up to the rank of Superintendent to the extent of $20,000.00 by which the annual amount at present needed to meet payroll expenditures will be increased by increasing the wages of cer-

tain employees below the rank of Superintendent, especially motormen and conductors, in order that our standard of wages may be more nearly that of those with whom we must compete in engaging employees.

24. During the year 1917, the expenditures of your petitioner exceeded its revenue by the sum of $77,417.97; estimating receipts of your petitioner for the year 1918, based upon the receipts for the first quarter of said calendar year, and basing the costs of operation upon present prices being paid for labor and materials, the deficit for the year 1918 will be $212,160,12; as shown by exhibits hereinbefore referred to. With the contemplated additions to capital expenditures, to depreciation appropriation and to wages indicated above, this deficit would be further increased for the year 1918 by $85,000.00, making the total deficit for 1918 at the present rate of fare in case the additional expenditures are to be made, $297,160.12.

25. The cost of Tee rail is now 96.4% higher than was the cost of Tee rail in the year 1914.

26. The cost of track special work is now more than 100% higher than the cost of track special work in the year 1914.

27. The cost of track labor is now 75% higher than was the cost of such labor in the year 1914.

28. The cost of our standard double truck car, fully equipped, is now more than 100% higher than the cost of such car, fully equipped, in the year 1914.

29. The cost of all other materials and labor required by your petitioner in the conduct of its business has increased by a large percentage over the cost of similar materials during previous years.

30. The conditions giving rise to such increased costs still exist and such costs will continue to increase in the year 1918 over present costs.

31. In the year 1917, your petitioner carried 24,363,898 revenue and transfer passengers, of whom 4,361,308 were transfer passengers.

32. Allowing 10% decrease in the number of passengers to be carried during the next 12 months under those riding at the present rate of fare due to the proposed increase in rate of fare to 6c, the increase in revenue from transportation of passengers over the amount being received during the year 1918, at present rate of fare will be $201,194.27.

33. The present rates of fare charged by your petitioner are unjust, unreasonable and insufficient to allow your petitioner to furnish reasonable and adequate service, to maintain the integrity of the physical property and to provide a fair and reasonable return on the value of the property.

34. The increased rate of fare and the discontinuance of the sale of six tickets for 25 cents as herein proposed are just and reasonable.

35. The statements herein made and the exhibits hereto attached are intended to comply, and, your petitioner submits, do comply with the conference ruling No. 15, applying to changes in rates of public utilities, promulgated by your Honorable Board, and dated April 23rd, 1918.

Your petitioner further prays that your Honorable Board approve and by order fix 6c as the rate to be charged by your petitioner where 5c is now charged and by order approve the withdrawal by your petitioner from sale of 6 tickets for 25 cents and that your petitioner may have such other and further relief as may

seem reasonable and proper; and your petitioner will ever pray, etc.

Respectfully submitted,

TRENTON AND MERCER COUNTY
TRACTION CORPORATION,

By RANKIN JOHNSON, *President.*

Dated May 10th, 1918.

EXHIBIT A.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

Statement showing Funded Debt and Other Outstanding Obligations, also Fixed Charges and Dividends of the Trenton and Mercer County Traction Corporation and Underlying Companies

	Dec. 31, 1914	*Dec. 31, 1915*	*Dec. 31, 1916*	*Dec. 31, 1917*
The Trenton Passenger Railway Company Consolidated—First Mortgage 6% Bonds	$910,000.00	$900,000.00	$885,000.00	$870,000.00
Trenton Street Railway Company Consolidated Mortgage 5% Bonds	1,090,000.00	1,100,000.00	1,115,000.00	1,130,000.00
Trenton Street Railway Company General Mortgage 6% Bonds	500,000.00	500,000.00	500,000.00	500,000.00
Mercer County Traction Company First Mortgage 5% Bonds	300,000.00	300,000.00	300,000.00	300,000.00
Trenton, Pennington and Hopewell Street Railway Company First Mortgage 5% Bonds	350,000.00	350,000.00	350,000.00	350,000.00
Trenton, Hamilton and Ewing Traction Company—First Mortgage 5% Bonds	350,000.00	405,000.00	405,000.00	405,000.00
Trenton Street Railway Company Capital Stock	1,000,000.00	1,000,000.00	1,000,000.00	1,000,000.00
Mercer County Traction Company Capital Stock	100,000.00	100,000.00	100,000.00	100,000.00
Trenton, Pennington and Hopewell Street Railway Company Capital Stock	250,000.00	250,000.00	250,000.00	250,000.00
Trenton, Hamilton and Ewing Traction Company Capital Stock	200,000.00	200,000.00	200,000.00	200,000.00
Trenton and Mercer County Traction Corporation Capital Stock	300,000.00	300,000.00	300,000.00	300,000.00
Car Trust Certificates—Obligations of Trenton and Mercer County Traction Corporation Equipment Gold Notes, Series A, Dated May 1st, 1912 Wilmington Trust Company, Trustee	33,000.00	28,000.00	23,000.00	18,000.00
Equipment Gold Notes, Series B, Dated Aug. 1, 1914, Wilmington Trust Company, Trustee	45,000.00	40,000.00	35,000.00	30,000.00

Equipment Gold Notes, Series C, Dated Oct. 1, 1917, Edward C. Stokes, Trustee				66,000.00
Real Estate Mortgage				
Trenton Street Railway Company on Spring Lake Park Property	20,000.00	20,000.00	20,000.00	20,000.00
Other Notes Payable	70,008.50	86,440.98	81,440.98	79,940.98
	Dec. 31, 1914	*Dec. 31, 1915*	*Dec. 31, 1916*	*Dec. 31, 1917*
Total Outstanding Bonds	$3,500,000.00	$3,555,000.00	$3,555,000.00	$3,555,000.00
Total Outstanding Stock	1,850,000.00	1,850,000.00	1,850,000.00	1,850,000.00
Total Car Trust Certificates	78,000.00	68,000.00	58,000.00	114,000.00
Total Real Estate Mortgages	20,000.00	20,000.00	20,000.00	20,000.00
Total Other Notes Payable	70,008.50	86,440.98	81,440.98	79,940.98
	$5,518,008.50	$5,579,440.98	$5,564,440.98	$5,618,940.98
	For 1914	*For 1915*	*For 1916*	*For 1917*
Interest on Bonds	$189,172.69	$189,782.18	$191,712.50	$191,562.50
Interest on Car Trust Certificates	2,524.52	3,629.17	3,129.14	2,794.19
Interest on Real Estate Mortgage	1,000.00	1,000.00	1,000.00	1,000.00
Interest on Other Notes Payable	1,950.03	3,430.21	4,417.46	4,283.35
Total Interest	$194,647.24	$197,841.56	$200,259.10	$199,640.04
Rentals	92,041.67	97,041.65	102,041.68	107,041.68
Amortization of Discounts on Bonds and Equipment Notes	1,509.86	1,633.22	1,554.08	1,564.19
Income Deductions	$288,198.77	$296,516.43	$303,854.86	$308,245.91
Dividends paid during year	None	None	None	None

April 26th, 1918.

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EXHIBIT B.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
RESULTS OF OPERATION

	Year 1914	*Year 1915*	*Year 1916*	*Year 1917*	*Est. for Year 1918*
Revenue from Transportation	$764,141.30	$761,792.12	$841,304.20	$866,103.33	$814,137.13
Revenue from Operation Other Than Transportation	10,415.52	5,804.29	6,752.33	7,981.54	8,107.85
Total Operating Revenues	$774,556.82	$767,596.41	$848,056.53	$874,084.87	$822,244.98
Operating Expenses exclusive of depreciation expenditures and taxes	$377,366.28	$342,906.40	$368,600.85	$404,754.79	$450,388.53
Depreciation Expenditures	69,603.89	72,927.20	98,623.58	130,753.44	150,000.00
Taxes Assessed	$497,941.71	$492,940.92	$547,471.16	$623,500.84	$688,381.14
Total Operating Expenses and Taxes	50,971.54	77,107.32	80,246.73	87,992.61	87,992.61
Net Operating Income	$276,615.11	$274,655.49	$300,585.37	$250,584.03	$133,863.84
Non-Operating Income	1,991.64	2,399.51	5,686.58	6,472.96	4,760.00
Gross Corporate Income	$278,606.75	$277,055.00	$306,271.95	$257,056.99	$138,623.84
Income Deductions (Income on Funded Debt, Rentals, Amortization Bond Disc	288,198.77	296,516.43	303,854.86	308,245.91	318,554.91
	9,592.02	19,461.43	2,417.09	51,188.92	179,931.07
Cash Payments on Equipment Notes and on New Cars Purchased	13,620.00	10,000.00	10,000.00	10,000.00	16,000.00
	23,212.02	29,461.43	7,582.91	61,188.92	195,931.07
Road and Equipment and Rehabilitation Expenditures	66,879.46	14,511.97	10,145.10	16,229.05	16,229.05
	$ 90,091.48	$ 43,973.40	$ 17,728.01	$ 77,417.97	$212,160.12

Exhibit "B"

	Est. for Year 1918
Forwarded	$212,160.12
8% on $500,000.00 additional capital	40,000.00
Increased depreciation fund	25,000.00
Increased wages of Conductors and Motormen	20,000.00
Total deficit	$297,160.12
Increase due to 6 cent fare for 12 months	201,194.27

April 26, 1918.

EXHIBIT C.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

Statement showing Revenue from Operation other than Transportation

	1917	1918	Increase or Decrease
Station and Car Privileges			
Trenton Car Advertising Co.—Advertising in Cars at $473.00 per month	$5,676.00	$5,676.00	
Thomas C. Hill & Sons—Advertising on strip ticket at $50.00 per month	600.00	600.00	
Rent of Buildings and Other Property			
Postal Telegraph-Cable Co.—Rental for 47 pole attachments	118.50	118.50	
Sale of Power			
White City Amusement Co.—Power furnished lamps at $8.52 per week for 350 lamps	169.79	169.79	
B. C. Kuser—Power furnished blacksmith shop at $5.00 per month	60.00	60.00	
Princeton Flying Club—Power furnished for lights Aviation Field—6-1-17—9-30-17 at $10.00 week 10-1-17—12-31-17 at $3.53 week	220.69	183.56	*37.13*
Princeton Flying Club—Power to be furnished for lights Aviation Field at $3.53 per week	319.64		
Capital Porcelain Company—Steam furnished at 50c. M pounds 11-26-17—12-31-17		1,200.00	880.36
Capital Porcelain Company—Estimated for 1918 at $100.00 per month			
Miscellaneous			
Pennsylvania R. R. Company—Rail for Princeton Terminal	699.44		
Pennsylvania R. R. Company—15% cost price for labor and material (except rail) furnished c-c Princeton Terminal	117.48		
Estimated sale of labor and material for 1918		100.00	*716.92*
Total	$7,981.54	$8,107.85	$126.31

April 26, 1918.

EXHIBIT D.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

Statement showing Non-Operating Income

	1917	1918	Increase or Decrease
Miscellaneous Rent Revenues			
Joseph Riether—Rent of Princeton Avenue Car Barn 6 months at $30.00 6 months at $40.00	$420.00	$480.00	$60.00
Co-operative Safeguarding Co.—Rent of Battery Building Lincoln Avenue, 11 months at $25.00	275.00		*275.00*
Gilbert Youmans—Rent of lot, Yardville, N. J. 8 months at $ 2.50	20.00	30.00	10.00
Delaware & At. Tel. & Tel. Co.—Rent of land, Yardville for pole line	10.00		*10.00*
Interest from other Sources			
Interest on Bonds owned	$3,312.52	$3,250.00	*$ 62.52*
Interest on Bank Deposits	2,435.44		
Interest on Bank Deposits for 1918, approximate		1,000.00	*1,435.44*
	$6,472.96	$4,760.00	*$1,712.96*

April 26, 1918.

Exhibit "D"

EXHIBIT E.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT No. 411—CLEANING AND SANDING TRACK

LABOR

Car Barn Pay Roll—Drying sand for cars	$	522.40
Track Dept. pay roll—Greasing track and hauling sand		2061.46
Chauffeur Auto Truck—Hauling sand		31.01
Asphalt Plant (Drying sand for cars)		1.22
Conductors and Motormen—Operating sand car		110.47
	$	2726.56

MATERIAL

Track grease and brooms	$	175.87
	$	2902.43

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$ 3130.09	$ 3130.09
Charges 1917	2726.56	
Increase for 1918	$ 403.53	

MATERIAL

Track grease and brooms	$ 258.49	$ 258.49
Charges for 1917	175.87	
Increase for 1918	82.62	
Total estimated for 1918		$ 3388.58
Total charges 1917		2902.43
Total increase for 1918		$ 486.15

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION EXPENDITURES YEAR 1917

CHARGED TO OPERATING ACCOUNT

No. 412—REMOVAL SNOW, ICE AND SAND

LABOR

Car Barn Pay Roll—Salting switches	$ 20.09
Track Dept. Pay Roll—Salting switches and removal of snow	609.76
Chauffeur Auto Truck—Salting switches	9.80
C. A. Reid Co., Contractor—Removal of snow	82.23
H. Acock, Contractor—Removal of snow	283.63
Conductors and Motormen—Operating sweepers, salt cars	703.26
City of Trenton (Removal of snow)	260.28
New Jersey & Penn. Traction Co.—Rent of snow plow	23.40
Hopewell House, Board & lodging for crews stalled by snow storms	15.00
	$ 2007.45

MATERIAL

Salt, brooms, shovels, etc	$ 266.64

MISCELLANEOUS CHARGES

Taxicab service, meals and other incidentals	$	25.80
	$	2,299.89

ESTIMATED FOR THE YEAR 1918

Charges to this account dependent upon weather conditions. Estimated cost for year 1918 to be the same as year 1917, as follows:

Labor	$2007.45	
Material	266.64	
Miscellaneous charges	25.80	
		$ 2299.89
	$2299.89	

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION. EXPENDITURES YEAR 1917

CHARGED TO OPERATING ACCOUNT

No. 446—ADVERTISING

LABOR

Publicity Agent	$	87.92	
Linemen installing lights at White City Park and Inter-State Fair Grounds		33.95	
Men in Car Barn putting advertising dodgers in cars		31.86	$ 153.73

MISCELLANEOUS CHARGES

Newspaper advertising, Folders, etc.	$	283.14
	$	436.87

ESTIMATED FOR YEAR 1918

LABOR

Publicity Agents	$1587.92	
Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918		
Linemen installing lights at White City Park and Inter-State Fair Grounds	$ 49.51	
Men in Car Barn putting advertising dodgers in cars	57.46	
Estimated for year 1918	1694.89	
Charges year 1917	153.73	
Increase for 1918	$1541.16	

MISCELLANEOUS CHARGES

Newspaper advertising, Folders, etc.	$ 1658.14	$ 1658.14
Charges year 1917	283.14	
Increase for 1918	1375.00	
Total estimated for year 1918		$ 3353.03
Total charges 1917		436.87
Total increase for 1918		$ 2916.16

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 448—SUPERINTENDENCE OF TRANSPORTATION

LABOR

Inspectors, Dispatcher and Supt. of Transportation Salaries	$ 7511.75

Proportionate charge Chief Engineer's Salary	1313.30		
Night Foreman (Car Barn) as Inspector at Fair Grounds	1.55		
Conductor as Inspector Union Picnic Day	.60		
Storekeeper as Inspector Inter-State Fair	10.50	$ 8837.70	

MISCELLANEOUS CHARGES

Office Rent and Light—12 N. Warren St.	$ 312.00		
Taxicabs, meals and other incidentals	204.16	516.16	
		$ 9353.86	

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$ 13715.00		
Less proportion Superintendent's Salary, settling accident claims, charged to Accident Fund	500.00	(Same as 1917)	
	$13,215.00		
Plus proportion Chief Engineer's Salary	$ 1313.30	(Same as 1917)	
Extra charges a-c Fair, Circus, etc.	12.65	(Same as 1917)	
Estimated year 1918	14540.95	14540.95	
Charges year 1917	8837.70		
	$ 5703.25		

MISCELLANEOUS CHARGES

Estimated to be the same as year 1917..	$	516.16
Total estimated for 1918		15057.11
Total charges 1917		9353.86
Increase for 1918	$	5703.25

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 449—POWER PLANT EMPLOYEES

LABOR

Power House Pay Roll (Including $231.35 teams hauling ashes)	$	18414.46
Track Dept.—Teams hauling ashes and cinders		339.74
Track laborer shoveling coal from under trestle		1.67
	$	18755.87

No material or miscellaneous charges made to this account.

ESTIMATED FOR YEAR 1918

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$23359.98	$23359.98
Charges year 1917	18755.87	
Increase for 1918	$ 4604.11	

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 451—FUEL FOR POWER

MATERIAL

15309.70 gro. tons used		$ 74388.32

MISCELLANEOUS CHARGES

Penn. R. R. Co.—Rent of portion of land on which trestle is constructed	$ 15.00	
		$ 74403.32

ESTIMATED FOR YEAR 1918

Based on same tonnage of coal consumed as during year 1917.

4464.28 gro. tons @ $4.744	$ 21178.56	
10845.42 gro. tons @ 6.10	66157.06	
14309.70 gro. tons estimated year 1918	$ 87335.62	$87335.62
Charges year 1917	$74388.32	
Increase year 1918	$ 12947.30	

MISCELLANEOUS CHARGES

Penn. R. R. Co.—Rent of portion of land on which trestle is constructed	$ 15.00	
Total estimate year 1918		$ 87350.62
Total charges year 1917		74403.32
Total increase year 1918		$ 12947.30

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 452—WATER FOR POWER

LABOR

Water Department force excavating for leak at street meter Power House....	$	13.93

MATERIAL

721700 cu. ft. water used at Power House	$	433.02	
Boiler Compound		47.59	480.61
		$	494.54

ESTIMATED FOR YEAR 1918

Cost to be the same as year 1917	$	494.54

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 453—LUBRICANT FOR POWER

MATERIAL

Lubricants used for an output of 10174400 K. W. for year 1917	$	783.44

ESTIMATED FOR YEAR 1918

Based on same K. W. output as 1917.

10174400 K. W. @ 9c M.	$	915.87

Total estimated cost 1918	$ 915.87	
Total charged 1917	783.44	
Total increase for 1918		$ 132.43

April 26, 1918.

TRENTON AMD MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 454—MISCELLANEOUS POWER PLANT SUPPLIES AND EXPENSE

LABOR

Power House Force	$ 16.25
Car Barn Force	.93
Auto Truck hauling old auto truck away	.90
	$ 18.08

MATERIAL

Shovels, Waste, Carbon Brushes Lamps, etc.	879.96
	$ 898.04

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employes and rate of wages paid April 15, 1918	$ 22.14	$ 22.14

MATERIAL

Estimated to be the same as year 1917	$ 879.96
Total estimated for 1918	902.10
Total charges 1917	898.04
Total increase for 1918	$ 4.06

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 460—PASSENGER CONDUCTORS, MOTORMEN AND TRAINMEN

LABOR

Conductors and Motormen operating Passenger cars	$ 209079.48	
Barn Crews putting passenger cars (suburban lines) on time, and making early morning and late night trips a-c conductors and motormen	196.95	
	$ 209276.43	

ESTIMATED FOR YEAR 1918

Based on total number of Active, Idle and Special Car hours operated year 1917 @ 31c per hour 360,106 car hours @ 31c ea. per hour for crew of two men	$ 223265.72	
Total charges 1917	209276.43	
Increase for 1918	$ 13989.29	

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 461—FREIGHT AND EXPRESS CONDUCTORS, MOTORMEN AND TRAINMEN

LABOR

Motormen and Track force hauling crushed stone to Lawrenceville Road for Contractors C. A. Reid Co.	$	13.63

ESTIMATED FOR YEAR 1918

LABOR

Based on number of authorized employees and rate of wages paid April 15, 1918	$	15.65
Total estimated for 1918	$ 15.65	
Total charges for 1917	13.63	
Total increase for 1918	$ 2.02	

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 462—MISCELLANEOUS CAR SERVICE EMPLOYEES

LABOR

Track Dept. force—a-c Inter-State Fair	$	244.77
Cooks serving lunches for trainmen—a-c Inter-State Fair		18.00
Car Barn force		306.56
	$	569.33

ESTIMATED FOR YEAR 1918

LABOR

Track Dept. force—a-c Inter-State Fair (same as 1917)	$	244.77
Cooks serving lunches for trainmen a-c Inter-State Fair (same as 1917)		18.00

Car Barn force based on number of authorized employees and rate of wages paid April 15, 1918		347.37
Total estimated for 1918	$	610.14
Total charges 1917		569.33
Total increase for 1918	$	40.81

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 463—MISCELLANEOUS CAR SERVICE EXPENSE

LABOR

Track Dept.—Hauling Coal for cars	$	10.17
Car Barn force		135.62
Inspection		125.64
	$	271.43

MATERIAL

Carbon brushes, lamps, trolley cord and rope, coal for heaters in cars, transfers, strip tickets, waste, lubricants for cars, brooms, etc.	$	6012.75
	$	6284.18

ESTIMATED FOR YEAR 1918

LABOR

Estimated to be the same as 1917	$	271.43

MATERIAL

Based on increased cost of supplies purchased first three months of 1918	$	6398.26
Total estimated for 1918	$	6669.69
Total charges 1917		6284.18
Total increase for 1918	$	385.51

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 464—STATION EMPLOYEES

LABOR

Track Dept. Force a-c Inter-State Fair	$	15.60
Conductor as Special Officer a-c Inter-State Fair		5.58
County Detectives as Special Officers a-c Inter-State Fair		15.00
	$	36.18

ESTIMATED YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of of wages paid April 15, 1918.			
Track Dept. Force	$	17.91	
Conductors as Special Officers		6.01	
County Detectives as Special Officers		15.00	(same as 1917)
Estimated year 1918	$		38.92

Charges year 1917		36.18
Total increase for 1918	$	2.74

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 465—STATION EXPENSE

LABOR

Line Department—Lights on platform Fair Grounds	$	3.42
Car Barn force—Making signs and closet for platform at Fair Grounds		6.82
	$	10.24

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918.			
Line Department	$	4.76	
Car Barn force		12.30	
Estimated year 1918			17.06
Charges year 1917			10.24
Total increase for 1918	$		6.82

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 466—CARHOUSE EMPLOYEES

LABOR

Track Dept. force—shifting cars in barns	$ 110.37
Inspector as Night Foreman at Car Barn (emergency)	30.00
Motormen—Changing crippled cars	3.83
Car Barn force—cleaning and inspecting cars, cleaning Car Barns, etc.	8652.34
	$ 8796.54

ESTIMATED YEAR 1918

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918, as follows:

Track Dept. force	$ 126.70	
Inspector & Motormen (emergency)	33.83	(same as 1917)
Car Barn force	15609.41	
Total estimated year 1918		$ 15769.94
Charges year 1917		8796.54
Increase for 1918		$ 6973.40

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 467—CARHOUSE EXPENSE

LABOR

Track Dept. force—Unloading coal for Car Barn	$	48.14
Car Barn force—Firing boilers Car Barn		106.95
	$	155.09

MATERIAL

Coal, water, rent, ice, etc.		$704.52

MISCELLANEOUS CHARGES

Advertising for men	$	8.22
	$	867.83

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918, as follows:

Track Force	$	55.26	
Car Barn force		192.91	
Estimated year 1918	$	248.17	$248.17
Charges 1917		155.09	
Increase for 1918	$	93.08	

MATERIAL

Estimated to be the same as 1917	$	704.52

MISCELLANEOUS CHARGES

Estimated to be the same as 1917	$	8.22
Total estimated for 1918	$	960.91
Total charges 1917		867.83
	$	93.08

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 472—OTHER TRANSPORTATION EXPENSES

LABOR

Track Dept. force—Putting Cars on track, etc.	$	9.64
Conductors and Motormen—Operating wreck car		5.19
Line Dept. force—Repairs to lights along road maintained in accordance with franchise requirements		48.91
Car Barn force—Putting cars on track, etc.		257.16
	$	320.90

MATERIAL

Lamps for street lights	$	25.35
	$	346.25

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918, as follows:

Track Dept. force	$	9.64	(same as 1917)	
Conductors and Motormen		5.19	(same as 1917)	
Line Dept. force		68.18		
Car Barn force		257.16	(same as 1917)	
Estimated year 1918	$	340.17	$	340.17
Charges year 1917		320.90		
Increase for 1918	$	19.27		

MATERIAL

Estimated to be the same as year 1917	$	25.35
Total estimate year 1918		365.52
Total charges year 1917		346.25
Total increase year 1918	$	19.27

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 473—SALARIES AND EXPENSES OF GENERAL OFFICERS

LABOR

Salaries of General Officers	$	27610.00

MISCELLANEOUS CHARGES

Expenses of General Officers		126.92
	$	27736.92

ESTIMATED FOR YEAR 1918

Salaries of General Officers	$ 21120.00	$ 21120.00
Charges year 1917	27610.00	
Decrease for 1918	6490.00	

MISCELLANEOUS CHARGES

Estimated to be the same as year 1917	$	126.92
	$	21246.92

Total charges year 1917	$ 27736.92
Total estimate year 1918	21246.92
Total decrease for 1918	$ 6490.00

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 474—SALARIES AND EXPENSES OF GENERAL OFFICE CLERKS

LABOR

Salaries of General Office Clerks	$ 7113.48

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$ 9697.18
Charges year 1917	7113,48
Increase year 1918	$ 2583.70

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 475—GENERAL OFFICE SUPPLIES AND EXPENSE

LABOR

Office Messenger (Part of year)	$ 365.15
Repairs to adding machine	8.19

Car Barn force—Repairs to furniture.		5.72
Auto Truck—Hauling		1.21
		$ 380.27

MATERIAL

Ice, water, towels, supplies for typewriters, etc.	$ 69.67

MISCELLANEOUS CHARGES

Office Rent	$ 1624.00	
Rent of ticket and transfer counting machines	393.93	
Incidentals	.50	$ 2018.43
		$ 2468.37

ESTIMATED FOR YEAR 1918

LABOR

Based on number of authorized employees and rate of wages paid April 15, 1918.

Office Messenger	$ 625.71		
Car Barn force	10.32		
Repairs to adding machine	8.19	(same as 1917)	
Auto Truck—Hauling	1.21	(same as 1917)	
Estimated for 1918	$ 645.43		645.43
Charges 1917	380.27		
Increase 1918	$ 265.16		

MATERIAL

Estimated to be the same as 1917	$ 69.67

MISCELLANEOUS CHARGES

Estimated to be the same as 1917	$	2018.43
Total estimated for 1918		2733.53
Total charges 1917		2468.37
Total increase 1918	$	265.16

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 476—LAW EXPENSE

LABOR

Counsellors' Salaries and Fees	$	2436.32
Court reporting and printing cases		1721.20
		4157.52

MISCELLANEOUS CHARGES

Taxicabs, lunches, literature, etc.	$	65.67
	$	4223.19

ESTIMATED FOR YEAR 1918

To be the same as year 1917	$	4223.19

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES AND CREDITS YEAR 1917 OPERATING ACCOUNT 479A MISCELLANEOUS GENERAL EXPENSE—ADJUSTMENTS

Discounts for cash payments made during year	$	444.89

Adjustment of shortage in Inventory of supplies taken December 31, 1917.	50.97
	$ 393.92

ESTIMATED FOR YEAR 1918

To be the same as year 1917	$ 393.92

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 479B—OTHER MISCELLANEOUS GENERAL EXPENSES

Membership dues and directors' fees	$ 390.00
Telephone service	593.31
Telegrams, etc.	47.84
Other Incidentals	64.21
	$ 1095.36

ESTIMATED FOR YEAR 1918

To be the same as year 1917	$ 1095.36

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 482—INJURIES AND DAMAGES

Two per cent of Gross Earnings from Operation charged to the account and set aside in Optional Reserve Account No. 217.	
Casualty and Insurance Reserves	
Two per cent Gross Earnings from Operation of $874,084.87 for year 1917	$ 17481.71

ESTIMATED FOR YEAR 1918

Based on same method as year 1917 2% of Estimated Gross Earnings from Operation of $822,244.98	$ 16444.90
Decrease year 1918	$ 1036.81

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 483—INSURANCE

Total cost of Fire, Boiler, Auto Truck, Safe, Messengers and other insurance for 1917	$ 3486.54

ESTIMATED FOR 1918

To be increased $2000.00	$ 5486.54
Charged year 1917	3486.54
Increase for 1918	$ 2000.00

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 484—STATIONERY AND PRINTING

MATERIAL

Stationery of all kinds which are properly charged to above account	$ 1000.60

ESTIMATED FOR YEAR 1918

Estimated to be the same as 1917.....$ 1000.60

No increase estimated for year 1918.

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 485—STORE EXPENSES

LABOR

Track Dept.	$ 373.25	
Power House	1.34	
Line Dept.	12.49	
Car Barn	22.19	
Storekeeper and Material Clerk's Salary	1313.55	
Advertising for Storekeeper.	.36	$ 1723.18

MATERIAL

Tools for Storekeeper	$	1.65

MISCELLANEOUS

Taxicab service	$	1.50
		$ 1726.33

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918.

Estimated year 1918	$ 1973.39	$ 1973.39
Charges year 1917	1723.18	
Increase for 1918	$ 250.21	

MATERIAL

Estimated to be the same as 1917	$ 1.65

MISCELLANEOUS

Estimated to be same as 1917	$ 1.50
Total estimated year 1918	$ 1976.54
Total charges year 1917	1726.33
Increase for 1918	$ 250.21

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO OPERATING ACCOUNT NO. 486—STABLE EXPENSES

LABOR

Track Dept. (Taking horses to blacksmith shop and stable work)	$ 25.76
Line Dept.—(Shop and stable work)	35.62
Car Barn (Making cover for manure box at stable)	2.61
Accounting Dept. (Messenger doing stable work)	260.55
	$ 324.54

MATERIAL

Feed for horses, oil and gasoline for auto truck, etc.	$ 1256.80

MISCELLANEOUS

Rent of Auto	$ 360.00	
Taxicab service	1.00	$ 361.00
		$ 1942.34

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918.

Estimated year 1918	$ 79.62	79.62
Charges year 1917	324.54	
Decrease for 1918	$ 244.92	

MATERIAL

Estimated to be same as 1917	$ 1256.80

MISCELLANEOUS

Estimated to be same as 1917	$ 361.00
Total estimated year 1918	$ 1697.42
Total charges year 1917	1942.34
*Decrease for 1918	$ 244.92

* Estimated that messenger would do no stable work in 1918.

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO INCOME ACCOUNT NO. 522 "EXPENSES ELSEWHERE UNPROVIDED FOR" INCLUDED IN OPERATING EXPENSE ACCOUNTS IN STATEMENT MARKED "EXHIBIT B."

Contributions on account of charity as follows:

To three local hospitals	$ 150.00
Volunteers of America	10.00
Young Women's Christian Association	30.00
The Independence	25.00
American Red Cross	100.00
New Jersey Children's Home Society	30.00
	$ 345.00

ESTIMATED FOR YEAR 1918

To be the same as year 1917	$ 345.00

April 26, 1918.

EXHIBIT F

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 401—SUPERINTENDENCE OF WAY AND STRUCTURE

LABOR

Line Dept.—Superintendent's Salary	$ 1395.00	
Track Dept.—Roadmaster's Salary	1347.50	
Track Dept.—C. A. Reid & Co., contractors	173.92	
Reconstruction Track—N. Warren St.	186.65	
Reconstruction Track—S. Broad St.	445.58	
Proportionate charge a-c new spur at Fair Grounds	19.55	
	$ 3573.20	
Credit a-c moving house Princeton Line	5.00	
	$ 3568.20	

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$ 2940.00	
Plus contractor's superintending work	173.92	(same as 1917)
Reconstruction Track	651.78	(same as 1917)
Total estimated year 1918	3765.70	
Total charges year 1917	3568.20	
Increase for 1918	$ 197.50	

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 402 BALLAST

LABOR

Proportionate charge a-c new spur at Fair Grounds ..... $ 14.80

ESTIMATED FOR YEAR 1918

LABOR

Estimated to be same as 1917 ..... $ 14.80

No increase estimated for 1918.

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
ESTIMATED YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 403 TIES

MATERIAL

Ties ..... $ 7867.39

ESTIMATED FOR YEAR 1918
MATERIAL

Estimated to be same as 1917 ..... $ 7867.39

No increase estimated for 1918.

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 404 RAIL

MATERIAL

Rail		$ 3248.49

ESTIMATED FOR YEAR 1918

MATERIAL

Estimated to be same as 1917		$ 3248.49

No increase estimated for 1918.

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 405 RAIL FASTENINGS AND JOINTS

LABOR

Track Dept.—Making rail fastenings	$ 14.43	
Car Barn — Making rail fastenings	40.19	$ 54.62

MATERIAL

Rail fastenings and joints		$ 3510.44
		$ 3565.06

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15th		$ 60.93
Estimated year 1918	$ 60.93	
Charges year 1917	54.62	
Increase for 1918	6.31	

MATERIAL

Estimated to be same as 1917	$ 3510.44
Total estimated for 1918	$ 3571.37
Total charges for 1917	3565.06
Increase for 1918	6.31

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURE YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 406 SPECIAL WORK

MATERIAL

Special work and miscellaneous material a/c special work	$ 3565.24

ESTIMATED FOR YEAR 1918

MATERIAL

Estimated to be same as 1917	$ 3565.24

No increase estimated for 1918.

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 408 ROADWAY AND TRACK LABOR

LABOR

Track Dept. (Contractor's & Company's forces) a-c Reconstruction work	$ 12339.81	
Track Dept. (General Track Labor	12302.46	
C. A. Reid & Co., Contractors, Track Labor	505.02	
Car Barn (Repairing rail fastenings, etc.)	130.54	
Proportionate charge a-c new Inter-State Fair Spur	224.12	
Line Dept. (Trimming trees and hedges	36.77	$ 25538.74

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918.

(Contractor's and Company's Forces)	$	
Total estimated year 1918	29297.50	
Total charges year 1917	25538.74	
Increase for 1918		$ 3758.76

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 409 PAVING

LABOR

	Track Dept. Company's & Contractor's Forces hauling materials for paving and labor paving	$ 7145.32	
	Track Dept. Company's & Contractor's Forces hauling materials for paving and paving a/c reconstruction work	4557.62	
	Car Barn (dressing asphalt picks)	.34	
	Proportionate charge a/c new Inter-State Fair Spur	10.82	
	City of Trenton (Asphalt Repairs)	250.00	$ 11964.10

MATERIAL

Paving Material — cement, paving blocks, etc.	$	3856.36
	$	15820.46

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$	13436.37

City of Trenton (Asphalt Repairs)	250.00	(same as 1917)
Estimated year 1918	$ 13686.37	$13686.37
Charges year 1917	11964.10	
Increase for 1918	$ 1722.27	

MATERIAL

Estimated to be same as 1917	$ 3856.36
Total estimated for 1918	$ 17542.73
Total charges 1917	15820.46
Increase for 1918	$ 1722.27

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 410—MISCELLANEOUS ROADWAY AND TRACK EXPENSE

LABOR

Track Dept. (Dressing tools)	$ 160.54	
Car Barn (Dressing tools)	82.92	
Blacksmith (Outside labor) sharpening tools	21.50	
		$ 264.96

MATERIAL

Lanterns, globes, hack saw blades, miscl. parts for welding machine and other miscl. roadway tools	$ 572.96

MISCELLANEOUS

Taxicabs a/c cars off track, etc.		111.65
		$ 949.57

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$ 333.87		
Blacksmith (Outside labor)	21.50	(same as 1917)	
Estimated year 1918	$ 355.37	$	355.37
Charges year 1917	264.96		
Increase for 1918	$ 90.41		

MATERIAL

Estimated to be same as 1917	$	572.96

MISCELLANEOUS

Estimated to be same as 1917	$	111.65
Total estimated for 1918		1039.98
Total charges 1917		949.57
Increase for 1918		90.41

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 415—BRIDGES TRESTLES AND CULVERTS

LABOR

Track Dept. (General repairs)	$ 48.63	
Car Barn (Carpenter a/c repairs)	9.72	$ 58.35

MATERIAL

Lumber, nails, bolts, washers, etc.	$ 92.61
	$ 150.96

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918		$ 73.36
Estimated year 1918	$ 73.36	
Charges year 1917	58.35	
Increase for 1918	15.01	

MATERIAL

Estimated to be same as 1917	92.61
Total estimated for 1918	$ 165.97
Total charges 1917	150.96
Increase for 1918	$ 15.01

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 416—CROSSINGS, FENCES, CATTLE GUARDS AND SIGNS

LABOR

Track Dept. (Crossings)	$ 6.64		
Line Dept. (Signs)	15.39		
Car Barn (Stop Signs)	21.21	$	43.24

MATERIAL

Lumber and Outside Varnish	$	5.10
	$	48.34

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$	67.28
Estimated year 1918	$ 67.28	
Charges year 1917	43.24	
Increase for 1918	$ 24.04	

MATERIAL

Estimated to be same as 1917	$	5.10
Total estimated for 1918	$	72.38
Total charges 1917		48.34
Increase for 1918	$	24.04

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO 417 SIGNAL AND INTERLOCKING SYSTEMS

LABOR

Line Dept.	$ 268.68	
Car Barn	8.03	$ 276.71

MATERIAL

Mazda Lamps, etc.	$ 59.19
	$ 335.90

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$ 388.99

Estimated year 1918	$ 388.99	
Charges year 1917	276.71	
Increase for 1918	$ 112.28	

MATERIAL

Estimated to be same as 1917	$ 59.19
Total estimated for 1918	$ 448.18
Total charges 1917	335.90
Increase for 1918	$ 112.28

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 419—OTHER MISCELLANEOUS WAY EXPENSES

LABOR

Track Dept. (Putting fire in ties out)	$ 1.22		
Track Dept. (Chauffeur paid if no work as per agreement)	46.70	$	47.92

MATERIAL

Scrap rubber for switches	$	25.95

MISCELLANEOUS

Bridge Rent	$	25.00
	$	98.87

ESTIMATED FOR YEAR 1918

LABOR

Estimated to be same as 1917	$	47.92

MATERIAL

Estimated to be same as 1917	$	25.95

MISCELLANEOUS

Estimated to be same as 1917	$	25.00
	$	98.87

No increase estimated for 1918

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 420—POLES AND FIXTURES

LABOR

Line Dept.	$ 922.38	
Power House	1.01	
Track Dept.	2.53	
Car Barn	1.02	$ 926.94

MATERIAL

Material a/c Poles and Fixtures	$ 622.60
	$ 1549.54

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918		$ 1290.26
Estimated year 1918	$ 1290.26	
Charges year 1917	926.94	
		$ 363.32

MATERIAL

Estimated to be same as 1917	$ 622.60
Total estimated for 1918	$ 1912.86
Total charges 1917	1549.54
Increase for 1918	$ 363.32

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 423 DISTRIBUTION SYSTEM

LABOR

10	Line Dept.	$ 1951.48	
	Track Dept. (Track bonding)	211.94	
	Car Barn (Operating line car)	81.37	
	Conductors and Motormen (Operating line car)	6.10	$ 2250.89

MATERIAL

	Material a/c Distribution System		$ 3658.51
20			

MISCELLANEOUS

	Taxicabs a/c line down		$ 157.80
			$ 6067.20

ESTIMATED FOR YEAR 1918

LABOR

30			
	Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918		$ 3049.55
	Estimated year 1918	$ 3049.55	
	Charges year 1917	2250.89	
	Increase for 1918	$ 798.66	

MATERIAL

40			
	Estimated to be same as 1917		$ 3658.51

MISCELLANEOUS

Estimated to be same as 1917		157.80
Total estimated for 1918		$ 6865.86
Total charges 1917		6067.20
Increase for 1918		$ 798.66

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 424 MISCELLANEOUS ELECTRIC LINE EXPENSE

LABOR

Line Dept. (Emergency duty and tool repairs)	$ 571.32		
Track Dept. (Emergency duty)	52.62		
Car Barn (Tool repairs)	1.66	$	625.60

MATERIAL

Line Tools	$	143.01

MISCELLANEOUS

Pole Rent	$ 8.00		
Meals for Linemen	2.30	$	10.30
		$	778.91

ESTIMATED FOR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$	858.43

Estimated year 1918	$ 858.43	
Charges year 1917	625.60	
Increase for 1918	$ 232.83	

MATERIAL

Estimated to be same as 1917		$ 143.01

MISCELLANEOUS

Estimated to be same as 1917		$ 10.30
Total estimated for 1918		$ 1011.74
Total charges 1917		778.91
Increase for 1918		$ 232.83

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 425 BUILDINGS AND STRUCTURES

LABOR

Power House	$ 83.16		
Track Dept.	30.45		
Car Barn	171.41		
Line Dept.	1.00		
J. Whittaker, (Thawing & repairing pipes)	7.00		
Samuel Street (Repairing corrugated iron barn)	39.10	$	332.12

MATERIAL

Material a/c Buildings and Structures	$345.99

MISCELLANEOUS

Rent of ground for anchor guy on smoke stack		$ 2.00
		$ 689.11

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918		$ 481.20
Estimated year 1918	$ 435.10	
Labor other than Company's	46.10	(same as 1917)
Estimated for year 1918	$ 481.20	
Charges year 1917	332.12	
Increase for 1918	$ 149.08	

MATERIAL

Estimated to be same as 1917	$ 354.99

MISCELLANEOUS

Estimated to be same as 1917	$ 2.00
Estimated for year 1918	$ 838.19
Charges for 1917	689.11
Increase for 1918	$ 149.08

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 429—SUPERINTENDENCE OF EQUIPMENT

LABOR

Car Barn (Master Mechanic's Salary)	$ 1582.00	

MISCELLANEOUS

Master Mechanic's expenses from Binghamton, N. Y.	$ 13.60	$ 1595.60

ESTIMATED FOR YEAR 1918

LABOR

Estimated Salary for 1918, based on rate of wages paid April 15, 1918		$ 1800.00
Estimated for year 1918	$ 1800.00	
Charges year 1917	1582.00	
Increase for 1918	$ 218.00	

MISCELLANEOUS

Estimated to be same as 1917	$ 13.60
Total estimated for year 1918	$ 1813.60
Total charges 1917	1595.60
Increase for 1918	$ 218.00

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 430—POWER PLANT EQUIPMENT

LABOR

Line Dept.	$ 1.89	
Power House	2239.39	
Track Dept. (Hauling a/c repairs to equipment)	10.86	
Car Barn	11.13	
Harry Stahl	37.93	
John Mordaunt	142.88	
J. L. Mott Co.	25.20	
Babcock & Wilcox Co.	86.50	
John Snow	37.93	
Elmore Bellis (Taking down frame around stack and painting stack	$ 40.00	$ 2633.71

MATERIAL

Material a/c repairs to equipment	$ 3165.63	
		$ 5799.34

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate

of wages paid April 15, 1918	$ 2822.89	
Labor other than Company's	370.44	(same as 1917)
		$ 3193.33
Estimated for year 1918	$ 3193.33	
Charges for 1917	2633.71	
Increase for 1918	$ 559.62	

MATERIAL

Estimated to be same as 1917	$ 3165.63
Total estimated for year 1918	$ 6358.96
Charges for 1917	5799.34
Increase for 1918	$ 559.62

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 432—PASSENGER AND COMBINATION CARS

LABOR

Track Dept. (Welding at Car Barn)	$ 83.64	
Car Barn	10750.73	
Harry Stahl (Repairs air armature)	9.78	
Penna. Railroad Co. (Turning wheels)	34.88	$10879.03

MATERIAL

Material a/c Passenger and Combination cars		$ 8516.01
		$ 19395.04

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$ 19474.20	$ 19518.86
Labor other than Company's	44.66	(same as 1917)
Estimated year 1918	$ 19518.86	
Charges year 1917	10879.03	
Increase for 1918	$ 8639.83	

MATERIAL

Estimated to be same as 1917		$ 8516.01
Total estimated year 1918		$ 28034.87
Total charges year 1917		19395.04
Increase for 1918		$ 8639.83

Year 1917—Cash payment on account of ten new cars purchased	$ 9000.00
Year 1918—Similar payment estimated	9000.00

No increase for 1918

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 435—SERVICE CARS

LABOR

Track Dept. (Repairs to stone car)	$ 8.57		
Car Barn	172.22	$	180.79

MATERIAL

Material a/c Service cars	$	365.07
	$	545.86

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$	319.22
Estimated year 1918 $ 319.22		
Charges year 1917 180.79		
Increase for 1918 138.43		

MATERIAL

Estimated to be same as 1917	$	365.07
Total estimated year 1918	$	684.29
Total charges year 1917		545.86
Increase for 1918	$	138.43

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 436 ELECTRICAL EQUIPMENT OF CARS

LABOR

Track Dept. (Welding at barn)	$ 77.10	
Car barn	6191.28	
Watts & Stern (Rewinding armatures)	285.75	
Harry Stahl (Grinding commutators and rewinding armatures)	47.50	$ 6601.63

MATERIAL

Material a/c Electrical Equipment of Cars	$ 11719.82
	$ 18321.45

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918	$ 11252.92	
Labor other than Company's (Same as 1917)	$ 333.25	
Estimated year 1918	$ 11586.17	
Charges year 1917	6601.63	
Increase for 1918	$ 4984.54	

MATERIAL

Material a/c Electrical Equipment estimated to be same as 1917		$ 11719.82
Total estimated year 1918		$ 23305.99
Total charges 1917		18321.45
Increase for 1918		$ 4984.54

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1918 CHARGED TO MAINTENANCE ACCOUNT NO. 438—SHOP MACHINERY AND TOOLS

LABOR

Car Barn	$ 55.16	

MATERIAL

Material a/c Shop Equipment and Tools	$ 104.55	$ 159.71

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918		$ 100.50
Estimated year 1918	$ 100.50	
Charges year 1917	55.16	
Increase for 1918	$ 44.34	

MATERIAL

Estimated to be same as 1917		$ 104.55
Estimated for year 1918		205.05
Charges year 1917		159.71
Increase for 1918		$ 45.34

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
EXPENDITURES YEAR 1917 CHARGED TO MAINTENANCE ACCOUNT NO. 439—
SHOP EXPENSE

LABOR

Track Dept. (Unloading and hauling coal for Car Barn).	$ 42.75	
Car Barn (Firing boilers, repairs to hand tools, etc.)	435.29	$ 478.04

MATERIAL

Hand tools, coal oil, lights, etc.	$ 1270.30
	$ 1748.34

ESTIMATED FOR YEAR 1918

LABOR

Estimated Pay Rolls 1918 based on number of authorized employees and rate of wages paid April 15, 1918		$ 827.92
Estimated year 1918	$ 827.92	
Charges year 1917	478.04	
Increase for 1918	$ 349.88	

MATERIAL

Estimated to be same as 1917		$ 1270.30
Total estimated year 1918		$ 2098.22
Total charges year 1917		1748.34
Increase for 1918		$ 349.88

April 26, 1918.

TRENTON AND MERCER COUNTY TRACTION CORPORATION

EXPENDITURES YEAR 1918 CHARGED TO MAINTENANCE ACCOUNT NO. 440—REPAIRS OF VEHICLES

LABOR

Line Dept.	$ 13.04	
Track Dept.	19.04	
Car Barn	15.94	
J. McCardell	2.69	
West End Garage	52.36	
Fritz Garage	22.20	$ 125.27

MATERIAL

Material a/c Repairs of Vehicles	$ 206.05
	$ 331.32

ESTIMATED FOR YEAR 1918

LABOR

Estimated to be same as 1917	$ 125.27

MATERIAL

Estimated to be same as 1917	$ 206.05
	$ 331.32

No increase estimated for 1918.

April 26, 1918.

EXHIBIT G.

TRENTON AND MERCER COUNTY TRACTION CORPORATION
ANNUAL PAY ROLL FOR THE FOLLOWING YEARS

	1914	1915	1916	1917	1918
Car Barn	$ 27,338.50	$ 23,200.66	$ 24,814.69	$ 30,935.23	$ 55,802.33
Power House	19,381.70	19,351.07	18,625.08	22,152.56	27,688.40
Track Department	*28,299.46	23,992.82	36,888.84	49,390.22	56,712.46
Accounting Department	9,542.26	9,927.70	10,253.96	11,362.73	14,337.88
Superintendent of Transportation, Inspectors & Dispatchers	4,626.25	5,680.83	6,483.83	8,036.75	13,715.00
Motormen and Conductors	198,127.17	190,891.81	203,169.61	210,018.39	** 226,283.26
Line Department	5,842.62	3,751.57	4,927.43	5,527.45	7,705.00
Auto Truck				See Track	See Track
TOTAL	$293,157.96	$276,796.46	$305,163.44	$337,423.33	$402,244.33

** Estimated Conductors' and Motormen's wages for 1918 based on number car hours operated for year 1917.
All other Departments based on number of authorized employees on April 15th, 1918, and at rate of wages paid that date, excepting Track Department, which is based on actual number of men employed April 4, 1918.

* Includes Company's Track Force and Roadmaster's salary only. Years 1915, 1916 and 1917 include Company's Track Force, Roadmaster's salary and all Reconstruction Work and Asphalt Paving Repairs done by Contractors.

April 25th, 1918.

Exhibit "G"

40 30 20 10

TESTIMONY

BOARD OF PUBLIC UTILITY COMMISSIONERS

Trenton, N. J., Thursday, June 13, 1918.

Before J. W. SLOCUM, ESQ., *Commissioner*

For the Trenton and Mercer County Traction Corporation, E. M. HUNT, ESQ.

For the City of Trenton, GEORGE L. RECORD, ESQ., and C. E. BIRD, ESQ.

For Hamilton Township, ALVIN W. SYKES, ESQ.

JOHN W. BURKE, sworn on behalf of Petitioner.

Direct examination by Mr. Hunt.

Q. Where do you live, Mr. Burke?
A. At Yonkers, New York.
Q. What is your business?
A. Civil Engineer, specializing on railway work.
Q. What was your preparation for your work?
A. I was graduated in 1887 at the Worcester Polytechnic Institute in the course in civil engineering, and since then I have been almost constantly on engineering work, mostly on railway and railroad location and construction. For the past nine years I have been on the staff of the J. G. White Companies in the railway department, engineering and construction. My first experience after graduation—I had a brief experience

before going to college on railway construction—but since graduation my first railway experience since graduation was as the principal assistant engineer on location and construction of the Ticonderoga Railroad, a branch of the Delaware & Hudson in New York State; later principal assistant engineer on location and construction of the Au Sable Railroad Company, New York State; then principal assistant engineer on the Greenwich and Johnsonville Railway, an electric line in New York State; principal assistant engineer of the Bristol Railroad, a branch of the Rutland Railroad in Vermont. On these four preceding roads I acted at times as chief engineer in the absence of my partner, Thomas F. Chappell.

Mr. Record: I think we might as well save all this. This gentleman comes here under reputable auspices; we will admit he is competent.

Q. Could you in a more general way just give a general idea to the Commission, of your experience without naming all the companies?

A. Yes, I could briefly state that. From the period that I have just described, I continued on railway work, generally on location and construction, in this country and abroad. I was also on electric railway work as chief engineer and president of the Sherbrooke Street Railway Company in Canada, quite early, where I had complete control of the property, including the purchases of materials as well as the design and construction. Beside construction and engineering I have had in the last 10 or 12 years experience from time to time in the examination of properties, properties proposed to be built and also existing properties with a view to determining their cost or value or their earnings. These are properties all over the country, in the New England and Middle States, Western States, and Central, Canadian properties, some in Cuba, Mexico and elsewhere. So that in general my practice be-

gan on the location and construction of railways, purely engineering, and then developed into the business aspect of engineering, more particularly paying attention to the cost of properties, the cost of the elements of properties unit prices, and also with respect to the earnings of properties and the cost of maintaining railway properties in their different departments, maintenance of way and structures, maintenance of equipment and so forth; also the cost, those various costs that go into the development of a property, and in construction, sometimes called overhead costs, engineering, superintendence, the obtaining of labor, the over-turn of labor, plant supplies and materials, watching and guarding the property, accidents and damages, contractors charges and fees, sometimes called contractors' profits, interest during construction; those various features I have made a study of for many years past.

Q. What is your connection with the J. G. White Engineering Corporation?

A. I am on the staff of the J. G. White Engineering Corporation as Railway Engineer, and also in the construction department from time to time as a consulting engineer, sometimes as superintendent of construction. I go out from the office often enough on construction to keep in touch with labor condition, costs and keep quite up to date on prices. That has been my experience there for the last nine years.

Q. What is the business of that corporation?

A. The business of the J. G. White Engineering Corporation is the design, construction, financing, and operation of railway, public utility and other properties. It has done, and is now doing, a good deal of construction for the Government in the obtaining of materials for Government Departments and the construction of Government plants.

Q. Is it part of their business to make appraisals of properties?

A. Yes, that is an important part of their business in which they have been engaged for a great many years.

Q. Have you made an appraisal or estimate of the value of the property of the Trenton and Mercer County Traction Corporation?

A. I have.

Q. Will you produce that estimate?

Mr. Record: I would like to make an objection here at some little length. I think there are several objections to this proposition. I understand this witness is produced to show to the Board a regular valuation of this property, is that right, Mr. Hunt?

Mr. Hunt: Yes, he is produced to make a valuation. I don't know what you mean by "regular."

Mr. Record: I mean a valuation in detail of every part of the company's property, the physical property. I understand that is what the question means when he says to produce his report.

Now, I make my first objection on the ground that the valuation of this property is res adjudicata in this Commission. Two years ago we finished a most elaborate investigation in which they proved their valuation, we produced two men here who spent weeks and months valuing every item of this property, they produced schedules showing the valuations that they had made and then that was decided by this Commission and fixed at $3,200,000 as of that date.

That went to the Supreme Court and the Court of Errors and the valuation of this Board was sustained. Then in some tax cases the Supreme Court has finally put a value on this property of $1,500,000 here a few weeks ago, just half what the Board did, and did that not by confirming the Tax Board but out of its own motion, from the

record of the evidence of the replacement value of this property. The Supreme Court fixed the replacement value of this property at $1,500,000. You have got the Board's own finding and that finding.

Now, I admit that they have the right to show any additions to the property since the Board's finding, new cars that have been added, any extensions that have been made that are in the nature of new property, not renewals, because they are cared for from year to year out of the fund.

My first point is that no testimony is here admissible except to show new property in addition to the $3,200,00 or the $1,500,000 whichever way the Board concludes it is bound, if it concludes either. That is the first objection I make. Your Honor will see, I think, the force of that in the injustice that an opposite conclusion will put upon this City. Have we got to go and make another valuation of this property? Only two years ago we made it. Have we got to go through all that and spend $6,000 or $8,000 more? Can properties be valued every couple of years and cities be made to carry this immense burden of expense? What is the possible justice in bringing a fresh man down here to make estimates upon the unit prices, starting all over again, and put that in front of us and compel us to get experts. Why not, if anything is permissible, why not have the additional properties specified and valued, either at the old prices or at the new; it does not matter, we can fight that out. But to allow a new valuation within two years after the other one, it seems to me is illegal. There would be no question about it, I take it, if there had not been this question of increased price; I don't think Your Honor would listen to a new valuation two years afterwards if there had been no change in prices. The thing to do, if they are entitled to the new prices, if they are entitled to have a rate fixed on the new prices, which is

another point, let them show the excess, 15 per cent, 10 per cent, whatever it is; I don't think we will fall out much about that. But to start a brand new valuation and put up to the City of Trenton the immense expense of getting experts down here and re-valuing and re-checking up every one of these items to see if he has measured it right, when we have just been through it, scarcely gotten through the courts on that other valuation, it seems to me that is a very powerful argument in support of my position, and I make the first objection to this valuation on that ground.

Mr. Hunt: Your Honor, in the first place, the valuation to which Mr. Record refers was simply an approximate valuation. There has never been a real valuation of this property. In the next place, certainly a valuation can be made from time to time of property; it is never the same in all its parts, as Mr. Record has pointed out himself; prices change constantly, and there is certainly no reason why we cannot produce a valuation here. His references to the tax cases of course are not pertinent, should not be made here, and I think it goes without saying that we are certainly entitled to put in this estimate.

Commissioner Slocum: It is very true that valuations do change from time to time, but as a matter of public policy, first, if this Board has established the value of any utility, ought they re-open the whole valuation within a year or two simply because war conditions have increased cost of production? I am speaking now simply as a matter of public policy; should such a thing be permitted? Secondly; if the matter has been thoroughly presented to the Board, and they make a finding, I doubt very much whether it is what we call res adjudicata in the courts, but nevertheless that finding, unless some mistake is shown in principle, ought to be binding on this Board.

I quite agree with counsel of the company that you can present a new valuation at any time, but ought we permit it when we have within a reasonable time familiarized ourselves with that value and said what in our judgment the value was as of a specific date. If we have ascertained that value, then it seems to me that the amount ascertained at that time should be the starting point.

Mr. Hunt: If Your Honor please, it was never, I think, never understood that there was an absolute value of this property fixed. There was never a complete estimate of this property.

Commissioner Slocum: Didn't we fix the physical value of this property and also fix a definite sum for the intangible value of the property?

Mr. Hunt: I think not, sir. What was done was this; when we were here in the so-called ticket case, the question of the value of the property was brought up; there had been reproduced at that time a rough estimate which had been made by Doctor Betts in connection with the leases; it never pretended to be a complete valuation of the property—I don't mean that it was not supposed to take in everything in a general way, but never going into any details at all, and Mr. Betts on the stand himself said that. Now from that, in connection with that Mr. Johnson made a like estimate, for instance, as an illustration, not valuing the power house and power machinery in any great detail; more on a kilowatt basis. So there has never been of this property a complete valuation. Now, as far as the Board having fixed—I don't understand, never understood that the Board fixed any valuation in that sense. What they did was to say that they took a figure from these different rough estimates and said if it was so much then the return was such that it did not justify the aboli-

tion of the tickets; only argumentated, no fixing in the sense of a finding.

Commissioner Slocum: I have not the report before me but I think a wise deicsion of it is, I will note the objection of counsel and I will reserve ruling on it.

Mr. Record: Might I just refresh your Honor's recollection. The facts were that the other side put in Mr. Johnson's most elaborate estimate which he made when he came down here to buy the property, as a purchaser. It occupied some six weeks and a lot of men, and he as an expert, he knew this sort of thing, just as this gentleman is testifying to, and was about to put his money in it and put his life in it. He made his own valuation for his own purposes, in great detail and he presented time after time here elaborate details of the poles and measurements and the overhead and every phase of it and gave his separate valuation of each of these parts, which as I remember it now ran up to something close to four million dollars. Then he added his intangibles afterwards. Then we produced two men who had spent the better part of two months here in Trenton, measuring and inspecting and valuing every section of it, competent men who had been in the street railway business. We produced our valuation which, as I now remember it, was $2,600,000 new and $1,800,000 depreciated. Then the Board put in evidence Doctor Betts' valuation at the time these gentlemen applied to the Board for permission to make the lease, and while Doctor Betts' valuation was not as elaborate as the others, it was a valuation made for this Board for its guidance, and it was admitted by the Board as evidence. Now, when the Board got through, my recollection now is, having all of that evidence before it, running from $1,800,000 (Doctor Betts, I think was $2,600,000 or $2,800,000, something like that) and theirs

running up to four million dollars, then the Board said, without any reference, as I now recall it, to tangibles and intangibles, the Board said that the valuation of this Company's property upon which it was entitled to a fair return did not exceed $3,200,000. That is the way, I recollect, the Board put it. They found that the valuation upon which it was entitled to earn—they did not say physically or anything else, but it included the whole term. In other words, the Board fixed the margin beyond which there was no value at that time. It seems to me that is res adjusticata if anything can be, so far as this Board is concerned.

Commissioner Slocum: I will reserve passing on the objection. The objection will be noted on the record and I will rule on it later.

Mr. Record: I would like to get several objections in here. We might as well get the record right. You see, if that is the ruling, then there comes up the subsidiary question as to whether they can prove values as of this date, on which I want to have my objection go in, either now—it might as well all go in together. I take it they are going to prove values with these present high prices, I take it, a valuation as of today.

Commissioner Slocum: I don't know whether they are or not. It is not customary to just put in prices at the present time. Usually inventories go over a number of years.

Mr. Record: If that is not so my point is not good. That is so, is it?

Mr. Hunt: No, sir, that is not so.

Mr. Record: Then I don't press that point.

Mr. Hunt: This might be a good time to put on Mr. Dickinson.

Mr. Record: Does the record show that they are not going to produce prices as of today?

(Informal discussion.)

Mr. Record: The point I wanted to make was, that is an additional reason; if they are not going to make this valuation under these high prices then that is an additional reason that I submit to your Honor in support of my first motion. If they are going back to those days, there is no need of it al all.

JOHN W. BURKE resumes the stand.

Direct examination by Mr. Hunt continued.

Q. I believe, Mr. Burke, you last said you did make an estimate?
A. Yes, sir.

Mr. Hunt: I suppose, Your Honor, we might as well introduce this in evidence now.

Commissioner Slocum: You may offer it and I will reserve passing on it. This is the inventory and appraisal that Mr. Record objects to which you now have marked for identification.

(Inventory and appraisal prepared by Mr. Burke received and marked Exhibit P-9 for identification.)

Q. Mr. Burke, will you take up that estimate and in your own way explain it in detail.
A. Turning to page 1 of the estimate, omitting the index, there appears a tabulation headed "Final Summary" giving, the first item, track

work $2,055,438. That includes rails, ties, special work, ballast, all materials and labor entering into the track in both the city and suburban lines. The next item, overhead construction, $366,574, includes the poles, trolley wire, hangers and incidentals for the overhead work on city and suburban lines. Power plant, $392,130. Car barns and shop, $128,650. Contingencies and omissions, 7 per cent of above, $206,000, it being made up of 5 per cent contingencies and 2 per cent for omissions. General contractors' profits, seven and a half per cent of above, $220,700; that is, seven and a half per cent of the first four items down to car barns and shop inclusive. This makes a sub-total of $3,369.492.

Q. (By Mr. Record) How much is that again, please?

A. $3,369,492, for the track work, overhead construction, power plant and so forth but not including the rolling stock and other items. The next item is the rolling stock, $564,480. Shop and miscellaneous equipment $20,195. Furniture, $3,198. Stores and working capital, $100,000. Real estate, $125,450. This item of real estate is greater than the value placed upon it by the preceding witness for the reason, that, as I will explain later, I have estimated a certain additional amount for the separation, segregation of tracts in the suburban lines, but have not added anything on the city properties.

Mr. Record: I would like to make an objection there, that this witness is not qualified to put any value upon real estate in this section of the country.

Mr. Hunt: You admitted his qualifications for all purposes.

Mr. Record: I did not. I admitted his qualifications as an expert on his engineering line.

Mr. Hunt: That is engineering line; engineers purchase property for railroad companies.

Mr. Record: If that admission covers that, I withdraw it. And I press the objection that this man has shown no qualification as to the knowledge—

Commissioner Slocum: You must qualify him particularly as to his knowledge of real estate in this locality if you want him to testify to real estate values of property here.

Mr. Record: He can say he has taken somebody else's estimate and put it in here.

Witness: That is what I do say.

Mr. Hunt: That is what he does say. He takes Mr. Dickinson's values and he adds to them a percentage, practically a percentage, which from his experience—

Commissioner Slocum: Let him tell what he did.

Mr. Hunt: Just tell, Mr. Burke.

Witness: Your Honor, I decline to attempt to place a valuation on this real estate.

Commissioner Slocum: What did you actually do?

Witness: In common with my usual practice in that respect, recognizing that real estate value is a strictly local thing. But I did, as I ordinarily do, determine the factor which in our experience we find in constructing roads is the multiple by which ordinary farm values of lands is exceeded by the actual prices for properties that are segregated, that are taken out in nar-

row strips in a certain specified location, somehaving curves in them, utterly regardless of the desire of the farmer or land owner. That is a recognized principle in engineering that I have been familiar with for many years.

Q. (By Commissioner Slocum.) Doesn't it vary as to the different districts, the city district or the farming district?

A. Yes, sir.

Q. Have you made such a distinction?

A. I have. In this case on the city properties themselves which are not right of way lands, I have not applied any factor.

Q. That is, you have accepted Mr. Dickinson's figures?

A. Yes. But on the right of way I applied a factor of two as being, in my judgment, a fair average. The factors generally vary from two and a half to three per cent in suburban properties throughout the country where the land is divided up by running through a property. But in this case so much of that land was taken off by simply widening the highway that there is not so great damage as ordinarily occurs. I recognized that factor and considered that a fair average, in view of that fact would be to cut down the usual factor of two and a half to three per cent to an average of two—I don't mean per cent—two times; that land thus segregated would cost double what farm land or less segregated land would be worth.

Mr. Record: If Your Honor please, I press my objection to that testimony. I want to say that I think the witness is absolutely right. That principle I have been contending for for years before our courts, and I cannot get the courts to stand for that position, obviously right. As a member of the State Board—

Commissioner Slocum: You have done your share to try to impress that on them.

Mr. Record: As a member of the State Board of Assessors I undertook to have the railroad property in Jersey City valued on that basis, and I could not get the courts to sustain me. I pressed my objection. That proposition is not law in New Jersey as I understand it. It ought to be law, but it is not.

Q. (By Mr. Hunt.) Is that the customary method that is followed in making appraisals?

Commissioner Slocum: We will allow the explanation to stand subject to the objection. It is simply the witness's explanation of how he ascertained his real estate values.

Q. (Question read.)

A. It is. The next item is engineering, $168,-500, it being five per cent on the first sub-total of $3,369,492 and not made applicable to the other items like rolling stock, shops and equipment, real estate, etc. The next item is law expenditures, $25,000. The next interest during construction, $333,800. Injuries and damages, $23,600. Taxes during construction $1,900. Miscellaneous, $140,000. Making a total of $4,875,-615. I have not explained in detail the composition of these last few items, as I would rather defer that until I come to them in the detailed estimate. I think we may skip the next summary and turn to page 3.

Q. (By Mr. Record.) Turn to page what?

A. 3. South Broad Street line it is headed. This relates to track work and the first item is one hundred and three pound grooved girder rail in sixty foot lengths and seven inches high, 17,635 lineal feet at .904, that is 90.4 cents per lineal foot, making a total of $15,942. That price of 90.4 cents per lineal foot is at the rate of $59

per gross ton for that rail delivered and unloaded at Trenton, which would be equivalent to approximately $56 per gross ton at the mill, allowing $3 for freight, inspection, handling and unloading at Trenton.

Q. (By Commissioner Slocum.) When were those prices in effect that you are testifying to?

A. This price and all the other prices I have endeavored to apply in this appraisal are intended to be the normal fair value of the materials and labor at this time, uninfluenced by extraordinary conditions, such as the war. These prices are intended to follow the curve of normal prices not influenced by panic, by war or any other extraordinary condition, as nearly as I could arrive at it in my judgment.

Q. Well, then it is all your judgment and not a matter of prices or average prices?

A. It is my judgment applied to the existing prices before the war, now, for a period of 5 years past.

Q. Have you some table demonstrating your method, taking for instance the steel to which you refer, the price of steel for 1913, 1914, 1915, 1916, 1917 and 1918?

A. Yes, your Honor. I may say now in explanation, of all these prices, I would be warranted in going into a little detail in this perhaps so as to cover all these prices and save time in the end; these prices are deduced from actual purchases of materials by the J. G. White Engineering Corporation for a period of 5 years past, by quotations for a period of 5 years past. We have to keep in touch with prices constantly for estimating purposes even if we are not constructing today, we have to keep in touch with the market price, that is part of our engineering duty. I personally have done that for many years, and others in our organization. Then in addition to that I have checked it with my actual—certain contracts that I have actually had personal control of the purchases on those contracts, so

that I could say from first hand evidence what those cost from time to time. In the case of this item of rails; those rails cost $38 a ton delivered for the years 1913, 1914 and 1915, and then as the effect of the European buying began to be felt in this country the price suddenly went up very rapidly, so that the price soon came from $38 up to $80 a ton and the present prices of these materials are $95 a ton, quoted now, for this type of rail—I am not speaking of T rail

Q. What did you do, take the average then for five years?

A. No, I did not take the average for five years. I took the trend from the time that the European war purchases began to make themselves felt here up to the present time, having in mind also the present conditions as to the demand for these materials, that we require three millions of tons of rails for renewals in this country alone annually and that now it is reported by Government officials that we are two millions tons behind our supply.

Q. All of that increases the price?

A. All of that increases the price. We are striving though to get away from the abnormal conditions caused by the war. It is not fair to take an average of the prices from 1912 or 1913 up to the present, for the reason that your war prices are so abnormally high now, one end of your equation that is concededly wrong, it is abnormal. But although we concede the present abnormal condition and that those prices should not obtain for rate making purposes we must also recognize that the war has made a condition by reason of using up materials, a condition that is going to continue after the war. That is a fact accomplished. That is, we see at present the need of these materials, particularly the materials that we are talking of on this property, steel and copper, is already evidenced in Europe. That is a fact we cannot get away from however it may have been caused. The cause is abnormal,

the condition is a fact that we have to face. We do in our business, in making our estimates, our associates, I find contractors in New York likewise.

Q. That would be so for present work, but is it fair to apply any such rule to a valuation for rate making purposes.

A. I am explaining that I eliminate the abnormal condition for rate making purposes.

Q. It seems to me you put it in.

Mr. Record: I would like to just make an objection. This witness has gone far enough now. I think I am entitled to make an objection on the record. I misunderstood my friends on the other side. I object to this witness' valuation upon any higher basis than that of the average prices of materials prior to the war period, prior to our entering the war, on the general proposition that they are not entitled to a fair return upon the prices at the present. This witness concedes that. However, I make the further point, objection to this witness testifying at all about rate making. He knows nothing about rate making, he is not here as an expert on rate making. He is here as an expert engineer on the cost of doing a piece of work. The rate making proposition is another proposition of law and reasoning and what not. I object to this estimate now at this point as it appears that it is based upon abnormal conditions and upon higher prices than prevailed prior to the previous valuation.

Commissioner Slocum: I should like to call counsel's attention to the finding of this Board in the matter of the proposed withdrawal from sale of six tickets for 25 cents by the Trenton and Mercer County Traction Corporation, and especially to our finding as reported in volume 4 page 152 of the Utility Reports. That report says: "In view of all the evidence, we conclude that the value of the property, for the purpose of

fixing rates, does not exceed $3,212,000, as follows: Present value, September 30, 1915, $2,685,-500, overhead charges, $324,000, organization expenses $62,500, contractors' profit(, $140,000, total, $3,212,000."

"The complete summary of value by classes of property is as follows: Land, $70,000, buildings, $217,500, track and roadway and paving, $1,285,-000, bridges, $50,000, overhead construction, $312,-000, rolling stock, $475,500, office furniture and supplies and office cash, $3,000, materials and supplies and fuel, $24,000, power house machinery, $248,500, total, although the word total is not there, $2,685,500. Overhead charges, $324,000, organization expenses, $62,500, contractors' profits, $140,000, total, $3,212,000?"

Now, I take it, that our finding at that time is binding on this Board, and the proper method as appears to me would be to take that sum as the basis and add to it all sums of money which this company has expended in additions, betterments and improvements since September 30, 1915.

Mr. Hunt: May I say, your Honor, in regard to this, of course this brings up a very serious question from our standpoint. If the Commission has in mind any such stand it is a serious question, and I feel somewhat embarrassed, personally, because Mr. Katzenbach, who is the chief counsel in this case is unable to be present today. Therefore it is a rather inopportune time for me, personally, and I would suggest that it is such a vital question that it ought to receive arguments and probably a brief submitted on it.

Commissioner Slocum: I will tell you the way I feel about it, Mr. Hunt. I am perfectly willing that this should go in as an exhibit, because I realize the way this witness has prepared his exhibit that it is a valuation of this property, and I am willing to receive it, but I want to call your attention to the fact that simply his method of

ascertaining values is going to receive very little support unless we can get it on a comparative basis with the report filed by this Board. Otherwise we would never end any valuation of any property.

Mr. Hunt: Of course, your Honor, there are several things I might say in that respect. In the first place, this has been referred to as a valuation, the so-called valuation, that was made two years ago; in the first place it was three and a half years ago that was made.

Commissioner Slocum: Well, the valuation fixed by us was as of September 30, 1915. Now, I take it that is absolutely binding on this Board. You may not agree with it, you did not agree with it at that time, but whether you did or not that is the valuation this Board put upon it.

Mr. Hunt: Of course that is the question. There were two or three things I thought I might point out, and then I would ask that this be a matter that be argued either at the end of the case or at some special time, because it is most essential. It seems to me that it should be determined, should be argued.

Commissioner Slocum: Well you may make such observations as you like, Mr. Hunt.

Mr. Hunt: In connection with this report, I just want to call attention—it is perfectly true that the Commission did go into this question of valuation, but in several instances—for instance here, they refer, they start with the estimate made by the Board's engineer in 1911. Now we go back some years further; then they refer to the others and then they go on with that. But if you will turn to the finding of the Board, what the Board found, and the way the Supreme Court has held—they have held and sustained, for instance I recall a case, I don't recall the name

of it, in which they sustained an order of this Board on the ground that although in the main part of their opinion there was a statement that they could not support, that the actual order that was made, the actual finding was proper. Now, the finding in this case was, what they find here after full consideration of all the facts in this case as developed from the testimony and exhibits which have been voluminous, the Board finds and determines that the proposed withdrawal of tickets, and so forth. That is what the Board found.

Commissioner Slocum: Yes, and we also found and said explicitly, "in view of all the evidence, we conclude that the value of the property, for the purpose of fixing rates, does not exceed $3,212,000, as follows:." That was a definite finding and it shows you how we divided it to make that total.

Mr. Hunt: As of that time.

Commissioner Slocum: As of that time. Isn't it a great deal safer guide to apply the prices in accordance with the times and prices before any war was thought of involving the United States?

Mr. Hunt: I don't think so. The other propositions would strike me this way: If you start here—just take our case as an illustration of it; it might be pointed out in the first place, we did not come in in this ticket case to this Commission, but we were brought in here. We were, as it were, defendants here.

Commissioner Slocum: No, I don't know that is true. You applied, if I remember right, to withdraw the sale of 6 tickets for 25 cents, is that not right?

Mr. Hunt: No, your Honor. We claimed at that time, we claimed a right under our ordinance.

Commissioner Slocum: To withdraw them?

Mr. Hunt: To withdraw the tickets. The City of Trenton filed a complaint with the Board and the Board issued an injunctive order.

Mr. Record: That is not quite accurate. They filed a notice with your Board, and your Board notified us to appear here on a certain morning, and we objected to it. I think that was the way. We never took any action until we received notice from the Board that there would be a hearing.

Commissioner Slocum: Here is the way it started. "Under date of August 13, 1915, the Board received a communication from the Trenton and Mercer County Traction Corporation, by Rankin Johnson, President, which notified the Board that the Company and its lessors had for many years past sold six tickets for 25 cents, that owing to decreased revenue and increased cost of operation the company intended to discontinue this practice and to withdraw the tickets from sale and would exact a five cent fare for carrying each passenger over five years of age, and that under the charters and ordinances by virtue of which it operated its roads it was entitled to exact such fare." That is the way it started.

Mr. Hunt: Yes, sir. I hardly see any distinction from the way I stated it. I said we made no application to this Board for permission to raise our rates.

Commissioner Slocum: No but you notified the Board that you were going to charge a new fare.

Mr. Hunt: Yes, sir.

Commissioner Slocum: And the Board suspended any such withdrawal of tickets.

Mr. Hunt: Yes, sir, suspended the increase. I did not mean to indicate anything else about that but I was simply pointing out that we did not come prepared for a rate increase, we were brought in. Under those circumstances we were not prepared with any valuation of our property.

Commissioner Slocum: No, but a valuation was developed very thoroughly in the hearing. You offered one.

Mr. Hunt: Finally during those hearings there was what I call a so-called valuation, never considered it anything else, because it never went into all the details. All I wanted to bring out at this time was in such a situation where you get a valuation that is not a detailed complete valuation, what the other view that I would take of it would lead to would be this; when that has once happened to a company they would be forever forestalled from making an accurate complete valuation of the property. Now, I would not consider that that is good public policy or for the benefit of the public, because it might be said it is the failure of the company to present sufficient evidence; there might be evidence which they did not produce and having once failed they would be forever forestalled from an accurate complete and full estimate. Now, I go further; I don't see how it can possibly be said that an estimate made once can never be gone back of, because in the nature of things rate fixing is in the future, always for a new time, and of necessity the facts, whatever they are, are different from time to time, the prices—the property changes, the prices change, everything may change, and therefore you are certainly entitled

to come in and make a complete estimate at any time that the company may choose. I say, that is within reason, within some reason; I don't mean that practically every day they can do it, from one day to another.

Commissioner Slocum: Now let us see just what is going on in this country, or was going on until the railroads were practically taken over by the Government. There was a valuation being made of the railroads of the United States at an expense of many millions of dollars, it had been going on for some years, and it is not yet completed, but suppose it had been completed September 1st, 1917 after all those years of labor and millions and millions of dollars expense; would you contend that because a railroad company was dissatisfied with the finding that the Government and the railroad ought to go all over that work again?

Mr. Hunt: I would not contend that they should your Honor, it would probably be very foolish, because in the first place that would have been complete. Certainly, the Government started out in such a complete way that they would never have finished it; I think that is generally agreed that they could not finish the proposition, it was too big. But that was complete; the companies that they did select they were going on a complete basis. I say that would not be a parallel to our case because the valuation that was made—admitting for the argument that it was a valuation that was made in the rate case—was not complete and did not pretend to be. The Board took the best that was presented to them, the best they had before them.

Commissioner Slocum: Don't you see what you are attempting to do now, is to increase findings, such as overhead charges, organization expenses, contractors' profits by allowances of in-

creased percentages. Now those items ought to be no further discussed with this Board so far as this company is concerned if our reports are to receive treatment and respect.

Mr. Hunt: Well of course as to that I don't know. That rests entirely with the Commission.

Commissioner Slocum: Do you think, Mr. Hunt, that we should say as a solemn finding, that the contractors' profit on this road or the allowance made for contractors' profit should be $140,000 and then two years later say "well, we think the contractors' profit ought to be $500,000?"

Mr. Hunt: Not unless, your Honor, the Commission was convinced by expert testimony that the latter sum was the correct sum.

Commissioner Slocum: I don't think any experts are any better judges of the facts than the Board who passed on it.

Mr. Hunt: I don't mean to indicate that, your Honor, at all. But this whole question, all these questions of rate making, are still, if I may say so, in a formative stage, the whole question of valuation to some extent is too.

Commissioner Slocum: I realize that, we all realize that. That is just the reason we ought to protect the public against an inflation in war times.

Mr. Hunt: We do not propose any inflation that is due to war times as such.

Mr. Record: Well you do; that is what he says.

Mr. Hunt: No, not as such.

Commissioner Slocum: Gentlemen, I think the way to do is—I am perfectly willing that your exhibit should go in for what it is worth, but I have commented very frankly about it. That is my own view.

Q. (By Mr. Hunt.) Proceed, Mr. Burke.

A. The present price of the grooved girder rail is $95.20 per ton. The price used in this appraisal is $57 per ton for the thirty foot lengths and $59 per ton for the sixty foot lengths. The pre-war price—

Mr. Record: What page are you testifying to now?

Witness: Page 3. The pre-war price for girder rails delivered at Trenton varied slightly, from $38.40 per ton to $39.90 per ton, from the years 1913 to 1915. The normal price fixed here is much nearer the pre-war price than it is the present price. Of course it is above the pre-war price, but it is much below the present price.

The next item, continuous joints for above, that is a special joint at $4 per pair, including the bolts, in this appraisal the bolts are included with the joint pieces. You will perceive there is no separate item for bolts by themselves. This price of $4 is very little advanced over the pre-war price.

Q. (By Mr. Record: Where is that?

A. That is the second item on page 3; continuous joints for above, the above girder rail. The next item is grooved rail—

Mr. Record: If I may be allowed, won't you state each time you name a figure, what the pre-war price was?

Witness: Yes, sir.

Mr. Record: If you can. It will save cross-examinations to that effect.

Witness: The pre-war price for this continuous joints, including the bolts was about $3.10 as compared with this, what I term the normal fair price now of $4.00.

Q. What was what?
A. $3.10 including the bolts, delivered.
Q. The first item page 38 to 39?
A. $38.40 to $39.90 was the pre-war price. The second item $3.10 pre-war price. The third item, grooved rail of the same type, that is 103 pound section, but in 30 foot lengths instead of 60 foot, 7,627 feet at 87.4 cents per foot, making $6,666 delivered. This is at the rate of $57 per ton delivered at Trenton. That is $2 less per ton than in the case of the same section of rail in 60 foot lengths.
Continuous joints for above—
Q. Wait a minute. You did not give the pre-war price.
A. The pre-war price for that 30 foot rail was $38 per ton.
Q. As against this 87.4?
A. The 87.4 corresponds with $57 per ton.
Q. You cannot translate that for me? I would like to follow your figures. You have 87.4; now, what was the pre-war decimal?
A. I could not give it to you in lineal feet without figuring it out. I can give you the price per ton in each case.
Q. Well, give me the price per ton in each case.
A. Well, the normal price per ton—
Q. What is 87.4?
A. That corresponds with $57 per gross ton, and the pre-war price, $38 per gross ton.
The next item, continuous joints for above $4.00; the pre-war price being $3.10; including the bolts.

Welded joints, five at $8 apiece. The pre-war price was from $6 to $7.

The next item is 119 pound girder guard rail in sixty foot lengths, nine inches high, at $1.04½ per lineal foot, which corresponds to $59 per gross ton delivered at Trenton, as compared with a pre-war price of $38 to $39, and a present price of $95.20 per ton, plus freight, which would make it, $98.20, freight and handling.

Standard joints for the above—

Mr. Record: I don't want to interrupt unnecessarily, but are we going through all of this thing in this way?

Mr. Hunt: Well, we thought at least we ought to give enough to show how it is made up, enough to satisfy you.

Mr. Record: I am only suggesting a method of saving time.

Mr. Hunt: Of course it all rests with the Commission.

Commissioner Slocum: I did not assume you were going through this page after page.

Mr. Hunt: We did not expect to do that; just give an illustration of one, for instance the track here, show the track work, and we will do that to the others too.

Mr. Record: He apparently has made an explanation which I think is proof enough that he has not used pre-war prices nor has he used war prices. He gives something that is not an average but which he defines as normal and at the proper time I would like to cross-examine a minute on that, but if this is the principle that applies to the whole thing we would like merely to have the pre-war prices put in here by a state-

ment. It is folly to take the time of the Commissioner and all of us to write these things in here.

Commissioner Slocum: I think that is true.

Mr. Hunt: Yes.

Q. (By Mr. Hunt.) Will you pass on, Mr. Burke, what is page 2 then?

A. We were discussing page 3 and got down to the 6th or 8th line on page 3, referring to the track work on the South Broad Street line. Page 4 refers in like manner to the track work on the South Clinton Avenue line. Page 5 track work, Hamilton Avenue, South Clinton to Chambers. Did you wish me to go all through that?

Commissioner Slocum: You may go along with the different pages and just state what those pages show.

Mr. Record: That is stated at the top.

Commissioner Slocum: What is that?

Mr. Record: It is stated properly at the top.

Mr. Hunt: You might make it more brief by saying from pages so and so—

Commissioner Slocum: Do the pages speak for themselves?

Witness: Yes, sir.

Commissioner Slocum: And there are notations on each page?

Mr. Record: Yes, there appear to be.

Commissioner Slocum: Then there is no occasion for going into any repetition of what appears on the pages themselves.

Q. (By Mr. Record.) Does this explanation of yours as to the price of materials apply also when you speak of falling and excavating and all of these various items that come in here; is that made up of what you call a normal?

A. Yes, sir, it applies to all of them.

Q. In each instance it is neither the highest price of the present war times nor is it the old pre-war period?

A. That is true. And to make it clear to your Honor and to counsel I may say now, for comparison, the present prices on the whole physical property are about twenty-eight and a half per cent above what I consider a fair normal price for this property today, and the pre-war prices were between twenty and twenty-five per cent below my appraisal of the normal values.

Q. That is, if you worked out each item separately the average would be something like twenty to twenty-five per cent below on the pre-war basis and 28 per cent higher on the present basis, is that right?

A. Exactly.

Q. They would average up that way?

A. Yes, for the entire property, that would be the weighted average.

Q. I think that is exactly what we want to know.

A. The weighted average of those comparisons. So that the present value, the present cost of this property would be roughly, $1,250,000 above my estimate and the pre-war cost about $1,000,000 below.

Q. (By Mr. Hunt.) Are like figures being used in various appraisements that you are making throughout the country and that are being made by others?

A. Yes, sir.

Q. Now, Mr. Burke, page 1 then is a recapitulation of the sub—what might be called the sub-summaries that follow, of the various elements of the properties, is it not?

A. Yes, sir, it is a synopsis or summary of all the details that follow.

Q. Referring to page 96, Mr. Burke, is there any explanation that need be given as to that being of a little different order than the others?

A. It would be well I think to explain this a little further inasmuch as it has not been fully explained in my previous testimony regarding labor and materials. Page 96 deals with overhead costs, the first item being No. 501 in the I. C. C. system of accounting, the item of engineering. My appraisal includes 5 per cent on $3,369,500.

Q. (By Mr. Record.) Three million and how much?

A. $3,369.500.

Q. Oh yes, 5 per cent on that.

A. Or $168,500 as the cost of engineering. Five per cent is the usual amount that we find by experience and actual measure of the actual cost of engineering on a property like this when applied to the construction items as we applied it here, that is to say, on track work, overhead construction, power plant, car barns and shops, and the contingencies and omissions that go with them and the contractors' profit that has to be paid in conjunction with them, making in this instance a total of $3,369,492. It does not include any allowance for engineering on rolling stock and other items. Engineering on these other items quite frequently is estimated and allowed, but I have not done so in this case.

I. C. C. account number 546, law expenditures, $25,000. This item is for the necessary legal assistance in carrying out the contract, in preparing the contracts, in protecting against suits during construction, the ordinary legal administration of the construction work, but not includ-

ing any legal expense or charge for obtaining franchises or anything of that sort. It applies strictly to the legal work in carrying out the construction and the item of $25,000 I think is a modest charge on a property of this sort and is less than we often have to pay on similar properties for that kind and class of work.

Item No. 547, interest during construction. We assume two years' construction period for building these 60 to 70 miles of railway, city and suburban, and assume that one-third of the money is called at the start, one-third at the eight months' period and one-third at the sixteen months' period, the money costing 7 per cent, but also allowing bank balance credits of two and a half per cent for a part of the period. We find in our experience not only now, but before the war and for many years before the war that it cost seven per cent to borrow money on construction projects, and sometimes it has to be borrowed—the underwriters require it to be appropriated at the beginning of the work and insist that all the money be raised at the start to avoid the risk of failure in carrying it through, to avoid the possiblity of not completing the finances, and in that case you have to pay interest during construction from the beginning of construction all the way through, and sometimes you get a credit from bank balances and sometimes you do not. In my earlier experience when there was greater confidence in public utilities, we were able to get money as we wanted it, paid interest for it only for a short time; if we wanted to pay for some cars or rails or anything of that sort, just get the money out of the bank thirty days. That cannot be done now. The methods of financing are totally different. So that I have assumed here a method which I think is most conservative and most fair to the public, in assuming that only one-third of the money would be called for at the start and that the financial plan would admit of reserving the calls for the

other two-thirds until 8 months and 16 months had expired. In this way I keep down the interest cost below what it would often have to be on a property of this sort.

Applying this first to real estate, assuming the value of the real estate as placed by the real estate experts I modifying, or rather applying the usual multiple for that part of the real estate which is in right of way and involves segregation of lands from the other properties, segregation in narrow strips, assuming that to be correct for real estate, we buy that in the first instance, so the interest on that goes for the full two years. That interest item is $17,600, seven per cent for two years. Equipment including rolling stock, furniture, fixtures and so forth, but excluding rolling stock—

Mr. Record: I don't see any rolling stock.

Witness: Rolling stock is excluded in that item.

Mr. Record: In the interest during construction.

Witness: In the interest during construction, yes, sir. That is taken for four-thirds of a year, that is on the system that is described, taking a third of the money at the start, a third at 8 months and the balance at 16 months, but that is applied just as in the case of engineering, only to the strictly construction parts of the property and not on rolling stock, furniture, fixtures and so forth.

Then there is also credited there the bank balance at 2 and a half per cent on this same amount of $3,369,500, giving a credit of twenty-eight thousand dollars, so that the interest item during construction sub-total is $304,000. Then there is interest on these preceding amounts, interest on engineering, on law expenditures, on

injuries and damages, on taxes and on miscellaneous for an average period of one year at four and a half per cent, that is, 7 per cent, less your credit of two and a half per cent from the bank, from the deposits, making $29,800, which with the $304,000 previously mentioned, makes a total of $333,800 for the total interest during construction.

The next account number 548 is injuries and damages. This is taken at the rate which prevails in New Jersey under the laws here as to employers and public liability. Our experience is that in New Jersey in a property of this sort the employers liability averages about 2.3 per cent of the payroll and the protection against public injuries, injury to the public or individuals or property is about one-half per cent of the payroll and the payroll is about 25 per cent of the entire construction cost. So that this item of injuries and damages figures 2.8 per cent on one-fourth of the construction amount previously mentioned, $3,369,500, which makes a total item for injuries and damages, $23,600.

Account No. 549, taxes during construction, on real estate only, at one and one-half per cent. Of course that is only a rough opinion, I don't know how near correct that may be, but I intended to get it on the low side. I know in my own city we pay, we have been paying 2.9 per cent, the City of Yonkers, and this year the assessment will be 3.6 per cent, $36 on a thousand on an assessed valuation well above 70 per cent. So, unless conditions in Mercer County are very extraordinary, peculiar, I should think one and a half per cent would be a conservative rate. However, the item is only $1900.

Mr. Record: You did not take into account taxes assessed by the Supreme Court on $1,500,000, did you?

Witness: No, sir, I did not. All I have dealt with is taxes during construction.

Account 550, miscellaneous. Under this comes preorganization costs, first, the initial engineering expense incident to a study of the location, preliminary surveys, preparation of maps, profiles, plans and estimates of cost and probable earnings. This is put in at $15,000 which I think is a very moderate amount for such work as would be involved by this item. I have often seen it cost double that.

Mr. Record: What page are you reading from?

Witness: 96 the bottom of page 96; I have just finished that and got to page 97.

The first item on page 97 is, securing franchises, $15,000. That includes legal expenses, traveling expenses, attending hearings, stenographic work, expenses of that sort, on the supposition that probably the proceedings would continue over several months time. This item is less than often happens, than often has to be paid on properties of this size.

Proceedings before the Commission, $7,500.

Mr. Record: Before what Commission?

Witness: That is the Public Service Commission of the State of New Jersey. That would involve the services and expenses of counsel, engineers explaining plans, routes, methods of construction and to furnish such information as the Commission would require or demand.

Miscellaneous promoter's expense, $5000. I could not think of a much less figure to put it in, for round numbers.

Initial financing expense, promoter's time,$7500.

Bankers; engineers, two reports, $8000.

Bankers; lawyers, $10,000.

As the properties are financed in these later days, the last several years, this financing expense would be encountered, could not be avoided, and this I think is a moderate measure of it. Making a total of $25,500.

Organization expense, incorporation and legal expenses in connection therewith and in drawing mortgage. Our experience indicates that this would cost $20,000. You gentlemen can judge that perhaps better than I, but I have often found that it has cost $20,000 to $50,000 in a property of this size. On a smaller property we had recently it cost us $30,000.

Engraving bonds and stock certificates, $5000.

Fees to trustee, $5000.

Underwriting expense, not including any discount or profit—I have not recognized that in any part of this appraisal—the expense of the underwriting syndicate; it would be clerical expense largely, not legal but clerical and general office expense, $5000.

Administration during construction, $30,000. That contemplates that your construction would be completed, you would have your officers, president and secretary and they would be engaged on this work with their assistants, clerks, for two years during construction.

Preliminary operation, $5000. That is a cost often overlooked, but the real cost always has to be encountered in smoothing up the property, getting it safe for use by the public after the contractor has finished with it, in getting cars limbered up as they show sometimes stiffness, taking out the cars, trying them out; you have to run cars over the entire line several times, familiarize the new men, the motormen, with the line so as to be sure that when you do begin to operate the property for public convenience it may be operated safely. A property of this size it would cost $5000 to do that.

Insurance during construction on power plant and car barns for say six months, at 30 cents per

hundred dollars; on rolling stock for two months at $1.15 per hundred, amounts to $2000 in all. The charge on the rolling stock is for the reason that in a property of this size your rolling stock will begin to come in a few months before you are ready to operate, in fact it would be only prudent that you have it do that. So there would be some of the rolling stock stored in the barn during the period of construction before you are ready to operate, and it would carry an insurance charge.

These so called overhead costs, which are a real out-of-pocket money cost and in no wise and in no particular an intangible cost, amount in this estimate to $692,800.

Commissioner Slocum: We will recess now until two o'clock.

Recess from 1 to 2 o'clock.

(After recess.)

JOHN W. BURKE resumes the stand.

Direct examination by Mr. Hunt continued.

Q. Mr. Burke, was there any more on that? Had you finished with the last page?

A. I finished page 97, yes, sir.

Q. Will you explain to the Commissioner, please, Mr. Burke, how you got the data for this estimate.

A. In March I came to Trenton and examined the principal parts of the property to determine how best to proceed to get our inventory and make the appraisal. Early in April we began an actual survey of the property, putting on several parties so as to measure up all the property, measure the length of track, the different kinds and weights of rail, counting the poles, measuring

the trolley, the feeders, the size of the buildings, noted the amount of cut and fill in the suburban lines, or excavation and embankment, culverts, drains, pavement, special work and rolling stock. In other words, we made an actual survey of all parts of the property. We also had access to the tables, information, data, prices, etc., of the corporation itself. We were given free access to those and found the prices actually paid for years past by the company in the purchase of its materials for this road in rehabilitation, improvements and renewals. Those prices, of course, are the best evidence of the cost at those times and are better perhaps than any estimated prices could be. I gave special consideration to those prices, and in studying unit prices for this property I tabulated those prices in ink for years past, 1913 up to 1918, and along on the same sheets I tabulated in pencil our prices for the same kind of materials in this vicinity and elsewhere, delivered at New York, delivered at Pottsville, Pennsylvania, where we have properties, Mauch Chunk and anywhere around in the eastern territory. The quantities that we determined by actual measurements, were tabulated and we found that those varied in many cases from the approximate quantities that the company itself had on its records. In this appraisal I followed my own quantities, what we actually found in the property irrespective of what may have been claimed by the corporation. The tabulations, records of the corporation I may say were closely approximated, were as good as you usually find them, but we went into special detail and took pains and care in finding, as near as possible the exact quantities in this property. Likewise I endeavored to give the same care in fixing the unit prices on materials and labor on the method that I submitted to your Honor, a price that is neither the pre-war price nor the present price but is nearer the pre-war price than it is the present price.

Q. (By Mr. Herrmann. (Might I ask what you mean by pre-war prices?

A. By pre-war prices I mean those prices that prevailed almost uniformly for several years before 1915.

Q. For several years; how many years?

A. Several years. In most cases, for instance in the case of steel rails they continued for 15 years at one dead level, $28 a ton at the mill for T rails—

Q. For other materials?

A. $38 for the others. Other track materials continued at nearly that same level for many years, angle bars, bolts, nuts, spikes, tie plates, the ties themselves varied very little for a period of ten years before the war. They rose gradually as the supply of ties diminished in comparison with the demand of the steam railroads, which are the great users of ties.

Q. Copper.

A. Copper; in copper there has been a greater variation. Copper prices have ranged from 17 to 25 and 28 cents, back to 19 cents, and back and forth almost like stock prices. Copper prices have been in a class by themselves. They have not enjoyed the same stability of rates that steel prices have. It seems that there might have been some manipulation; prices have not varied with the demand, as nearly as I could judge.

Q. For example what would you call the pre-war price on copper?

A. The pre-war price on copper was about —it varied from 17 to 25 cents, probably about 21 cents. The present price on copper is a fictitious price forced by the Government. Before the Government fixed the price of copper on a basis of twenty-three and a half cents per pound copper was selling up to 26 cents, the prices were not stabilized at all, they varied from 28 to 40 cents and more than 40 cents. Even now it is very difficult to get copper at the Government price. You either don't get it at all or you have

to pay a premium for it. However, I have assumed that in a property of this sort, in a large property, the reconstruction of a large property you would succeed in somewise in purchasing copper at the fixed base price of the Government plus three cents for fabricating it, making 26½ cents a pound for trolley wire and 27½ cents a pound for feeder wire.

Q. Might I ask just one or two more questions for information. What other materials are there that there would be a variation in pre-war prices? The poles?

A. Not very much in poles. There would be a variation in special work but not nearly so much as in rails for the reason that the great demand by the steam railroads for rails has been in excess of the demand by the steam railroads and the trolley lines for special work. Rails have been wanted in great quantities for France.

Q. I was speaking of the pre-war prices.

A. The variation of the pre-war prices?

Q. Yes.

A. Poles like ties were pretty well stabilized The price on poles did not vary very much. The very great element of cost is labor. The price of labor gradually increased during the pre-war period. My first construction we paid $1.25 for labor for several years, we paid only $1.25 for very efficient common labor; then it gradually rose up to $1.50, and for a period of 5 or 6 years common labor generally cost $1.50 to $1.65 and then gradually up to $1.75, speaking about pre-war times. You don't want me to go into the question after the war?

Q. No, I just want to get your general ideas as to what standard you took as to the pre-war prices when you call them pre-war prices.

A. Yes, sir. I took the prices that came under my personal observation during a long period before the war, prices that I encountered and paid year after year, and have enumerated some of

them for you now, and followed the same method in all the others.

Mr. Herrmann: That is all for the present.

Q. (By Mr. Hunt.) On what principle was this estimate made? That is, I mean, was it a reconstruction new?

A. It was a reproduction of the physical property new as of the present time, without any intangible values.

Q. Now, if with the same quantities, of course, which are the quantities in the physical property, you acquired the present prices, what would this total valuation have amounted to?

A. It would amount to about $6,146,700.

Q. Does your valuation include any allowance for intangibles?

A. It does not.

Q. Then your estimated cost of reproduction is solely for physical property?

A. For the physical property only.

Q. Does your appraisal include an allowance for the early losses in operating the property?

A. No, it does not.

Q. Does your appraisal include any allowance for the cost of developing the business and bringing up the property to good operating condition?

A. No, it does not.

Q. Does your estimate include any allowance for initial risks?

A. No.

Q. In your experience have you found that such development costs generally are encountered in developing the business of a property?

A. Generally, yes.

Q. Would you consider such costs an intangible value?

A. Not at all. Such a cost would be just as real and tangible as the cost of rails or labor.

Q. Why have you not included this development cost in your appraisal?

A. Only for the reason that I have been unable to obtain satisfactory data to furnish a basis for an accurate estimate of the amount of that development cost. That being the case I had to forego the estimate on it.

Q. Have you included any allowance for superseded property involved in changes in method of transportation or otherwise?

A. I have not, except that on the Crosswicks line, near Yardville, I have allowed the salvage value of a bridge that is now claimed to be in stock and not in operation. I have not allowed the reproduction cost new of it but only the salvage value at $30 per ton, as compared with $34 fixed by the Government as to salvage price on old steel.

Q. Your estimate then is for the cost of reproduction new of the property as it stands today at what you consider normal prices?

A. It is, except in the instance of this old bridge that I have just mentioned.

Q. Have you made any allowance for alleged depreciation to the property?

A. I have made an estimate that might be used in lieu of the claim of alleged depreciation.

Mr. Record: Why do you call it alleged depreciation, Mr. Hunt?

Q. Would you explain that, Mr. Burke?

A. We commonly refer to it as alleged depreciation for the reason that we do not consider that there is any real depreciation in the investment in a case like this. Any depreciation or deterioration is simply a factor in the use of the property by the public and is properly part of the maintenance and renewals and has no relation whatever to capital account. Such deterioration must take place in the economical use of the property. Of course it would be inadvisable, most reprehensible to try to maintain a property in new condition always; by that means

you could not get any use of it. It you renewed ties or rails as soon as they began to deteriorate so as to keep the property in 100 per cent physical condition, as if it were new, then it would defeat your purpose and cause an unnecessary burden on somebody, probably the public. This deterioration is therefore an incident in the use of the property by the public. The most economical use of the property involves using the elements until they are worn out, down to the point where their further use would become unsafe. The condition of an element of the property just before it is renewed, when it is approaching the unsafe condition, and its condition immediately after it is renewed and when it has been restored back to a new condition, is entirely an element of operation and has no relation whatever to capital account. And I am advised by my legal friends that it is upon the capital account or such measure of it as we are able to get that you form your basis for rate making.

It is commonly accepted among engineers and legal gentlemen whom I meet in business, and also by some of the Commissions, notably the Public Service Commission of Massachusetts, which is one of the oldest, has been established for forty years.

Mr. Record: I think I ought to object to this line of testimony. Nobody is an expert on rate making, for that matter?

Witness: Of course, the comparison of ideas is hoped to have some effect toward determining the true basis, and these comparisons have been going on among us for a good many years. We have as much respect for the opinions of the legal gentlemen and of the Commissioners, and much more respect than we have for our own, and we look to them in large measure as guides. We find some diversions of opinion on it and we find some appear to us to be more logical than others

and the Massachusetts Commission one of the foremost.

Q. What would be the alleged depreciation; what would you include in that?

A. If we have to have a depreciation, as I think the courts still impose, the best modern practice seems to be to take the measure of it to be that amount of deficiency in certain elements of the property below the average good standard that obtains in the balance of the property. You find in practice, however careful you may try to maintain a property, that for one reason or another, failure to obtain materials, failure to obtain rights or labor or something, that the quality of the property is not maintained at the same uniform standard throughout and some parts show more deterioration than others. There are some parts of almost every property, especially in war times, in the last few years of stress, that have been permitted to go down below the general standard, and I have found some such elements in this property, although not very many, and not of very great weight or consequence. I think that on the whole it compares very favorably with other similar properties that I know of in that respect. But for this depreciation, as you term it, I propose this measure; the amount of deferred maintenance, as it may be called, in certain parts of the property where they have fallen below the general average. I have prepared an estimate here called summary of renewals and of single truck cars.

The first item in this estimate relates to a tangent track on West State Street between Willow Street and Calhoun, comprising seventy-seven one-hundredths of a mile of single track equivalent; the route distance therefore would be half of that or thirty-eight one-hundredths miles of double track. The cost of replacing, reproducing that track now at present prices, I estimate at $36,450. I take it at the present prices

rather than at the normal rate used in the main appraisal for the reason that this expenditure would have to be made now or in the near future while prices probably would be maintained at the present or even a higher rate.

The next item is tangent track, North Clinton Avenue and Mulberry Street, from the stone bridge on North Clinton Avenue to the end of the track on Mulberry Street. Part of this is double track and part on Mulberry Street is single track, and the total is 1.8 miles of single track equivalent, costing at present prices, $86,538.

Special track work in the city in twenty-five scattered locations, costing at present prices $42,188. I have the details of those various locations and the description of the special work, if you wish me to enumerate them.

Total estimated base cost, track and special work renewals on city lines only, $165,182.

Suburban lines; renewal of stone ballast on about one-half of the Hopewell-Princeton and Trenton Junction suburban lines, 24 miles, that is their total mileage, and the half on which the stone ballast would be renewed would be 12 miles as per details; $50,400. That also is on present prices of labor and material.

Total base cost of track renewals $215,582.

Overhead renewals, city and suburban, total ten miles of 2-0 trolley, on both city and suburban, that would be the total of all lines to be renewed, at $624.70 per mile, including sundry brackets and suspensions. The brackets and suspensions would not be necessary for more than perhaps about five miles, whereas I am estimating on the renewal of the trolley for ten miles and allowing salvage on the old wire, so the total estimate is $6,247, making a total of $221,829 base cost.

Adding omissions and contingencies 7 per cent, $15,528; general contractors' profit, seven and a half per cent, $16,637; accident and liability insurance seven-tenths per cent, $1,553 (that is

less than the allowance in the main estimate for the reason that the time, the period for doing this work would of course be less); interest during construction 1.125 per cent on the preceding items, that is one and one-eighth per cent for interest during construction on the short period. Making these overhead costs $36,213, and the total of that reconstruction $258,042.

Then comes the item of single truck cars which are becoming obsolete. They are operated and will be needed for operation, especially in Fair times and on special occasions, but they are not up to the standard of the rest of the property I have depreciated those fifty per cent of the price I had for them in the appraisal. I cannot tell you just off hand now what that is from the present cost of them; it might be forty per cent, say. They have some salvage value and they also have some operating value yet. The depreciation on the open types is $22,550; on closed, 100 to 222, $41,670, making a total of $64,220 on the cars, and a grand total for roadway track, and cars $322,262 to be expended probably within the next two years as these portions of the property are worn out, although I doubt whether it will be necessary to expend all of that sum within that time. Of course I wish to err on the side of conservatism and give the benefit of the doubt to the public in this case.

Mr. Herrmann: Do I understand, Mr Hunt, that this is to take the place of the depreciation of the property, or are these replacements and renewals that are necessary?

Mr. Hunt: This is depreciation. Mr. Burke has made this up so that if depreciation is to be taken into consideration in a rate case this is what he believes should be the depreciation.

Mr. Herrmann: Are these nothing more or less than replacements and renewals that are

necessary? I understood the witness was going to testify to some depreciation that would have to be taken care of.

Mr. Hunt: That is the depreciation, yes. That is the way he reckons depreciation. This would be necessary to bring it up. If you are going to allow the depreciation, these renewals will have to be made within a period and it might be considered they should be deducted from his other estimate.

Mr. Herrmann: I must confess to some ignorance, unless you can show me the difference between these items and other replacements and renewals that are necessary at all times to the plant.

Q. Would you just explain that, what the difference is between the ordinary replacements and so forth that would be charged to depreciation account?

A. They are in the same class, but as I endeavored to explain in my earlier testimony these cover those particular parts of the property that are deficient in quality in comparison with the balance of the property which is taken care of by ordinary maintenance and depreciation.

Q. (By Commissioner Slocum.) And I understand you to say you find them deficient by your personal inspection?

A. I find them deficient as compared with the rest of the property, to the extent that I should say they would have to be renewed within two or three years on the average; some of them might last longer, some of them less.

Q. (By Mr. Herrmann.) You don't mind my asking again what you would call renewals and replacements, if these are not renewals and replacements?

A. These truly are renewals and replacements, but they are that part of the renewals

and replacements on this property which under the system practiced by the Massachusetts Commission is set aside as a penalty or a depreciation against the property in contradistinction from the other renewals and current repairs that are made out of the current depreciation fund.

Q. In other words, if you were to spend this amount of money on this property immediately you would then have a practically new property?

A. So far as its operating service abilty is concerned, yes.

Q. Well, for value.

A. For value of the investment in the property, yes.

Mr. Herrmann: That is all. I just wanted to understand what your theory was.

Q. (By Mr. Hunt.) Might that be called deferred maintenance?

A. It is deferred maintenance, and usually termed deferred maintenance.

Q. (By Mr. Herrmann.) Now you have got me confused again. Might it also not be that the property has been maintained and has been maintained to such an extent that it has outlived its usefulness and will therefore have to be replaced? In other words, you can continue to maintain a track or piece of track to the point where you cannot maintain it any longer and will have to replace it?

A. That is the best practice. All track should be maintained in that way, operated in that way for the benefit of the public.

Q. And as soon as it depreciates to the extent that it is no longer useful it has to be scrapped and new track put in its place?

A. Yes, out of earnings, not out of capital account.

Q. So that by this same process these parts would have to be replaced out of earnings?

A. Quite true.

Q. And if they have not been, and the earnings have been appropriated elsewhere you now say they belong then in depreciation?

A. That would be true. Except that this amount of $322,262 should be diminished a little, for the reason that the expenditure is not immediately necessary; it will continue over a period of two or three years. If we say that on the average it would be two years, the money then would be expended one year hence, so that the true value of this cost to replace deferred maintenance now would be the present value at some fixed interest rate. We have been using 7 per cent before; if you divide $322,000 by 1.07 it will give you the present value of this improvement at approximately $300,000.

Q. I assume that all property or all elements of property have a certain life and do not go beyond that life; am I right in that? If they are used?

A. They have, but very few people know what that life is.

Q. Now then assume if you will that there is a piece of track that has been laid fifteen years and has about five years more of usefulness; you give that track the same value as you would a new track which is laid?

A. For service ability in the use by the public, if it has no defects, it carries the cars properly, it rides well, yes.

Q. Assume then, if you will, that the life of the track is twenty years, and some of the track of this road has been laid 15 years, by your method you give that the same value as you would a new rail laid today, not calculating any depreciation, whatsoever?

A. There is no depreciation calculated, for the reason that the value of the property which you are trying to obtain, concededly is the investment value of the property. Reproduction new is the best available means of determining the investment value of the property at the present price value of a dollar. That being the case, the

condition of your rail, the age of your rail, has no reference whatever to the property. We are estopped from considering that part of it by the very nature of the case, finding the investment value of that property as near as we can.

Q. (By Commissioner Slocum.) You are trying to ascertain the investment value all the time; that is what you have in mind rather than the actual value?

A. Trying to find the—

Q. You distinguish between investment value and value?

A. I am trying to find the investment value under the law that, as I understand, you are entitled to your investment, to your investment at present. For instance, if you build a property, put a million dollars in it at a time when the prices were half what they are now or half what they are through a normal period, when you are considering the property, then you are entitled to the value of that property to renew it now; it is the investment, your investment now.

Q. Then would you be entitled to earn on $2,000,000 now providing prices have increased?

A. Yes, properly so.

Q. And that is the theory of your appraisal, isn't it?

A. The theory is that your bushel of wheat costs you $2 now and it cost you $1 before; it is no more good to you now than it was before. Your wheat is—

Q. I understand. I want to know if that is the same theory you have applied in making up your appraisal?

A. I think it might be considered so, if I understand your Honor's question. I have tried to make clear my method of appraisal.

Q. Well, it is the investment value that you are considering all the time.

A. It is the investment value at present, that is, what it would cost to reproduce that property

new under normal conditions in approximately the present period.

Q. (By Mr. Hunt.) Then do we understand that you would make an estimate of the cost of reproduction at prices below the present prices and then deduct from that the depreciation for the items which are close to the end of their useful lives, at present prices, approximately 28½ per cent above the cost of reproduction new?

A. I do, because the expenditure on these renewals would have to be made at present prices, whereas, in endeavoring to get a basis for the purposes of this proceeding we are not justified in taking present prices, but taking prices that cover this period under normal conditions, as nearly as we can estimate them.

Q. In case the company were to make some of these renewals included in your depreciation estimate within two or three years among their regular annual renewals out of their depreciation fund, should they then, in your opinion be deducted from the investment represented by the property?

A. They should not.

Q. Have you made any estimate as to the amount of annual depreciation fund which this company should set aside and extend for maintenance and renewals and depreciation reserve?

A. I have given some consideration to that.

Q. Would you just state what that estimate is and upon what basis it is made?

A. That estimate is from $150,000 to $175,000 per year. The most generally accepted, and one of the most logical basis, is the assumption of a cost of five cents per car mile per year for maintenance of track and roadway and maintenance of equipment both, and on this property with a car mileage of about 3,200,000 per year, the necessary allowance for this purpose would be $160,000. Another basis commonly used is a percentage on the physical value of the property. Commissions allow from 3 to 4 per cent. on the

physical value of the property, for this. Another basis is a percentage on gross earnings, which however is rather begging the question and is not so sound a method of calculating this allowance. That however is often taken to be 15 to 18 per cent of the gross earnings. In any event on this property I think it would figure about $150,000 to $175,000 per year.

Q. Is the method and procedure that you have followed in making this estimate the same that your corporation follows in making similar appraisals of street railway properties?

A. It is.

Q. Have you another volume to your estimate that concerns real estate?

A. Yes, sir.

Mr. Hunt: This is the real estate blue prints we had before, but with a recapitulation that might be useful, so it can go as a part of this.

Commissioner Slocum: We have it already in the unbound form.

Mr. Hunt: Yes, you have the blue prints but not the part that precedes it there which gives the different items and the valuation placed on them. It probably is more convenient that way.

(Bound volume of blue prints with statement of valuation, etc., substituted for 25 blue prints previously marked P-8 for identification, and given the same exhibit number.

Mr. Hunt: That is all.

Mr. Record: If your Honor please, I would much rather have a chance to study this record, because if I am asked to cross-examine, if I go at it now, I will have to come back again at it.

Commissioner Slocum: Yes, I think that is true.

Mr. Record: I would like to do the same with Mr. Johnson, and if I could have them both for cross-examination when they finish the case, I would like it.

Commissioner Slocum: Anything further, Mr. Herrmann?

Mr. Herrmann: Not today.

Commissioner Slocum: That will be all today. The cross-examination of this witness is reserved.

Mr. Hunt: Yes. Could we fix that before we leave, so he might know. I imagine Mr. Burke has a good many engagements.

Commissioner Slocum: It will be continued to June 25th here.

Mr. Hunt: Is that the earliest day?

Commissioner Slocum: Yes, that is the earliest day. Gentlemen, when we recess, the case will be continued until Tuesday June 25th, at Trenton, eleven o'clock.

TESTIMONY

BOARD OF PUBLIC UTILITY COMMISSIONERS

Trenton, N. J., Tuesday, June 25, 1918.

Before the following Commissioners:

A. S. MARCH, ESQ.
G. F. WRIGHT, ESQ.

Appearances:

For the Trenton & Mercer County Traction Corporation, F. S. KATZENBACH, JR., ESQ., and E. M. HUNT, ESQ.

For the City of Trenton, GEORGE L. RECORD, ESQ., and C. E. BIRD, ESQ.

For Pennington, C. R. RUHLMAN, ESQ.

For Hopewell Township, E. C. LONG., ESQ.

JOHN W. BURKE, recalled on behalf of Petitioner.

Direct examination by Mr. Katzenbach.

Q. Mr. Burke, in the appraisal which you made and which you testified to on June 13th, did that appraisal include any allowance for working capital?

A. No, sir.

Q. Have you prepared what, in your opinion should be the amount of working capital to be carried in this property?

A. I have.

Q. Will you state what, in your opinion, is the amount of working capital that, in your opinion, this property should have and your reasons for it.

A. A moderate conservative amount for a property of this size and character, in my opinion, would be $40,000 cash working capital. Sometimes the stock on hand is included also with working capital. I mention that so as to coordinate different estimates and appraisals. My appraisal already includes about $66,000 for stock on hand, that is materials on hand, which is obviously part of the physical property, but sometimes is included in the working capital account. In addition to the stocks or materials on hand, which I valued at about $66,000, there should be, in my opinion, a cash allowance of working capital to the amount I named, for the purpose of enabling the company to go into the market and advantageously purchase coal, rails, ties, line materials and whatever it may need, two or three months ahead of the requirements or use of these materials, in order to be reasonably certain that it will thereby avoid shut downs, interruption of service or other disturbance to the public travel by reason of strikes at the mines, delays in transportation and so forth. I estimate that about 5 months supply of coal should be bought, or at least there should be money available for the purchase of three months' supply of coal, which would be about $18,000; three months' supply of rails, ties and overhead materials, car repair parts, etc., which last year according to the company's experience was $45,000 I think, or thereabouts, for the year; that would be $11,000 more; eleven and eighteen would be $28,000. Then there should be ten to twelve thousand dollars free cash for incidental current expenses, meet-

ing notes and sundry supplies and emergencies, making in round figures $40,000. If this were added to the stock on hand it would make the amount of $106,000 for stock on hand and working capital which are very often grouped together.

This $40,000 that I estimate to be the amount that in prudence should be appropriated by a company of this size is estimated in view of the fact that the company receives payments for passenger service every day, and therefore does not need so large a fund as it otherwise might. I think it receives enough to take care of pay rolls, so I do not include any labor charges in this working capital fund, only coal and ordinary construction and rehabilitation materials for track, line and cars.

Q. Mr. Burke, have you prepared any charts which would graphically show the fluctuations in the cost of the essential materials entering into the construction, rehabilitation, re-equipment and repairs of street railways?

A. I have.

Q. Will you produce that chart?

A. (Witness produces book.)

Mr. Katzenbach: You have produced a pamphlet containing these charts. Will you please hand one to the stenographer, Mr. Hunt, and ask him to mark it as an exhibit.

Commissioner March: Any objection?

Mr. Record: No.

Commissioner March: It will be received and marked P-15.

(Pamphlets containing charts showing prices of materials 1913 to 1918 received and marked Exhibit P-15.)

Q. Mr Burke, I understand that this merely graphically depicts the fluctuations in prices of various materials during the last few years that you have already testified to in your examination heretofore, does it not?

A. Yes, sir, the main materials, and also the construction labor for the years 1913 to 1918 both inclusive.

Mr. Katzenbach: I think that is all on the direct examination. Mr. Record, you may cross-examine the witness.

Cross-examination by Mr. Record:

Q. Mr. Burke, in making up your report, as I understood you to say, your total valuation of the physical property was arrived at by taking figures as your unit figures which represented neither the pre-war price nor the existing price, that is right?

A. Yes, sir, that is true.

Q. You, in a general way, say that the total of your valuation is, in your judgment, if my recollection is right, 28 per cent— is 28 per cent below the existing price and 25 per cent above the pre-war price, is that a correct statement?

A. Approximately. I estimate that the present price would be twenty-eight and a half per cent on the average above what I have made my normal price, and that the pre-war prices would be from 20 to 25 per cent below, perhaps an average of twenty-two and a half per cent below my normal price.

Q. Your term for the description of the unit price that you finally did take is "normal price?"

A. I call them the normal fair price of the reproduction value new, as of present.

Q. As of present?

A. The present day.

Q. Those prices are not the prices of the present?

A. No, sir.

Q. Then they are not the prices of the pre-war period?

A. No, sir.

Q. Are they the prices of any period? If so, what? Or is it just a theory that you have worked out by which you have arrived at what you think is fair?

A. They are the prices that I would consider from my experience fair at the present time, considering the demand for the materials in question, the present demand and the present outlook into the future.

Q. You cannot get from it the present price, can you?

A. No, sir.

Q. Then what has the Commission got to do with anything except the fact of the price at the present time and the price at some other time? Why do you put up another price to this Commission when it is not a fact?

A. It is a fact only in so far as it is my judgment and that of my associates working with me, for whom I am responsible in this case, of the cost of those materials and that labor for our present period when we wipe off war, when we go back to peace.

Q. Is it a fair statement to say that what you call normal prices are made up from your judgment of what the present prices would have been if the war had not happened?

A. No, sir.

Q. Then, won't you kindly make clear what is your hypothesis by which you arrive at your result? If you say that the present prices are not your prices and the pre-war prices are not, then you must have started from somewhere to come out to where you came out.

A. Yes, sir.

Q. Now, what theory did you use?

A. The fact that the war has taken place, is in process, and during the process has used up a

certain amount of materials such as we are talking about. It has increased the demand for those materials, not only the present demand, but has made a future demand.

Q. How do you know that?

A. For the reason that the present supply is way behind the requirements in rail—

Q. Requirements of rail, of whom?

A. Behind the war requirements now, to be sure, but the war has brought this new condition, that it has exaggerated the pre-war condition which was known to be almost excessive at that time, in the requirements of railroads in their roadway, in their cars, to make their habilitation, their renewals; the war demand has made that still greater. The war has also brought this new condition, that it has in effect depreciated the buying power of the dollar. It is not merely the fact that it has used up these materials and has made a great demand for labor—the labor will come back after the war, the materials are partly gone—but it has also depreciated the purchasing power of the dollar.

Q. That is plain, but why don't you then come to the point that the purchasing power of the dollar has gone down so much, prices have gone up, and arrive at a result? What you do is to lay that foundation and then instead of coming out at the end where that would lead you, you come out somewhere in between, and I cannot understand how you arrive at that in between point. You don't state any reason; you just say that is your judgment.

A. It would have to be largely a matter of judgment, I concede.

Q. Then that is a matter of judgment not based upon existing prices?

A. Based in part upon existing prices.

Q. Is it based upon your opinion as to what the future will give us?

A. To some extent. I am confining myself as far as possible to the present.

Q. Is it based upon your view of what will happen in the future?

A. Partly.

Q. To what extent?

A. I conceive that in the three great factors that enter into a property of this sort, copper, steel and labor, that these high prices are surrounded by such conditions now as makes it fair to presume now that they will be continued at very much above pre-war prices, perhaps not the present high prices.

Q. For how long?

A. For several years to come.

Q. Supposing the war ends this year and we have a financial panic as the result of the shutting down of all these great war industries, wouldn't prices go tumbling quickly?

A. With that premise they would temporarily go tumbling down.

Q. Do you expect all this demand to go on—

Mr. Katzenbach: I think he had not finished his answer.

Mr. Record: I beg your pardon.

A. (Continued.) But there is no present indication that we will suffer any such calamity as that with labor represented in every regiment in the army, with copper represented at the Capitol and directing one of our great bureaus of war industry, with steel likewise represented. I think we may say that industrial tripod, the three legged base of our industrial activity at home and abroad, is in a splendid condition to maintain its present high prices because it not only controls the products but it is organized by the Government and by the Nation and is engaged in the most patriotic pursuits at present, to save the Nation and aid the Nation.

Q. Supposing the Nation is saved; supposing the Germans are thrust back this summer and

the Austrians and we have peace in the fall; won't all these munition factories shut down, won't all these clothing establishments in Bridgeport discharge thousands of their men? What is your view of that?

A. They will make as quick a transition from the present method of manufacturing as they did to the present, in part.

Q. What becomes—if these men are discharged and the Government ceases to demand clothing and shoes and rifles and the million things that it is now urging the manufacturers to produce, what will become of your tripod then, when the men cannot get jobs?

A. The tripod won't be shaken then. The Government program looks forward at present to the supply of materials for the army and navy, for the fleet and the merchant marine, enough to keep labor and materials busy for two years at least to come.

Q. How do you know that?

A. I know by experience with the Government departments as well as by the public press.

Q. Have you any authoritative knowledge by which you can tell this Commission that Congress will appropriate millions of dollars to keep up this war game after Germany has surrendered; have you any inside tip you can swear to?

A. No, I could not swear as to the attitude of Congress on it.

Q. Don't they hold the purse string? Isn't it a fact that Congress appropriates the money?

A. Yes, that is a fact, but—

Q. Then you have taken—

Mr. Katzenbach: Wait a minute. Finish your answer.

A. (Continued.) That is a fact, but in my judgment, giving you a reason for these present normal prices, the country is committed so far by Congress itself and by the people behind

Congress that the possibility of what counsel claims seems to me to be extremely remote.

Q. We are entering a new field, an expert on politics. I have struck most everything in these litigations but this is a new one.

Mr. Katzenbach: The reason that you object to it is that you don't want a rival in the field.

Mr. Record: I don't object to rivalry. There is a certain advertising value in rivalry.

Q. Then, in this attempt to fix a normal price you undertake to consider all of these abnormal conditions the like of which have never come before, and to judge what is likely to happen in the future, and by taking those all together you come forward with a figure which represents your judgment of something that you call normal. Is that a fair statement?

A. I think it is Counsellor, except to the extent that you stress abnormal conditions. I make this distinction; that war is an abnormal condition but it had brought a certain state of circumstances to us, which to us is normal now.

Q. You say that you considered this on the basis that this demand would keep this tripod of yours standing for two years after the war. Have you considered when the war would end?

A. No, sir.

Q. Haven't figured on that?

A. No, sir.

Q. Wouldn't that make a difference—it might be 7 years off or 10 years off—in this normal proposition of yours, looking down into the future without considering how long the war is going to last?

A. No. I calculate that this will be normal for two or three years hence no matter whether the war closes early or late. If the war should continue for 7 years, as you say, then our normal prices would still continue so much the longer be-

low the abnormal prices due to war; the high war prices would continue for so much longer period; it would be so much a greater burden on the public utility companies or other purchasers of materials or labor.

Q. I understood you to say that this is in no sense an average between the existing very high prices and the pre-war prices; you have not arrived at it by a process of average?

A. I have not arrived at it by a process of average, but I have in my direct examination compared it with the average. There is very little difference.

Q. Did you not state distinctly that you did not arrive at it by an average and that you did not claim it was an average?

A. Yes, I did so state.

Q. You don't urge that upon the Commission as a theory of valuation, that they should take the pre-war prices and the existing prices and average them; you don't urge that theory?

A. I would have no objection to that whatever.

Q. I mean, do you urge that theory?

A. I do not think it is so sound a theory as the theory of normal fair price, for the reason that one end of your average is based on concededly abnormal conditions. The result, however, would be practically the same.

Q. If one end is based upon abnormal conditions what objection have you to that, what is the objection?

A. I have no objection, but as—

Q. Why didn't you take the high prices, the extreme high prices and put that in as the fair value?

A. Only for logical reasons. I did not think that was a sound theory.

Q. Why not?

A. For the reason that we have to concede that one end of that equation, or one side of that equation, is abnormal, so that if you divide it

by two you have still an abnormal element in it. As a matter of practice, as a matter of practical good sense there is no objection to it whatever.

Q. Isn't it a logical thing to say that if abnormal high prices cannot be admitted as one end of the equation that they cannot be admitted in any other part of the equation? If an abnormal price should not be submitted to this Commission as a measure of the value of this property, then it ought not to be considered at all, had it?

A. Only in so much as the fact that the abnormality has become a normal condition with us.

Q. You don't come here seriously as an expert on that, do you?

A. No, sir.

Q. As to whether or not this abnormal condition is going to be permanent?

A. Certainly not.

Q. Or as to what extent it will be permanent?

A. No, sir.

Q. Isn't it a fact that all students of finance, all students of these problems, all intelligent students of affairs admit this is such an abnormal time that nobody knows what the future has before us in this line; isn't that so? Don't you feel that way yourself?

A. Only to the extent that all future is uncertain, but not to the extent that we are going to have low prices very soon.

Q. You haven't seen anything like these times in your experience?

A. Never before.

Q. You have never heard of any such debts or any such purchases in any such quantities?

A. Never.

Q. Therefore, there has nothing passed upon which you can predicate the future from past experience?

A. Not a direct parallel. Of course there are certain principles that are always evident, history, past and present.

Q. Now, just a moment or two on some of these items which appear at the end where you have summarized your account on page 96—97. In here you put several large items, engineering, interest during construction, taxes during construction and so on. Isn't this valuation, your method of arriving at it, based upon the theory of taking the City of Trenton and conceiving it to be without a trolley system, and then you are picturing and building up the successive steps in making that new system as a whole?

A. Yes, sir, in general that is true.

Q. That is your method of approaching this valuation, is it not?

A. Yes, sir.

Q. It is not the method by which this property was built up, was it?

A. Not fully.

Q. Well, not at all. Didn't that property start very small as a horse railroad and gradually grow to its present size?

A. It did.

Q. Didn't it start with two or three miles?

A. Yes, sir.

Q. Way back in war times?

A. I believe so.

Q. Now, let us picture ourselves with a horse railroad as a start. You think they hired Mayor Katzenbach for $25,000 to go and get a franchise from the council for the horse railroad for a couple of miles?

A. I should think not for that small property.

Q. Then after they got started they either made money or lost money, didn't they?

A. Presumably, yes, sir.

Q. It must be one or the other, or come out even.

A. Yes, sir.

Q. Let us take this hypothesis; supposing they made money, more than what you say is fair, we will say 8 per cent, if you think that is a fair figure, suppose they made more than 8 per cent

on their returns after the first couple of years; they started with 2 or 3 miles, then they built this property up, not by hiring a lawyer or engineers to develop a four million dollar property, but using the engineering knowledge and the work of the men who were paid salaries, and built it up gradually through this horse railroad period; would any of these items that you spoke about then come in, if they were paid for out of earnings?

A. Some would be modified, others would be changed very radically.

Q. Supposing they were all paid for out of earnings in excess of 8 per cent on the cost of the original work?

A. You are speaking of the 2 miles of road or the 70 miles of road?

Q. I am speaking, after you get it started, assuming it all continues to pay, as they add the increments, and that they use the engineering force that they have on hand, they hire a lawyer when it is necessary, they pay all of those people out of earnings and don't go and increase their capital fund at all, and still they have left eight per cent all the time. Carry that picture along that far; would you say they were entitled to any of those allowances?

A. If they were not entitled to those as overhead allowance, they would probably encounter much more than that cost in the excessive cost of construction and interest accounts by constructing a road piecemeal during that long period.

Q. That is the way they did do it, wasn't it? Don't you know that was the way they did it?

A. I know that occupied a long period.

Q. Then you know it was constructed piecemeal, wasn't it?

A. Piecemeal, yes, sir.

Q. Now, assuming that they paid for engineers, lawyers and all that sort of thing out of their pay roll, out of their receipts and still had left enough to pay a fair return upon the original

investment and the cost of the construction of the new; would you then say they were entitled to charge up to this account these expenses, if they paid interest during construction upon an extra mile of track out of current funds and had left enough to pay a fair return upon the outstanding securities, would you say they were still entitled to charge that up?

A. I would say that the total cost of their property would be in excess of the cost arrived at by one construction, as I have here, whoever paid for it. I could not tell if the public paid for it or the company paid for it; I have no means of knowing.

Q. I am asking, if the company paid for it and had a fair return, have you any opinion about it then, whether they ought to be allowed for it or not?

A. Certainly not, if the public has paid for it once, so far as paying them back again they would not be entitled to it. That however has nothing to do with the estimate of the cost of reconstructing the property.

Q. I didn't say that it had. I am only trying to get one theory as against the other, the theory of the actual fact as against your theory. You don't know whether, if they built it all that way, it would cost more than what you say because that is the way they did build it up, isn't it?

A. I understand it is.

Q. Now, isn't it a perfectly easy thing to go to the books of this company and find out what this property has cost the company?

A. I don't think so.

Q. Isn't it a perfectly easy thing to trace every dollar that has ever gone into this property, by virtue of considering the issues of stocks and bonds?

A. If so, I think it would be the first and only company I have ever had any experience with where it could be done, running as long as this has, built up piecemeal.

Q. The money must have come from somewhere?

A. Yes, sir.

Q. And when they took it over, put it over from a horse railroad to a trolley, that money had to come from new sources, bonds were issued for it. Supposing you go back to that period and you find the bonds that were issued; they certainly did not put any more into it than the bonds, if you find the stock was issued without money; that would be a correct judgment, wouldn't it?

A. I wouldn't know how to determine that.

Q. Would the money come out of the air?

A. The money must have been produced to build this property.

Q. Now, if it was produced from somebody's investment or if it was produced from the excess earnings over 8 per cent, you would not make any difference in treating this company if you were a public utility commission.

A. I would not presume to have an opinion on that, Mr. Counsellor. In making my estimate of the cost of reproducing the property it would not make any difference to me where the money came from. I am just giving you a measure of the amount of that money.

Q. I don't fight with you on that, I am only just trying to bring out the fact that that is hypothetical and theoretical and that you know of no such instance; you know of no instance, do you, of a population of 120,000 people being without a trolley and suddenly determine to have one, and call in engineers, lawyers and promoters, and reproduce it right out of the air; you have never heard of that, have you?

A. No, sir, not in this country.

Q. Now, Mr. Burke, if a commission was trying to honestly find out what people are entitled to receive so as to determine how much people ought to pay, isn't the way to go about it, if it is possible to do so, to find out what has been

invested in the company, what it has cost them to produce, instead of your estimating what it would cost to produce, if that was available; wouldn't you say that was the best way?

A. I would not say that would be the best or the better way, Mr. Counsellor. It is always recognized as being usable by the Interstate Commerce Commission, by the courts. It might work an injustice in this respect, that if the property were built in time of high prices and cost $1,000,000 and the property could now be reproduced for half a million dollars, it would then become a question whether the company would be entitled to this first investment. Or pro contra, if it were built in time of low prices and a property that originally cost one million dollars could now be reproduced only at an expenditure of two million dollars, whether the company would not be entitled to the enhancement in value, especially when you consider the thing that we alnost always forget, that these variations in prices are due mostly to the variation in the value of our dollar. We look upon our dollar as being immovable, never changing, it is always a par with respect to other gold coins all over the world. But as a matter of fact we know that that dollar does not always buy the same quantity of essentials, edibles, materials or labor, which really in the last analysis are the real measure of purchase value rather than the dollar. So that unless we follow the rulings of the court, for which I have the most profound respect, and let a property have some advantage of the enhancement of value or penalize it with the depreciation in value due to the variation in prices or the purchasing power of the dollar, I question whether you arrive at so equitable a result if you discard that method and simply try to trace through the number of dollars you put into that property.

Q. As a matter of fact the cost of construction every year that you go back was practically less, at least no more, isn't that so? As you trace

back the years, the cost is generally lower wasn't it?

A. Generally.

Q. Wages generally lower, materials generally lower?

A. Generally lower, yes, sir. Materials in 1914 were lower than they have been since or than they were prior to that. Labor however has had an upward trend for many years, even during the dull season of 1914, just previous to this war.

Q. If you could find out what it would cost to produce this property in 1912, it would be a fair argument to say that it must have cost less to produce it actually prior to that time, so far as that cost was measured by the cost of materials and labor; that is a fair assumption, isn't it?

A. That would be true for only a very short period prior to that time, a very few years. You go back a little further and there was a period of higher prices.

Q. When?

A. 1907 was.

Q. 1907?

A. Yes.

Q. 1907 was the year of the panic, prices went to smash?

A. Just prior to 1907; then they came down suddenly.

Q. You mean to say that it would cost—if you found out the cost of this property in 1912, and undertake to use that as a measure of what was built prior to 1912, it would not be an ample measure?

A. It would be for some few years past, and the variation for ten or fifteen years past would be very slight, there would not be very much difference.

Q. You have an item here of administration during construction, $30,000. You have no idea that these people ever paid out any such figure, have you, in the actual development of this property, except out of current expenses?

A. Well, I think if it were built in the manner which you describe they may have paid out fully that; built piecemeal. This administration during construction is for salaries of officials, counsel, clerks and others who would administer the work and the funds of the company during the construction period, here estimated at two years.

Q. They were under salary for their ordinary duties, weren't they?

A. Under the piecemeal construction—

Q. No, I mean to say, those people you speak of, in your estimate were simply officials of the company drawing their regular salaries and doing that part of the work?

A. This would be their only duties during the construction period, that is before the earning period.

Q. Before the what?

A. Before the earning period, before the road is put in operation.

Q. You don't understand me. You are talking theory, I am not quarreling with the accuracy of your statement of your own theory. I am trying to get the other picture. As a matter of fact, barring the time when they turned this from a horse railroad into a trolley, they had to call in new engineers, that was a new transition period for that time; then they built all these outlying roads and extended the city roads, for twelve or fifteen years, and those extensions were piecemeal; presumably now those extensions were decided upon, planned out and the money raised, and the bulk of what you call engineering done by salaried employees of the company, were they not, probably, from your experience in such things?

A. To some extent, but it does not follow that any marked economy would result from that.

Q. I am not talking about that. I am talking about whether, in your judgment, that was what happened?

A. Undoubtedly that is what happened, and the company probably in view of this construction program engaged different personnel, some additional members of the force or something of that sort to help out, that would be the natural way to do it. I have seen that done.

Q. For instance, you would simply employ additional men to lay an extra mile, that you run up a new street. You would not hire a new president, you would not hire a new engineer?

A. Possibly you might have a new organization.

Q. Mr. Burke, do you want to give this Commission the impression that the trolley companies after they got started could not run a mile of extra track with their own force, except as to hiring additional laborers, that they could not engineer it, lay it out and do all of the work without any extra employment for that end of the job?

A. They might be able to do it. What they saved in engineering however, they might pay out ten times over.

Q. I am not talking about what they saved. Isn't it likely that is what they did?

A. Quite possible.

Q. You have had experience; isn't that the way all of these trolleys have been extended?

A. I have seen many extended that way.

Q. If that was the way it was done and those allowances were paid for out of current earnings and still left more than 8 per cent, would you say it ought to come in here again?

A. I should think it would be equitable to have one payment only.

Q. When you came to examine this proposition, did you ask Mr. Johnson to see the books of the company to find out what it had cost, from the books?

A. No. I discussed it a little with him, and I understood that he could not give me—the books did not afford anything like full information and that he did not want to have me undertake the examination of the books for that purpose; that

he wanted of me an estimate on the reconstruction cost as of the present time, at normal prices.

Q. Did he ask you to figure on depreciation?

A. He asked me to consider and testify what depreciation the property ought to carry.

Q. In fixing depreciation, wouldn't the actual physical condition of the property figure as a basic element? You would not figure depreciation on a theory without looking at the property, would you?

A. Certainly not.

Q. Did you look at the property?

A. I did.

Q. Did you ask Mr. Johnson to check up your estimates of depreciation with the facts that he had at hand?

A. As to the age of the property, age of the elements, things of that sort?

Q. Yes.

A. No, sir.

Q. Is it not a fact that a piece of track as you find it in the ground being subjected to normal use, that its depreciation depends upon the number of years that the piece of track has been in normal use and the probable life that it will last?

A. Yes. In general, the physical condition of that part of the property depends upon its age and use.

Q. Then, if you knew that this track and construction which you valued at two million dollars, if you were informed that its life as shown by the books of the company, was half gone, what would you figure its depreciation?

A. I knew about the life of the track approximately, from observation and from inquiry. But as I explained in direct examination, I do not figure any depreciation as applicable at all—

Q. I don't want to interrupt you. That is not my question.

Mr. Katzenbach: That is in answer to the question, it seems to me.

Commissioner March: I thought it was.

(Question read.)

Mr. Record: That don't answer that.

Q. If you knew that the life of the track was half gone what would you figure as depreciation? Taking that hypothesis now, that is my question.

A. I would not figure any depreciation when you are trying to find out what return to make on the property used by the public.

Q. Mr. Burke, the property in Trenton, the rails in the streets have been used a certain time, have they not?

A. Yes, sir.

Q. They have a certain probable life, have they not?

A. Yes, sir.

Q. That probable life can be reasonably estimated by men like you, from the life that it already has had, assuming ordinary use; that is right, isn't it?

A. It can be approximately estimated, yes, sir.

Q. Now let us assume that the life of the rail is twenty years and that the average life of those rails in this street already expended is fifteen years, that there is only 5 years left; let us assume that the average life gone is only 5 years and that there is 15 years left; in each of those cases would you have the same identical depreciation?

A. The same capital charge, the same account, the same value of the property, devoted to the public use, but in the one case you have the likelihood of the charge upon the public to make up deferred depreciation or depreciation that is going to accrue, within an early period, and in the other case it will accrue at a later period; the public will have to make it up at a later time.

Q. My question is, what do you say that this Commission should do as to finding depreciation if one-half of the life of the rail is gone, and the commission finds that to their own satisfaction as a fact, then do you say that the depreciation should be reckoned at 6 per cent instead of 50, for rate making purposes?

A. There should be no depreciation for rate making.

Q. Couldn't you answer that yes or no? It seems very simple.

Mr. Katzenbach: He has a right to answer that question.

Mr. Record: Perhaps he has. I want to press it and see if I cannot get an answer to that.

(Question read.)

Witness: I think that the Commission should consider the 50 per cent condition of the property with a view to allowing an annual depreciation that will save the property from going to wreck, so far as that is concerned. The other proposition as to what return the Commission should permit on the investment value of the property is totally distinct and apart from that and has no relation whatever to the life of that rail.

Q. You have offered a valuation here for some purpose; that purpose must have been to guide this Commission; that is right, isn't it?

A. Yes, sir, it is.

Q. You are offering a valuation and contending as an expert that that is a fair measure of the physical reproduction cost upon which a fair return should be computed; that is right, isn't it?

A. Yes, sir.

Q. Now, do you say deliberately to this Commission that if it costs $2,000,000 to reproduce that track, that they should allow a six per cent depreciation, although one-half of the life of the

New Jersey State Library

track is gone? Can't you answer that simply yes or no?

A. Kindly read the question.

Q. (Question read.)

A. Yes, sir, Mr. Counsellor, for the reasons I explained in direct examination.

Q. All right. Let me see if I state your position fairly then. Your position is that if a company is properly managed, you start in new, the different items of the property come to the end of their lives at different times, after you have gone clear through the property, prudent management renews it whenever it is necessary, and after you have got by the whole line and commenced over, then the efficient, prudent management of the company keeps it at a current—at a regular level all the time; that is your position?

A. Yes, sir.

Q. That is my position. I am glad to have eminent authority on that subject. Now, if that is kept up in a proper way, either by putting aside a depreciation fund, which is not needed the first year but which you can draw upon, or by actually taking out of earnings the amount needed in the years when it is needed, then you have got an average continuous condition of the property which is approximately the cost of reproduction; you have an actual continuous condition of the property which is approximately what it cost or would cost to renew it, very slight depreciation? In other words, the property would be continually just the same.

A. Yes, Mr. Counsellor, but nevertheless the physical deterioration in such a property would be very considerable, it might be 20 to 25 per cent in a splendidly, well organized, well operated property. The physical deterioration might be down to that extent, while the serviceabilty would be up to 100 per cent, and the investment in the property up to 100 per cent of its new cost. I might explain a little further—

Q. Just wait a minute. I want to get your

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theory stated fairly just the way you want to state it.

Mr. Katzenbach: I think if you will just let him finish his answer, he said he could explain it. Will you just explain that, Mr. Burke.

Witness: If the Commission would permit me to take as my own, the words of a very good lawyer who has given a lot of attention to this, about 20 words here, Mr. C. E. Smith, in the Texas-Midland Rate case before the Interstate Commerce Commission. Counsellor Smith said: "If the depreciation funds be properly kept up there will always be invested for the public and in their interest, the depreciated value of the property plus an aggregate amount in the depreciation funds, the sum of which on any correct basis must always equal the original investment."

Mr. Record: Bully.

Commissioner March: I guess we all agree with that.

Mr. Record: That is all right.

Witness: "As the depreciated property and the depreciation funds, which together equal the original investment, are in the service of the public, the public should pay a return on that amount and not on a depreciated value."

Q. All right. Let us start in again. Are you through?

A. Yes, sir, thank you.

Q. Let me state it my way. If a company starts, builds new, as this company did when it transposed the horse railroad into the trolley, then when it built its extensions those were new; the physical depreciation being bound to occur in each item has got to be met either by setting aside a fund each year which experience shows

will always be sufficient to renew each part, or the other practice must ensue of not setting aside a fund but actually meeting, out of earnings and a diminution perhaps, if necessary, of dividends, these renewals when they are necessary. Now, it must be one or the other; there is no alternative, is there?

A. No. If they are made the money must come from one source or the other.

Q. Let us assume—I don't care which alternative you take—let us assume first you put the actual cash by in an account and you figure it as 20, 25 per cent, and you say to Mr. Johnson, put that by each year—you say it is now $175,000—put it in the First National Bank by itself and you will always have a fund that will keep this property in a continual state of efficiency that won't vary materially. Is that a fair statement?

A. Yes, sir.

Q. Now, whenever the Commission approached the subject of a valuation they would find a property depreciated in fact and the depreciation measured by the cash account in the bank, isn't that so?

A. True.

Q. So that with the depreciated property plus the account in the bank they would always have this 100 per cent investment upon which they were entitled to a return?

A. Yes, sir.

Q. That is your position?

A. It is.

Q. Now, supposing that instead of putting the money by in the bank they had waited until the depreciation had taken effect item by item, twenty-five thousand dollars this year, two hundred thousand dollars next, but still averaging your one hundred and seventy-five, and over a period of 20 years they had met the bill of renewal and replacement just as it occurred out of the earnings of the company, then you would have a

property that physically would be just the same, wouldn't you, as if you had the cash account in the bank?

A. Yes, sir.

Q. Efficient property, normally efficient?

A. Yes, sir.

Q. And 100 per cent efficient?

A. Yes, sir.

Q. That is your theory?

A. Yes, sir.

Q. Now, supposing it develops that they had neither the money in the bank nor did they keep the renewals called for, make the renewals as they occurred, and allowed the property to actually run down; wouldn't that be a new factor in the valuation?

A. That in conjunction with the other facts would have to be considered as a new factor.

Q. Would have to be considered. If they took the money that should have been put into replacements, repairs and renewals to keep it up to this 100 per cent efficiency and diverted that money, then there would come a depreciation that would not be the normal depreciation that you have pictured, isn't that so?

A. I think that is true.

Q. Now, do you know whether that happened here or not?

A. I do not.

Q. If Mr. Johnson said to you that the track equipment, the track had used up half of its life, half of its life was gone, and that there was no money in the tray to represent that half, then you would not depreciate that 50 per cent, but you would treat that just as though it had been kept up to normal, would you?

A. Yes, unless he told me he had received from the public ample funds to do this and had failed to do it. If he had received the money and had not either maintained his property or paid the surplus into a fund so that the property might

now be maintained, why, then it would be an entirely new condition. Some people say—

Q. I don't care about that, I want to get the fact as to your view. Never mind what other people say. Is it your judgment that if a property is maintained efficiently in the way you have described, either with a fund that is ready to be drawn upon or by using current funds as the depreciation needs to be met, is it your judgment that at any time after it had been through its life and all the parts have been renewed once, that you would go and find a big element of such a plant, like the track, with half of its life gone; is that your judgment, is that your experience?

A. These properties do not suffer one-half the loss of life. We have used that term and I have not made any comment on it. They do suffer a large diminution but they do not suffer one-half if they are kept in good working order. As I stated before, 20 to 25 per cent is the physical deterioration in a property like this in good working order.

Q. That is to say— pardon me if I interrupt you, I don't wish to; I want to get that nailed. Your point is, if I understand you right, that a properly conducted business that has been through one cycle of renewals, if you go at it at any particular time you will find the remaining life of the property to be three-fourths, still that.

A. Approximately that.

Q. Yes, that is what I wanted to get, that was exactly what I wanted to get. Then if the life of the property remaining was 50 per cent instead of 75— I withdraw that question. Did you make any study of this property whereby you were able to determine whether the remaining life of the items that you have estimated was this 75 per cent?

A. No. My study along that line was general over the whole property and particularized with respect to parts of the property that I found to be rather below the good general condition of the

property, like certain special work and certain cars which I have included in my schedule of deferred depreciation submitted in direct.

Q. As to the track, are you able to say to this Commission whether three-fourths of the track, of the life of the track, is still there, as you found it, today?

A. I did not make a special investigation on that, but my impression was that the track is practically in seventy to seventy-five per cent condition of new.

Q. That is your judgment?

A. Yes, sir.

Q. Did you make an investigation sufficient to testify to that as a fact?

A. Not with a view to fixing the deterioration of the property about which you are now inquiring because as I previously explained that does not enter into my calculations.

Q. I am not asking your reason, I am asking what you did. You explained your reasons, I am not quarreling with them at the moment; I want to get the fact. The fact is that you did not make sufficiently detailed investigations of that track to determine whether one-half of its life is gone or one-quarter of its life is gone, isn't that so?

A. That, Mr. Counsellor, is not quite true. I know enough about it to be able to testify as definitely as that.

Q. Waht can you testify? Can you testify that 50 per cent of its life is not gone?

A. Yes, sir.

Q. You testify to that as a fact? Supposing the books of the company show the contrary; would that modify your estimate?

A. It would not, for the reason that that cannot be shown by books. That can be shown only by the condition of the rail itself. When we judge of condition by life alone, we have gone so far on theory as to be on untenable ground; we must couple that up with an examination of the

condition of the property because while some rails last 40 years—I have seen rails that are more than 40 years old—others last only 6 months, depending upon the quality of the rail and the service which it is subjected to.

Q. Then in order to arrive at a determination of the probable length of life of a rail you have got to know its history as well as to inspect it, got to know the number of years it has been there.

A. That is an important feature of it. If you have rail in open track where you can see it all, not in pavement, you do not need to know its age or history.

Q. You say then you can make an appraisement of the Trenton track as to its probable life, without knowing when the rail was bought, just by looking at it, is that your testimony?

A. I would be greatly assisted by a knowledge of the age.

Q. Why?

A. Because it helps in this wise; that while you may observe the amount that that rail is worn down, having found out the original section of the rail, and observed how much that is worn down, if you know its age you can determine from that very fact whether that is one of the soft, fast wearing rails or whether it is one of the extremely hard and slow wearing rails, and that very fact of additional information will aid you in determining how much longer that rail will last before it wears down to its limit.

Q. Did you have such information as to the basis of your estimate here?

A. I had that in general, but I did not use it except just as a matter of — as a mere incident of examination.

Q. Just one more question to make this point perfectly clear. If this Commission were satisfied by evidence that one-half of the life of that rail is gone, on your theory that would make no difference as to the value that you would put upon it for rate making purposes?

A. No; that in itself would make no difference.

Q. You have talked of different elements of value, and I think Judge Slocum asked you one time here when you spoke of value, what was your definition of value. I ask you a similar question; when you were speaking of value, you mean, do you not, a value determined by figuring upon the cost of this property if you were to start to build it all new today under existing conditions with the unit prices that you have adopted (you call them normal); that is what you mean by value, is it not; it is the basis of your valuation?

A. Yes, sir.

Q. You first get that figure, the cost to reproduce it today, just as though there was no rail here and no trolley here but you had the job to do all over again from the beginning today?

A. That is true. But not using today's prices.

Q. I understand it. But using a unit price?

A. Yes, sir.

Q. My picture is right; you take it all brand new?

A. Yes, sir.

Q. And fix a valuation from a price which you justify, as you give it; then that is what we might call reproduction cost new; that is your definition of value as the ground work of it, isn't it?

A. Yes, sir.

Q. From that you then take approximately 6 per cent upon the theory that if the property is a well managed property, one year with another it will be within 6 per cent of 100 per cent efficiency, is that a fair statement of your position, of your idea of value?

A. Not quite. If you will refer to my direct testimony, it appears that I estimate that amount of deferred depreciation under protest or duress, if I have to calculate some kind of depreciation.

Q. What do you mean by deferred depreciation? That is also a new piece of lingo in this literature. What do you mean by deferred depreciation?

A. That is the depreciation of a character that counsellor has been indicating lately; neglected parts of the property or property that is more neglected than other parts of the property. I find this property, as I before testified, in good general condition, but there were certain parts of it, like some of those single truck cars, two or three sections of track, some of the special work, that fall below the good general average of the rest of the property, and I discern there a failure, we may say, for one reason or another, no blame attachable, but a failure—

Q. That is all in your 6 per cent, isn't it?

A. Yes —to maintain that part of the property up to the extent of the rest of the property.

Q. That is all in your 6 per cent?

A. That is all that is in the 6 per cent, nothing else in it.

Q. So that that is then a depreciation that is beyond the average and you put that in, otherwise it would be all one hundred per cent, on your theory?

A. Yes, sir.

Q. Did you ever testify in a tax case?

A. No, sir.

Q. Is this a value that you would consider a value for sale, or just a value for rate making purposes?

A. This would be a value for rate making purposes.

Q. Solely? Would you testify to a different value of this property if you were called in a tax case and asked the question "What is the value of the physical value of this property?"

Mr. Katzenbach: That is objected to as irrelevant as to what he would do under other conditions.

Commissioner March: I think that is proper. We will allow it.

A. In such cases I would give the reproduction value new, if that is what was estimated. I do not know what is required in a tax case, as I have never been in one. I know only that the rules and the laws governing taxes vary with our properties in different states and that not one general uniform rule is applicable to all our properties.

Q. Is there any difference between this reproduction cost less the 6 per cent that you found here, as a definition of value in this case, and the word "investment value;" is there any distinction between those two terms?

A. Yes, there would be.

Q. If J. G. White and Company wanted to buy this property, would this be the figure, would they arrive at this figure as the value of the property, or would that be one of the elements or what?

A. That would be only one of the elements. They would probably consider that. They would want to inquire what the public had contributed toward paying for this depreciation, and what the the management had done with the fund if it had been contributed.

Q. And if they found it had been diverted they would not pay as much for the property?

A. No, sir.

Q. Why not?

A. Not unless it could be diverted back to them so as to make up the depreciation account?

Q. Why wouldn't they pay as much? They would figure they would have to put this additional money out of their own pocket?

A. They would be free agents, they would not come in under duress, and if the old owners had suffered any loss or injustice or misfortune in the handling of the property in its relation to the public, the new people who are free agents would not assume that loss or burden.

Q. Then investment value and reproduction value less depreciation are, in your opinion, the

same; is that your definition here, or is there a distinction?

A. Kindly read the question.

Q. (Question read.)

A. By investment value I mean the cost new, the investment it would take to reproduce the property new, that is what I mean by investment value, without relation to depreciation.

Mr. Record: That is all.

Mr. Katzenbach: That is all, Mr. Burke.

TESTIMONY

BOARD OF PUBLIC UTILITY COMMISSIONERS

Trenton, N. J., Monday, June 3rd, 1918.

Before the following Commissioners:

J. W. SLOCUM, ESQ.
G. F. WRIGHT, ESQ.
L. EDWARD HERRMANN, ESQ.,
Counsel.

Appearances:

For the Trenton & Mercer County Traction Corporation, F. S. KATZENBACH, JR., ESQ., and E. M. HUNT, ESQ.

For the City of Trenton, GEORGE L. RECORD, ESQ., and C. E. BIRD, ESQ.

For Lawrence Township, H. T. SATTERTHWAITE, ESQ.

For Hamilton Township, ALVIN W. SYKES, ESQ.

For Pennington, C. R. RUHLMAN, ESQ.

For Hopewell Township, E. C. LONG, ESQ.

RANKIN JOHNSON, sworn on behalf of Petitioner.

Direct examination by Mr. Hunt:

Q. Mr. Johnson, are you President of the Trenton & Mercer County Traction Corporation?

A. I am.

Q. Is that company lessee of other companies?

A. It is.

Q. Of what companies?

A. Of the Trenton, Pennington & Hopewell Street Railway Company; the Trenton Street Railway Company; the Trenton, Hamilton & Ewing Street Railway Company; and the Mercer County Traction Company.

Q. Does it operate the street railways owned by those four companies?

A. It does.

Q. By virtue of what?

A. A lease.

Q. A lease for each one?

A. Yes.

Q. And did those leases receive any approval?

A. Yes. They were approved by the Board of Public Utility Commissioners under date of March, 1911.

By Commissioner Slocum:

Q. Were they all approved at one time?

A. They were.

Q. (By Mr. Hunt). In connection with those orders, were other orders or memorandum that required certain work to be done?

A. Yes.

Q. Was that work done?

A. It was.

Mr. Hunt: If the Commission please, I desire at this time to offer—I suppose as we have done before—those are all in the files of the Commission and they can be considered as part of the record?

Commissioner Slocum: Yes, they may be received as exhibits and marked as exhibits in this proceeding. You are referring now to the leases

approved by this Board and the orders made at the time?

Mr. Hunt: I am referring to, particularly—I don't care about the leases, as much as the orders of approval.

Witness: Also the orders for the expenditure of money.

Mr. Hunt: Yes.

Commissioner Slocum: I suppose counsel have no objection to the stipulation that any of the orders, or leases approved by this Board, the record of which is on file with this Commission, may be considered in evidence in this proceeding?

Mr. Record: That is, with reference to other companies?

Commissioner Slocum: No, this Mercer County Traction Company.

Mr. Hunt: The Trenton & Mercer County Traction Company, the Trenton & Mercer County Traction Corporation.

Mr. Record: I should think not. I should think that would be fair. And the same privilege to us.

Commissioner Slocum: Oh, certainly.

Q. In that connection, how much money was expended in rehabilitation of the property?

A. The order requiring certain improvements to be done was in connection with the approval of a $500,000 bond issue. The order specified certain improvements to be made, but did not state what each item would cost. The company, in carrying out the provisions of the order,

expended the proceeds of the $500,000 bond issue, as well as approximately $320,000 additional, although in making this expenditure, this total expenditure, improvements in addition to those specified by the Public Utility Commission were made.

Q. But were all the improvements, or any work that was required by the Public Utility Commission, performed?

A. They were.

Q. In what municipalities do you operate your system of street railways?

A. In the City of Trenton, Townships of Ewing, Princeton, Lawrence, Hamilton and Hopewell, and the Boroughs of Princeton, Pennington and Hopewell.

Q. Are they all within the County of Mercer?

A. They are.

Q. In connection with this petition to the Board for an increased rate, have you made any publication, and if so, what?

Commissioner Slocum: Haven't you proof of the publication? Of notice of your application, do you mean?

Mr. Hunt: Yes.

Commissioner Slocum: It is customary to file proof of publication with the Board.

Mr. Hunt: We can do it that way if you desire.

Commissioner Slocum: That is the usual method of doing it, unless counsel waives that formal proof.

Mr. Hunt: We would be pleased to get the usual certificate. I just thought that was not possibly necessary.

Commissioner Slocum: You may supply it.

Mr. Hunt: Are you willing, Mr. Record, to agree that the petition was published in the newspapers?

Mr. Record: If you say so. Anything you say we will agree to, as a fact; I mean, a statement of fact.

Witness: The petition was published as an advertisement in the daily papers, the State Gazette and the Trenton Times, under date of May 10th, 1918. These papers are read and circulated in the City of Trenton.

Q. By Commissioner Slocum.) In that notice, did you say or state what date had been fixed for the hearing of the matter before this Board?

A. The notice, the advertisement was published before the appeal to the Board. As we understood the conference ruling, it required that we should make the publication before we presented the petition to the Board.

Q. So that your newspaper advertisements did not contain the date of the hearing before this Board?

A. No. That has been published, however, in the daily papers.

Q. Since?

A. Yes.

Q. As a legal notice?

A. No, as a news item.

Mr. Hunt: Your Honor, there wasn't any opportunity to do that, because the date had not been fixed for a hearing. We took it your new rules that were issued since the Public Service case—

Commissioner Slocum: I suppose you have given some notice to the various municipalities affected?

Mr. Hunt: I understand they have been furnished. We furnished the Board with notice, and the Board, I believe, Mr. Barber—

Mr. Barber: Yes, they have all been served with copies of the petition and with notice.

Commissioner Slocum: That is what I assumed. So they have legal notice of the hearing now going on?

Mr. Hunt: Yes, sir.

Q. (By Mr. Hunt.) What is the increase in rate which is proposed by the company?

A. It proposes to increase the rate of fare for the transportation of each single passenger over the age of five years, within the City of Trenton, and likewise for the transportation of each single passenger over the age of five years in each of the fare zones on the suburban lines operated by the company, from five cents to six cents; and also to discontinue on all lines operated by it the sale of six tickets for twenty-five cents.

Q. (By Commissioner Slocum.) What about school tickets?

A. We have no school tickets.

Q. (By Mr. Hunt.) Will you kindly state, Mr. Johnson, what the revenues and expenditures of the company were for the years 1914, 1915, 1916 and 1917, and give the estimate of revenues and expenditures for the year 1918?

Mr. Record: I would like to enter on the record formally an objection against any estimate about the future.

Commissioner Slocum: It will be admitted, subject to the objection of counsel.

A. For the year 1914 the revenue from transportation amounted to $764,141.30. The revenue from operation—

Commissioner Slocum: What exhibit?

Mr. Hunt: That is Exhibit B, your Honor, Exhibit B attached.

Commissioner Slocum: B?

Mr. Hunt. Yes, it is the third page of the exhibit.

Witness: The revenue from operation, other than transportation—

Mr. Record: I beg your pardon; just a minute. Can't we arrange to have that go in, without sitting here and listening to all that mass of figures?

Mr. Hunt: We will put that in as such, but I think there are certain matters which will be cleared up more easily—

Commissioner Slocum: I think you better offer your exhibit, and then let the witness testify to any fact or figure that he thinks is deserving of explanation. But there is no good of repeating it in the record. Suppose we marked Exhibit B Number 2 on the part of the petitioners?

(Exhibit B attached to the petition received and marked Ex. P-2.)

Commissioner Slocum: Now you may ask the witness concerning any figure on that exhibit, or he may testify to anything thereon that he thinks needs an explanation.

Q. Is there anything there that you would like to explain, Mr. Johnson, on that?

A. I think not, at this time. If the points are not brought out in the subsequent questions, if there is anything later—

Q. What was the basis on which you estimated the revenues for 1918, shown on Exhibit P-2?

A. I prepared a statement showing the gross receipts from transportation for the first three months of 1918, as compared with the first three months of 1917, and found that they had decreased, for the first three months of 1918, as compared with the first three months of 1917, by 7.61 per cent. I estimated that the gross receipts from transportation for the entire year 1918 would be six per cent, under the gross receipts from transportation for the year 1917.

Mr. Record: Now, if the Board please, I do not want to keep reiterating objections. I would like to have a general objection on the record against any testimony about the earnings or expenses of this year, other than the facts up to date. I would like to have that generally on the record, so it would apply to anything in the nature of an estimate after the date he testified. And I call the attention of the Commission to the ground of that objection: In this particular testimony he takes the three worst months, he testifies, in this part of the country.

Mr. Hunt: He has not testified to that.

Mr. Record: He has in these other cases—I mean, it is known to this Commision that this particular witness, this particular company—

Commissioner Slocum: Now, gentlemen, let us get counsel's objection on the record. Of course, that has been noted by the stenographer.

The Board rules that the witness may testify as to his method of ascertaining his estimates shown on P-1.

Mr. Herrmann: Both as to revenue and operating expenses. Mr. Record's objection was confined to operating expenses.

Mr. Record: No, it was not. It was confined to any testimony of estimates of what would happen after, as to what would happen in the future.

Commissioner Slocum: All estimates shown on this exhibit.

Mr. Record: Or on any exhibit or on any testimony. I want to make a general blanket objection.

Commissioner Slocum: Yes, and that objection may be noted and you may have the advantage of it.

Q. Did you estimate, Mr. Johnson, the gross receipts from transportation for the first three months of 1918, as compared with the first three months of 1917?

A. I did, as follows: For January, 1917, the gross receipts from transportation amounted to $72,315.49.

Mr. Record: Where does that appear?

Witness: I am reading.

Mr. Hunt: He is giving the figures.

Witness: January, 1918, $65,431.03, decrease—

Mr. Record: Pardon me just a moment. I have not got on to what this is about. Is he testifying now as to this P-1?

Mr. Hunt: Yes.

Commissioner Slocum: Yes.

Mr. Record: I don't see those figures that you speak of.

Commissioner Slocum: On P-1, under the year 1918, following out the first line, revenue from transportation, the item is $866,103.33, that is for the year. Now, the witness has been speaking about a single month, and not the year.

Mr. Record: I don't see it. Now he is talking about a month which does not appear here?

Commissioner Slocum: Does not appear on that exhibit.

Mr. Hunt: Explaining how the estimate was made up for 1918.

Mr. Record: All right.

(Last answer read.)

Witness: Decrease, $6,884.46.

Q. (By Commissioner Slocum.) That is not an estimate? That is actual figures?

A. That is a statement of fact, in one month.

Q. Comparing the month of January, 1917, with the month of January, 1918, there was this actual decrease in your revenue?

A. Yes, sir.

Q. For transportation?

Mr. Record: How much?

Witness: $6,884.46; per cent of decrease, 9.52.

Didn't you follow that same method for the months of February and March?

A. I did.

Q. Just give us that information, too.

A. February, 1917, $66,367.45; February, 1918, $61,657.50; decrease, $4,709.95; per cent. of decrease, 7.10. March, 1917, $74,608.81; 1918, $69,966.86; decrease, $4,641.95; per cent. of decrease, 6.22. Total for the three months, 1917, $213,291.75; 1918, $197,055.39; decrease, $16,-236.36; per cent. of decrease, 7.61.

I then prepared a statement showing revenue from operation other than transportation for the year 1917, consisting of car advertising, advertising on tickets, pole rental, and the sale of power, and I estimated the amount which will be received under each of these headings for the year 1918.

Mr. Hunt: Let us offer that; Exhibit C, is it not, Mr. Johnson?

(Informal discussion.)

Mr. Hunt: We will offer all the exhibits attached to the petition.

Commissioner Slocum: Any objection to that?

Mr. Record: Not the slightest; subject to our power of correction.

Commissioner Slocum: Certainly.

Mr. Record: I don't see any objection to that at all.

Commissioner Slocum: Exhibit A will be P-1; Exhibit B attached to the petition will be P-2; Exhibit C will be P-3; Exhibit D will be P-4.

Mr. Hunt: Your Honor, Exhibit E consists of a number of pages. I don't know whether you want to treat that as one number.

Witness: There are twenty-nine sheets in Exhibit E and twenty-five in Exhibit F.

Commissioner Slocum: We will mark that P-5, and in testifying you can refer to your page; that is Exhibit E. Exhibit F will be P-6; and Exhibit G will be P-7.

Mr. Record: That is the last page.

Commissioner Slocum: That is the last page. I think if you will refer to the Exhibit number given by the Commission and refer to the page, we can keep the record simplified.

Mr. Hunt: That then is Exhibit P-3.

(Exhibits A to G, attached to the petition, received and marked Ex. P-1 to P-7, respectively.)

Mr. Long: Do I understand these revenues are the total revenues from all divisions, he is testifying to now?

Witness: Yes, sir.

Mr. Long: No special divisions?

Witness: No.

Commissioner Slocum: Yes, sir, these are total revenues.

Q. Is there any comment that you wish to make on that at this time?

A. It will be noted that the revenue from operation, other than transportation, as estimated for the year 1918, in detail, will exceed the revenue

from operation, other than transportation, during 1917 by $126.31. These estimates for 1918 are based on what we are at present receiving and what we have every reason to believe we will continue to receive, or we will receive for the different items. For example, car advertising which is one of these items, amounted in 1917 to $5676. This, as our contract continues through 1918, will amount to the same figure for the current year.

Advertising on strip tickets, for the same reason, will amount to the same as during 1917.

Q. Would that exist if the tickets were abolished?

A. No. The pole rentals are assumed to be the same as for the previous year. Power sold to the White City Amusement Company Park—

Q. (By Commissioner Wright.) What do you mean by that, please, power furnished $8.52 per week for 352 lamps, $179.70 a year?

A. That is during the summer. The company has a piece of property on South Broad Street, a part of which is operated as an amusement park during the summer months, and the company provides part of the lights used for that park, and this is the sum received for those lights during the summer of 1917.

Q. (By Commissioner Slocum.) It is at the rate of $8.52 per week?

A. Yes, sir.

Q. But they are only in use during the summer months?

A. Yes, sir.

Mr. Hunt: It don't give the number of weeks. Do you know the number of weeks?

Witness: I don't know. That is taken from the accounting records.

Q. (By Commissioner Wright.) In other words, if you got for 350 lamps $1.00 a week, that would be $350. It is only $169.70 receipts.

A. If you desire, I will have a statement prepared, showing just the period of time when the rate covered.

Commissioner Slocum: Yes. The item looks very small for the service. You might check that up; we would like to know about it.

Witness: I will have that done.

Mr. Hunt: So much a week for about twenty weeks, just a weekly charge.

By Mr. Hunt:

Q. Do you know, Mr. Johnson, whether that is in connection with the lease of the property?

A. It is, yes, of the part of the property used by the Amusement Park Company.

Q. (By Commissioner Wright.) That is only for a pro rata share of those 350 lamps?

A. No, that is light furnished to those lamps. The lamps are furnished by the Amusement Park Company, the globes; the company furnishes power to light the globes.

Q. (By Mr. Hunt.) So it is a little bit different from the usual way of a lighting company furnishing light?

A. Yes, sir.

Q. It is more a power charge?

A. Yes, sir.

By Commissioner Slocum:

Q. What we want demonstrated is how you get your item of $169.79. You can supply that information.

A. I will secure that information. The power furnished the blacksmith shop, $5.00 a month,

$60. The Princeton Flying Club, power furnished for lights to the aviation field, $220; that has been discontinued.

By Mr. Hunt:

Q. There is one item there that is continued. That is a different amount?

A. The number of lights has been reduced. They still keep some of them there for the watchman. The Capital Porcelain Company, adjoining the power house, some steam has been furnished them, $319.64, and at the estimated monthly average for the year 1918, the amount received from them would be $880.36.

Q. That is increase?

A. Yes.

Q. $1200 total?

A. Yes. The rail for the Princeton Terminal, sold to the—sold provisionally to the Pennsylvania Railroad Company, amounts to $699.44, plus $117.48 during 1917. The estimated sale of labor and material for 1916 is $100. This is estimated on the basis of the remaining material to be supplied under an agreement covering the Princeton Terminal, in case that agreement is finally approved. That is all.

Q. Now, have you a statement, Exhibit P-4, which I call your attention to; what is that?

A. That is a statement of the non-operating revenue for the year 1917, covering rentals of buildings, rental of lot at Yardville, rental of land at Yardville for pole line, interest on bonds owned, interest on bank deposits, and an estimate of the amount to be received, under the same headings, for the year 1918. The estimate for the year 1918 shows a reduction under the year 1917, it is a decrease of $1,712.96. This decrease is due chiefly to the fact that the rent of the Battery building on Lincoln Avenue, which amounted in 1917 to $275, is now discontinued, as the building is used for company purposes.

The rental for land at Yardville for pole line is also discontinued. The interest on bank deposits is estimated at less for the year 1918, because there will be less funds under present receipts, and the interest on bonds owned will be less because the company owns less bonds.

Q. Now, referring to Exhibit P-5, to what does that relate?

A. Exhibit P-5 is composed of twenty-nine statements; each statement covers one of the twenty-nine accounts which make up the distribution of operating accounts.

Q. (By Commissioner Slocum.) Are those operating accounts taken from the records filed by your company with the Commission?

A. They are, with the exception—Yes, sir, they are.

Q. Are they exact transcripts of those accounts?

A. Yes.

Q. (By Mr. Hunt.) That is, in so far as they relate to the year 1917?

A. Yes, sir.

Commissioner Slocum: Yes; I am referring to the report filed for the year 1917.

Mr. Hunt: 1917, yes, sir.

Q. They are just in the order, are they, of that account, Mr. Johnson?

A. Yes, sir. These are the operating expenses, exclusive of replacement and maintenance expenses. We made this separation in order to show in a later exhibit the maintenance and replacement expenses under which a consideration of the depreciation fund would be presented. This Exhibit P-5, after showing in each of the twenty-nine sheets the operating accounts, or the respective operating account for 1917, shows the estimate of the corresponding account for the year 1918. This estimate is arrived at by taking

the quantities of labor and material entering into each one of these 1917 accounts, and applying to those prices—to those quantities, the prices for material and the rates for labor actually being paid by us on April 15th, 1918.

Q. (By Commissioner Slocum.) Now, you are getting into estimates, Mr. Johnson, aren't you?

A. Yes, sir.

Q. Where is the dividing line between the actual figures which you filed with the Commission for 1917, and your estimated increases?

Mr. Hunt: Each page has a heading, your Honor, if you will notice, about the middle of it, first, sum added, and then an estimate for the year 1918 right across it.

Commissioner Slocum: You have carried that all the way through?

Mr. Hunt: Yes, sir.

Witness: On each one of these exhibits.

Mr. Hunt: And as to each charge according to the Public Utility number of accounts.

Witness. It shows the actual expenditure under that account in each case for the year 1917, and then below is taken the quantities in each item entered into that account, and the rates being paid by the company on April 15th, 1918, for wages and material, and applied to those quantities, and then the difference between the 1917 statement and the 1918 estimate in each account. By taking the sum of the increases, and deducting from that sum the sum of any decreases in the estimated expenditures under these accounts for 1918 over 1917, the total increase in these twenty-nine operating accounts for 1918 over 1917 is found to be $45,633.74 making the total estimated expenditures under

this heading for the year 1918, $450,388.53, and that figure is found on P-2, under estimated expenses, exclusive of depreciation, expenditures and taxes for 1918, estimated operating expenses—

By Mr. Hunt:

Q. Under what heading?

A. Estimated operating expenses for 1918, exclusive of depreciation expenditures and taxes, is shown to be $450,388.53, on Exhibit P-2, and that figure is arrived at, as stated, by the method explained and shown on Exhibit P-5.

Mr. Record: Mr. Hunt, might I ask a question, without throwing you off?

Mr. Hunt: Yes.

Mr. Record: Just for information.

Q. (By Mr. Record.) I don't gather as to whether you have taken the first three months as a fact, or have just taken this April 15th and used that as your figure?

A. We took the date, April 15th, and took the rates of wages being paid by us to our employees on April 15th.

Q. But you did not follow the original plan that you had of taking January, February and March and actually making the figures of each separately for each month?

A. Yes, we followed the original plan that we had, but this is taking the quantities of labor and material used under operating accounts during the year 1917, and applying to those quantities for the working days during 1918 the rates of wages paid, actually paid on April 15th, 1918, and the prices being paid for materials on April 15th.

Q. But you did not take your actual expense account off of the books for January, February and March? You just made up an estimate upon the theory of April 1st; is that right?

A. To arrive at these figures, we took—we did what I have told you. We also have our expenditures for January, February and March, which are higher than these estimates.

Q. But they do not appear in here?

A. No. This is done on the basis which I have attempted to explain.

Commissioner Slocum: You have got no actual figures on P-2 under "Estimated for year 1918?"

Witness: No.

Mr. Record: On P-2? Your Honor made a mistake on that.

Commissioner Slocum: P-2, yes.

Mr. Record: We are talking about P-4, aren't we?

Mr. Hunt: It relates back to P-2.

Commissioner Slocum: The same figure is carried over in P-2, under operating expenses, exclusive of depreciation and taxes.

Mr. Record: Yes, but on P-2—that is what my question was about—he was very clear he took his actual expenses for January, February and March, as I understood it.

Commissioner Slocum: That is what he testified to.

Mr. Record: And on that he made his estimate. Apparently here he does not do that.

Mr. Hunt: He gave those figures for the receipts, the receipts all appear there. Now he is talking about expenses.

Commissioner Slocum: Why not carry the same thing through with your operating expenses; those are actual figures for 1918.

Mr. Hunt: You say you have those, Mr. Johnson?

Witness: Yes.

Mr. Hunt: But it seemed this would give a more true estimate.

Commissioner Slocum: No, I think facts are always better than an estimate.

Mr. Hunt: They would only be facts—

Commissioner Slocum: For the three months.

Mr. Hunt: — for the three months. Mr. Johnson has those and we will put both in; it might be compared.

Commissioner Slocum: What I wanted clear is an understanding of it. My understanding was the same as Mr. Record's, namely, that these were actual figures, under the heading I have read.

Mr. Record: On P-2 they were.

Commissioner Slocum: On P-2. Now, the witness says, no, they are not.

Mr. Record: On P-2?

Commissioner Slocum: He says the last column is not an actual figure, but an estimate.

Witness: You are applying, I think, to the entire 1918 column on P-2 a statement which I have made relative to operating expenses under the last column.

Commissioner Slocum: Why haven't I a right to? I direct your attention to the item "Operating Expenses, exclusive of depreciation expenditures and taxes," in the last column of P-2, $450,388.53. I understand you to say that is not an actual figure, but an estimate; am I right?

Witness: It cannot be an actual figure, because the year has not passed. It is an estimate, yes, sir.

Mr. Record: That is not the point.

Commissioner Slocum: Or is it based upon the figures for the three months, which are the same three months you spoke of as actual figures for revenue from transportation, on the first line of the same exhibit?

Witness: No, sir, the two cannot be treated the same. If I should take the operating expenditures for January, February and March, and apply those three months operating expenditures to the remaining nine months of the year, it would not convey a correct idea of what the operating expenditures would be, because—

Commissioner Slocum: They would be higher?

Witness: They would be higher, but the operating expenditures fluctuate with the months. It would not convey in any sense what will probably take place as the decrease in revenues from transportation would indicate. The decrease in revenues from transportation, which has taken place, and which is still taking place, is due

to the fact, probably, that many laborers have gone from Trenton to neighboring—

Commissioner Slocum: But the chief reason why the revenue fell off in January and February, especially, was weather conditions; we all know that.

Witness: I know that, but the average for the year, as it is at present going, will exceed six per cent., and while the average for those three months was 7.6%, I discounted the situation in January and February by assuming it would continue so that the remaining nine months, plus those three, would only show an average of six per cent., while those three months showed an average of 7.6.

Commissioner Wright: When you made up your figures there, have you the figures for April and May revenues?

Witness: No; this was done before the April and May revenue came.

Commissioner Slocum: You may proceed.

Q. (By Mr. Hunt.) Had you finished in regard to that?

A. I wanted—this is repetition—to make clear that the operating expenses are on the basis of the quantities of labor and material used in 1917 and the prices paid in April, 1918, applied to the material and the wages paid in April, 1918, applied to the quantities of labor used in 1917.

Q. I call your attention to Exhibit—

A. Pardon me; I should like to say one more thing in regard to that; that the unit prices for labor and material, which were applied in arriving at the 1918 estimates, as shown on Exhibit P-5, have already increased since April 15th, considerably beyond the prices used then.

Mr. Hunt: Would the Commission like if Mr. Johnson took up one of these and explained more in detail just how—

Commissioner Slocum: No; I understand how he arrived at his estimates now; I did not when I asked the question.

Q. Calling your attention to Exhibit P-1, what does that show, Mr. Johnson?

A. That shows the funded debt and other outstanding obligations, and the amount of capital stock of the company and its lessor companies, the interest payments and rentals which are an obligation on the company, for the years 1914, 1915, 1916 and 1917, with the total of the obligations as to bonds, stock, notes, and the total of the interest, other fixed charges which the company is under obligation to meet.

Mr. Record: May I ask a question about that, Mr. Hunt?

Mr. Hunt: I don't know, Mr. Record, I think it would be more orderly if we went through–

Mr. Record: I was just asking your permission.

Mr. Hunt: If it is not long, I think we can clear it up.

Mr. Record: My only point was to ask, make sure that there was no estimate of 1918, no statement of what the obligation would be in 1918.

Witness: The statement of what the obligations would be in 1918 is made in Exhibit P-2, where, under the heading "Income deductions," "Income on Funded Debt, Rentals, Amortization, Bond Discount," the total is shown, which

it will be noted is about $9,000 in excess of the same figure for the year 1917.

Mr. Hunt: $10,310, isn't it?

Witness: What?

Mr. Hunt: $10,310, that difference?

Mr. Record: Yes, it is a little over $10,000.

Witness: A little over $10,000 in excess of the similar figure for 1917. Then on the second page of the exhibit—

Mr. Record: Just a second. What is that $10,000 made up of?

Witness: It is partially car equipment dues, that is, interest, and partly rentals.

Mr. Record: Partly on the rentals?

Witness: Yes.

Mr. Record: I would like those separate figures, if we could have them conveniently.

Witness: I can make a statement of that.

Mr. Record: That is all, Mr. Hunt.

Q. (By Mr. Hunt.) Mr. Johnson, referring to Exhibit P-6, what do the various pages of that exhibit show; what does it show as a whole?

A. Pardon me, I haven't finished. I wanted to say that on the second page of Exhibit P-2, in reference to increases in capital expenditures, as is presented in the petition to the Board, there is an item of $40,000, which would be added to income deductions, on account of the expenditures

of $500,000 of capital estimated, in case the application for the increased fare is approved.

Mr. Record: In case of what?

Witness: As stated in the appeal, the company desires to make certain improvements to the plant, which it estimates will require an expenditure of $500,000, but which would be impossible to finance unless the approval for the increased fare is granted.

Q. Referring to Exhibit P-6, what is that, Mr. Johnson?

Commissioner Slocum: We will recess now until two o'clock.

Recess from 1:00 to 2:00 o'clock P. M.

After recess.

RANKIN JOHNSON resumes the stand.

Further direct examination by Mr. Hunt:

Q. Referring to exhibit P-6, Mr. Johnson, what does that cover?

A. That P-6 covers expenditures made from the depreciation fund. These expenditures cover payments for work done under the heading of repairs, maintenance, replacements and depreciation reserve.

Q. Does that show under each account number the actual expenditures for the year 1917, and then an estimate for the year 1918?

A. They do. There are twenty-five accounts in the distribution of accounts under which we report our yearly operations to the Public Utility Commission, and there are twenty-five sheets under this Exhibit P-6. Each sheet covers a statement of the expenditure under its respective

account for the year 1917 and also an estimate for the same account for the year 1918.

Mr. Record: Is there a total of that given anywhere?

Witness: I am about to give it. The total of these expenditures for the year 1917 amounted to $130,753.44.

Mr. Record: That is not here anywhere.

Witness: Those are additions of that.

Mr. Record: I understand; but it isn't here.

Witness: No.

Mr. Record: Go ahead.

Witness: The estimates for each account, each of these twenty-five accounts for the year 1918 was arrived at by taking the quantities of material and of labor used in that account for the year 1917 and applying to them the prices being paid on April 15th, 1918, for material and the rates of wages being paid on the same date to labor. In this—

Mr. Record: You haven't given that total.

Witness: That total amounts to $153,159.55. In the corresponding figure in exhibit P-2 it will be noted that the estimate for 1918 for expenditures on account of depreciation is $150,000 which is somewhat less, less by $3,159.55, than the sum of the estimates of these accounts.

In making up the statements and estimates for 1918, the statements for 1917 and the estimates for 1918 under P-5 and P-6 I tried to be extremely conservative. And I want to illustrate that.

Q. You mean by "conservative," taking figures that would be against the company rather than in its favor?

A. Against the company. Under account 404, which is the fourth page on the Exhibit P-6, this account is the cost of the rail used in repairs and replacements. I assumed we would use in 1918 the same quantity of rail that we used in 1917, and I put the estimate in at the same price. Rail is considerably higher today than it was in 1917, and as an actual fact, the cost of replacements where rail must be used will be more for the same quantity of rail than they were in 1917.

That same statement will apply to account 405, which is the next page of Exhibit P-6; rail fastenings and joints; rail fastenings and joints cost more today than they did in 1917.

Assuming that the same quantity would be used the price would be higher, although the cost of rail fastenings and joints is estimated with an increase of only $6.31.

In case it were said we might not use the same quantity of rail in 1918 as in 1917 if we set aside a sufficient depreciation fund to care for replacements as they become due we should have in that fund a sufficient sum to replace at least as much track as was replaced in 1917, and therefore, the company would not gain in net operating results through using less rail in any one year, because it must be set aside, under the plan proposed here, an amount of money sufficient to replace that rail even though it might not be replaced in one year. And I have estimated we should set aside $150,000 and, in case we were granted the six cent fare, added a further $25,000 to the proposed depreciation fund; making the total annual appropriation for account of depreciation fund in case the six cent fare is granted, of $175,000.

This fund would then be set aside, and a decrease in the actual annual appropriation of track construction, track reconstruction allowed

for under this depreciation fund appropriation would not increase the net revenue.

I am going into this explanation in order to explain that unless it is estimated that we are proposing an excessive depreciation fund—the estimate for 1918 depreciation fund is in fact a statement. It is not estimating on any unknown figure any more than would be this statement of what we actually did in 1917.

Q. You considered it would be to the public interest to spend that sum, if you had such a rate of fare as would permit of the setting aside of that fund?

A. I do.

Q. (Continuing) —on the property.

A. I want to call attention in that connection—

Commissioner Wright: Wouldn't most, if not all, of that work come under that five hundred thousand dollar expenditure you mentioned in P-2, Mr. Johnson?

Witness: No, sir; none of it.

Commissioner Wright: None of it would?

Witness: No, sir. This is a replacement and repair expenditure. The five hundred thousand dollar estimate was road and equipment expenditure.

Commissioner Wright: Which included some replacement?

Witness: No. The five hundred thousand dollars anticipated expenditure did not include a replacement.

Q. The others would be for new things?

A. Yes; additions to the plant.

Commissioner Wright: How about special work? That was mentioned in the five hundred thousand dollars?

Witness: No, sir. Not in the five hundred thousand dollars I have in mind. I don't know what five hundred thousand dollars you refer to.

Mr. Hunt: Perhaps your Honor refers to the five hundred thousand dollars bond moneys used.

Commissioner Wright: No. This item of forty thousand dollars interest on the five hundred thousand dollars additional capital.

Mr. Hunt: Yes; that is right.

Witness: Yes. That five hundred thousand dollars does not represent any expenditure for account of maintenance or replacements, but purely for additions to plant in excess of what we have now.

Mr. Hunt: That is, it would be new special work if there was new special work, like new connections that didn't exist before.

Witness: I want to call attention to account 403 in P-6; it is the second page, subject "ties." I have there estimated there would be no increase in ties. If we were to replace the same number of ties that we did in 1917 the cost would be at least fifty per cent greater. We are paying now for hard wood ties from $1.26 to $1.35 apiece. We bought ties last year for sixty and sixty-five cents apiece, hard wood ties. We bought creosoted ties for $1.12 apiece, and creosoted ties this year, the last estimates, which were about two months ago, were $1.75 apiece.

I am therefore endeavoring to show that a careful analysis of P-6 will show that a depre-

ciation fund of $150,000 is a conservative estimate of what a depreciation fund should be to meet the annual proportion of maintenance and replacement expenditures.

Q. Then in none of these estimates for the year 1918, which were made under exhibit P-6, have you increased the quantities of material that would be used, have you?

A. I haven't increased the quantities of materials that were used in 1917, actually used.

Q. How in respect to labor?

A. I have not increased the quantities of labor that were used in 1917.

Q. Would those two statements apply also to the items under exhibit P-5?

A. They would. There is one point in that connection that I would like to mention particularly. Exhibit E, account 460, passenger conductors, motormen and trainmen; that shows an increase, and an estimated increase for 1918 over the amount actually expended in 1917 of $13,989.29. This was arrived at by taking the number of car hours actually operated during 1917 and applying to those car hours the wages paid motormen and conductors in April 1918. It does not include any possible advances to the wage of motormen and conductors which might be made after April 1918.

Q. Were the wages that you were paying to motormen and conductors in April, 1918, greater than for part of the year 1917?

A. Yes. We have an agreement with our employees, with the union, I would say, the organization of which our employees form a division, which provides that we shall pay our motormen and conductors twenty-nine cents an hour.

Mr. Record: How much?

Witness: Twenty-nine cents an hour. This agreement expires the first of July, 1919. Owing

to the increase in wages which are paid by employers, companies with whom we must compete in securing our employees, we on November 2nd, 1917, arranged for an advance of two cents an hour to motormen and conductors, by a bulletin which provides as follows: "Notice to conductors and motormen. The rate of pay covering platform time of Motormen and Conductors is 29c per hour. Commencing November 8th, 1917, the Company will on each pay day give extra compensation of two cents (2c) per hour or a total payment of 31c per hour, platform time, to such motormen and conductors, in good standing, as report regularly at all roll calls including, when necessary, three roll calls on Saturdays and Sundays and perform all work as directed each day for the entire preceding pay day period.

There are four pay day periods each month. The first three periods are of seven days each, commencing with the first day of each month. The fourth pay day period commences on the twenty-second of each month and extends to the first day of the next month, covering a period of from seven to ten days.

Motormen and Conductors who are excused in writing by Dispatcher from reporting, or who are granted leave of absence in writing by Dispatcher, or who are prevented by sickness from performing their work will not by such failures to report be disqualified from receiving for that pay day period the extra compensation for such platform time as they have worked.

To obtain the extra compensation for a pay day period during which absence on account of sickness has occurred, a doctor's certificate must be given the Dispatcher, or other evidence satisfactory to the General Manager."

A very large majority of the motormen and conductors now are paid thirty-one cents because they live up to this requirement.

Under date of April 10th, 1918, due to the difficulty of providing the schedules tripper ser-

vice and in order to use every effort to get out all the trippers provided in the schedule, the following bulletin was issued: "Effective April 11th, 1918. Conductors and motormen who, when needed, volunteer to perform extra service in addition to an early or late straight run, shall be paid at the rate of forty (40) cents per hour platform time, during the period of such extra service. This order will apply to regular men and to any extra man who takes the place of a regular man and works the full time of the run assigned to such regular man."

That last advance for extra service on trippers was not included in the estimated amount of wages to be paid motormen and conductors for 1918, nor was any possible increase in the car hours to be run in 1918 over 1917.

Q. You considered all these increases necessary to get out as many men as you could to give the public service?

A. Yes.

Q. Is there anything further?

A. Yes. Account 449, power plant employees: The estimated amount to be expended for wages for power plant employees for 1918 was based on the authorized number of such employees in April, 1918, in the wages then paid. Since April, 1918, we have had to make certain addition to wages to certain employees in the power house, which are not included in this.

Also in each one of these estimates for labor for 1918 the number of working days in 1918 for each class of employees was used. Where employees were working on Sunday and were allowed for Sunday, Sundays are included. Similarly, certain holidays where those employees have not worked on Sundays, or certain other days, Sundays were eliminated. And for track employees it was based on twenty-two days a month to allow for rainy days.

Commissioner Slocum: Is there anything else?

Witness: No; let the other go.

Q. Mr. Johnson, how did you arrive at the estimate in regard to taxes, taxes to be assessed for the year 1918?

A. I assumed that the taxes for 1918 would be the same as those for 1917.

Q. How did you arrive at your estimate of income deductions?

A. I prepared a statement showing the actual expenditures which we will be under obligation to make under accounts introduced in the heading for the year 1918; they amounted to a total of $318,554.91.

Commissioner Slocum: Where are the items making up that figure?

Witness: I have made a note here to assemble that. I don't think I have that here.

Mr. Record: I don't hear what the witness said.

Witness: I have a note here made this morning to bring a statement showing the items introduced in income deductions for the year 1918.

Q. Does the total appear on any of the exhibits?

A. The total appears, yes, on P-2.

Mr. Record: Where?

Witness: But the detail is elsewhere.

Mr. Record: What is the item you are talking about on that?

Mr. Hunt: Income deductions.

Mr. Record: Income deductions?

Witness: Income deductions.

Mr. Record: $318,000?

Witness: Yes; and 554.91.

Commissioner Slocum: The witness is to furnish a statement to show the items making up that account.

Mr. Record: Yes.

Q. How did you arrive at the cash payments to be made on equipment notes for the year 1918?

A. I prepared a statement showing the amounts which we are under obligation to pay during 1918 on equipment notes.

Q. Does the total of that appear anywhere?

A. Yes.

Q. Where is that?

A. That is on P-2, under the heading "cash payments on equipment notes and new cars purchased," $16,000.

Q. How did you arrive at your estimate for expenditures on account of road and equipment for the year 1918?

A. I assumed that the expenditures on account of road and equipment would be the same under exhibit P-2 as those which we actually made in 1917 amounting to—

Q. Have you made any—Have you finished?

A. (Continuing) —amounting to $16,229.05.

Q. That oppears on exhibit P-2?

A. It does; the bottom of exhibit P-2, page one.

Q. Have you made any estimates of the additional expenditures for the year 1918 not included in your previous statements, which would be depended on receiving an increased rate of

fare sufficiently large to make such additional expenditures.

A. I have. First I estimated that we will require an expenditure, within a reasonable period, of five hundred thousand dollars additional capital in order to make certain desirable additions to the plant. Eight per cent on this capital expenditure would amount to forty thousand dollars.

Second, if we get a sufficiently large increase in the rate of fare to enable us to make the expenditure, it is my belief we should set aside twenty-five thousand dollars annually for account of depreciation fund in order to enable us to replace all depreciable parts of the property as they respectively reach the end of their useful life. That should be in addition to the one hundred and fifty thousand dollars provided for in the statement previously given, and would make the total annual appropriation for account of depreciation fund $175,000.

Third, we would advance the wages of motormen and conductors. In addition to the amounts required annually by the present wages paid to motormen and conductors, I would set aside twenty thousand dollars to be paid in wages to motormen and conductors.

Q. The increase of $25,000 in the depreciation account which you propose, and the setting aside of $20,000 for the increase of the wages of motormen and conductors, of course don't in any way come out of the $500,000?

A. Oh, no.

Q. By the addition of these amounts and expenditures to what sum would the total sum of the deficits for the year 1918 be increased?

A. Increased to $297,160.12.

Q. You find that the costs of materials needed in the operation and maintenance of the property are increasing?

A. Yes.

Q. How about the quality?

A. The quality is deteriorating in some cases.

Q. Can you give some of the items of increase in prices since 1915, stating what you paid then and what you have paid since?

A. In 1915 we paid for Keystone coal, $1.20 a ton at the mines. The first of January, 1918, we paid $2.45 a ton for it. Rock Hill coal at the mines, cost us in 1915, $1.40 a ton. The first of 1918 it was $4.20 a ton.

Track bolts in 1915, $6.50 a keg; in 1917 they were $9.00 a keg.

Granite block and paving block in 1915, $1.59 a square yard; in 1917 it was $2.20 a square yard.

2-0 trolley wire was $311 a mile a coil in 1915; in 1917 it was $662 a mile.

Steel trolley poles in 1915 were $19.93 each; in 1918 they were $59.20 each.

Wood trolley poles, chestnut, 1915, $2.00 each; 1918, $3.00 each.

Brasses for journal boxes, 1915, $1.24 each; 1918, $2.55 each.

Four inch trolley wheels, 1915, $.65 each; 1918, $1.05 each.

Armatures for cars, 1915, $15.25 each; 1918, $27.68 each.

Gears, 1915, $12.60 each; 1918, $24.82 each.

Armature Coils, 1915, $24.20 each; 1918, $41.85 each.

Car Wheels, iron, $6.11 each in 1915; $7.05 each in 1918.

Steel car wheels, 1916, $19.06 each; 1918, $36.50 each.

Spikes, track spikes, 1915, $4.50 a keg; 1918, $10.00 a keg.

Asphalt for repairs, 1917, $23.10 a ton (we hadn't bought any prior to 1917); 1918, $32.00 a ton.

Girder rail, 1916, $38.40 a ton; 1918, $65.00 a ton.

T-rail 1916, $29.68 a ton; 1918, $55.00 a ton; rail can't be bought for those prices now.

Good oak ties, 1915, $.60 each; 1918, $1.26 to $1.35 each.

Q. These prices have further advanced in some cases since that statement was prepared?

A. They have.

Q. Do you anticipate that there will probably be further increases?

A. I know there will because on quotations which we are receiving for materials needed for the next few months supply the prices are higher than those quoted, than those named in my previous statement. We have during the past week or two received quotations in some cases, in many cases considerably higher than those mentioned here.

Also contracts for certain materials for renewals will be renewed only at higher prices. For example, our lubricated oil contract, which expired on June 30th, this is based on lubricating our cars on a guarantee they would not exceed eleven cents a thousand car miles, will be renewed on a basis of twenty-three and a half cents a thousand car miles.

Q. By what amount would the revenue from transportation be increased for twelve months over the estimated revenue for transportation for the year 1918 in case a six cent fare were put in effect?

A. By $201,194.27.

Q. Is that an estimate you make?

A. That is an estimate.

Q. How did you arrive at that?

A. I have prepared a statement showing the number of cash fares, the number of tickets and number of transfers received during the year 1917. In view of the fact that the revenue from transportation of passengers for the first three months of 1918 was less by 7.61 per cent than the revenue from transportation of passengers for the same three months of 1917, I estimated that the total cash fares, tickets and transfers received from twelve months of the year 1918 would be

less by six per cent than the total cash fares, tickets and transfers received for the year 1917.

I then estimated there would be a further reduction of ten per cent in passengers carried in case a six cent fare were put in effect.

To state these results in figures, during the year 1917 we received, cash fares, 3,681,315, tickets, 16,321,275, transfers, 4,361,308. Estimating a reduction of six per cent in passengers carried for the year 1918 we would receive during the year 1918, cash fares, 3,460,436, tickets, 15,341,998—

Mr. Record: Is that in there anywhere?

Mr. Hunt: No. It is his testimony.

Mr. Record: I was wondering whether he had it in an exhibit. I can't carry those figures in my head.

Commissioner Slocum: No; it is an estimate.

Mr. Record: I was going to say if he had it there conveniently and put it in as an exhibit, I always like to follow these things with my eyes if I can.

Witness: No.

Commissioner Slocum: He hasn't it in such form, Mr. Record.

Mr. Record: There is such a mass of accounts, I thought if he had it handy I would be glad to have it.

Witness: I should be glad to give you that, if you like.

Mr. Hunt: I think you read, a six per cent reduction in passengers. It is a misprint. Isn't that ten per cent?

Witness: No. That is six per cent and then ten per cent.

Commissioner Slocum: Six per cent based on the actual figures for the first three months of the year.

Witness: And then ten per cent in case a six cent fare is put in effect for the following:

Mr. Hunt: All right.

Witness: What was the last I said?

(Last of witness' answer read as follows: "Tickets 15,341,998.")

Witness: (continuing) —transfers 4,099,629. In case a six cent fare were put in effect we estimate we would receive during the twelve months following such fare increase ten per cent less fares than would be the case under the present rate of fare: cash fares 3,114,392, tickets, 13,807,798; total revenue passengers 16,922,190, transfers 3,689,666.

If each of these revenue passengers were to pay the six cent fare we would receive in the twelve months following such fare increase $1,015,331.40 which would be an increase of $201,194.27 over the amount anticipated for the year 1918 at the present rate of fare.

Q. How does that amount compare, if you have it ready there, with the estimate of the increase in costs?

A. The deficit? The anticipated deficit, you mean?

Q. Yes.

A. The anticipated deficit, including the proposed increase in depreciation fund, wages and interest on additional capital dependent on the increase, was $297,160.12.

Q. Considerably greater than this sum?

A. Yes.

Q. What would be the increase in revenue from transportation for the year 1918 over the year 1914 at the present rate of fare?

A. $49,995.85.

Commissioner Slocum: What is the idea of taking different years for these comparisons? Now I notice a reference to 1914, and then a short time ago for comparison you referred to 1915.

Witness: We took the two extreme ends. That is, we understood from the Commission's ruling that it was desired that we give a certain— the result of a certain period of years.

Commissioner Slocum: Yes, but we have to have those periods uniform. Namely, if you take all the accounts for the year 1915 and all the accounts for 1916 and all the accounts for 1917, then it makes a ready comparison.

Witness: Well, we have given that here, all the accounts for those years.

Commissioner Slocum: Yes, but I call your attention to the fact you picked out isolated items in different years.

Witness: No. I don't know— you refer to that in our particular case?

Commissioner Slocum: In your testimony.

Witness: No we are comparing the full year we were asked to give, under the conference rul-

ing the last year, showing the increase or decrease that may have taken place in the various items between those years.

Commissioner Slocum: I am not criticising your exhibit, but I want to know why you pick out in your testimony certain isolated items for different years for the attention of the Commission.

Witness: I don't understand where we have picked out the item in any intermediate year.

Commissioner Slocum: What I asked was why those comparative prices relate to 1915. Why does the witness relate those prices to 1915, 1916 and 1917?

Mr. Hunt: I don't think he has done that in any case but in giving the increased prices of certain articles and explaining that one, for example, asphalt hadn't been bought, we didn't run the asphalt plant, and only bought that in 1915. That is one of the explanations.

Commissioner Slocum: That is just what I am asking. Why did you take those? As far as asphalt is concerned, that part is answered.

Mr. Hunt: We made a list, kegs of spikes and different things, a long list for 1914, 1915 and so on.

Commissioner Slocum: Yes; but it would be more enlightening for the Commission and more accomplished for the Commission if those items were carried through for one and the same year.

Mr. Hunt: They are in regard to the principal things. It was only in that, that those were given for different years.

Witness: I should be glad to make an explanation.

Commissioner Slocum: My thought was you will be called on for an explanation either by the Board or on cross-examination.

Witness: I will have a statement prepared where it can be given. The only case where we have given the— skipped around in the years referred to, was in that price quotation. Those price quotations were given because— in some cases we found we bought rail, for example, in one year or another. As far as we can get the prices I shall be glad, if the Board so desires, to present a statement showing the prices we have paid for each of the items here mentioned in each of the years 1914, 1915, 1916, and 1917.

Commissioner Slocum: No; I am not requesting it, but I am satisfied on your cross-examination you will be asked some questions relating to those same facts. I thought if you had the information you would expedite matters to furnish it.

Witness: I shall be glad to do it. That refers to prices. On the other quantities we have simply taken the two extremes, 1914 and 1918.

Mr. Hunt: The figures are given for the year 1914, 1915, 1916 and 1917, and of course we could go on over each one, if it just be an estimate, and we didn't think it necessary to prolong the examination to that extent. We could do it, and of course would be glad to do it. We were just making this one comparison in 1914.

Commissioner Slocum: No. I was just making the query what was done.

Q. What will be the increase in operating expenses and taxes in the year 1918 over the year 1914?

A. $190,439.43.

Q. Does this increase in operating expenses include your anticipated addition to the wages of motormen and conductors or to depreciation appropriation, in case an increased fare is granted?

A. It does not.

Q. If you were to include the twenty thousand dollars for the increase to the wages of motormen and conductors, and the twenty-five thousand dollars additional depreciation appropriation, by what amount would taxes and operating expenses for the year 1918 be increased over the year 1914?

A. With these additions the estimated operating expenses and taxes for the year 1918 would exceed those for the year 1914 by $235,439.43.

Mr. Record: Where is that?

Commissioner Slocum: That is not in the exhibit at all.

Witness: I beg pardon; it is in the exhibit by subtraction.

Commissioner Slocum: In what part?

Mr. Hunt: Might I identify that?

Q. Is that a subtraction of the two sums that are shown in the exhibit?

A. The year 1914—

Q. What exhibit?

A. P-2. Take the operating expenses and taxes for the year 1914 shown on P-2—

Q. Where? What line?

Mr. Record: That is $497,000.

Witness: $497,941.71. Take the same item $497,941.71, for the year 1918 $688,381.14, add to that as the question indicates $20,000 proposed increase in wages shown on the following page of the exhibit, and $25,000 additional to depreciation fund, which makes $45,000—

Commissioner Wright: Why do you include $20,000 in exhibit P-2 for the increased wages of your conductors and motormen and then on P-7 that increase amounts to $16,000?

Witness: P-7?

Commissioner Wright: Those figures do not tally then.

Witness: P-7 does not include the $20,000. P-7 (I haven't reached that in the testimony) but that covers the estimated amount which will be paid to those various departments in wages, at the rate of wages paid April 15th, 1918. This $20,000 refers to an additional payment to motormen and conductors in case we receive the rate of fare we are asking for, and is not covered in any way by exhibit P-7.

Q. The amount in P-7 is reckoned on the basis of wages as you are actually paying them now, is it not?

A. Yes.

Q. And the other is the proposed increase over and above that?

A. Yes.

Mr. Record: That is, the $688,000 includes a proposed increase, is that right?

Witness: It does not include a proposed increase.

Mr. Record: It does not include?

Witness: No. The proposed increase is on the following pages.

Mr. Record: Yes; I see.

(Last of witness' previous answer read as follows:) "Add to that as the question indicates $20,000 proposed increase in wages shown on the following page of the exhibit, and $25,000 additional to depreciation fund, which makes $45,000." —

Witness: (Continuing) —gives $733,381.14, which is the operating expenses and taxes for 1918 with the proposed additions in case the six cent fare is granted. The difference between that and $497,941.71, was the answer to the question, $235,439.43.

Q. How much would this increase in operating expenses and taxes between 1914 and 1918 exceed the increase in revenue from transportation for the same period?

A. The increase in operating expenses and taxes between 1914 and 1918 amounted to $235,439.43. The increase in revenue from transportation for the year 1918 over 1914 at the present rate of fare was, as I stated $49,995.85.

Mr. Record: I can't follow those figures, somehow.

Witness: The difference between—

Mr. Record: You say the difference—

Witness: May I finish? It breaks it up.

Mr. Record: The $497,000 the operating expenses and taxes in the year 1914 and the year 1918 is $200,000, you say, but it don't so figure according to my arithmetic.

Witness: Perhaps that is explained, if the stenographer would read it, so it won't be necessary to repeat it.

Mr. Record: I don't just follow it, perhaps it isn't fair for me—

Witness: Might I explain it without repeating it for the stenographer?

Commissioner Slocum: No; repeat it; but let it go on the record whatever is said.

Witness: I want Mr. Record to understand it.

Mr. Record: Explain it over again. I don't follow that figure.

Witness: You have P-2?

Mr. Record: I have P-2.

Witness: You note the line headed "Total operating expenses and taxes?"

Mr. Record: Yes.

Witness: Follow horizontally from that to the first column and you read for the year 1914 the figure $497,941.71.

Mr. Record: That is right.

Witness: Follow that horizontal line to the extreme right.

Mr. Record: Yes.

Witness: You have the year 1918 "estimated operating expenses and taxes, $688,381.14."

Mr. Record: That is right.

Witness: Turn over the page and on the second line is "increased depreciation fund $25,000."

Mr. Record: $40,000 isn't it? No; that is right; $25,000.

Witness: All right. Below that, "increased wages of conductors and motormen $20,000."

Mr. Record: Yes.

Witness: Those you understand are the amounts by which it is proposed to increase the depreciation fund and the wages of motormen and conductors respectively in case the advance of the rate of fare is granted. Adding those two items together it makes $45,000, does it not? 25 and 20, $45,000?

Mr. Record: Those two added to the other makes 200.

Witness: Those two together make $45,000. Then $688,381.14 makes $733,381.14.

Mr. Record: Yes.

Witness: If you subtract them the first figure that I read you, take $497,941.71 from the $733,381.14 you will get $235,439.43.

Mr. Record: I see that now.

Q. By how much would this increase in operating expenses and taxes between the years 1914 and 1918 exceed the increase in revenue from transportation for the same period?

A. Wasn't that—I think that was answered. I will repeat it.

Commissioner Slocum: Don't repeat it if the question has been answered.

(Previous question and answer read as follows: "How much would this increase in operating expenses and taxes between 1914 and 1918 exceed the increase in revenue from transportation for the same period? A. The increase in operating expenses and taxes between 1914 and 1918 amounted to $235,439.43. The increased revenue from transportation for the year 1918 over 1914 at the present rate of fare was, as I stated, $49,-995.85.")

Witness: The difference between these two figures, which would represent the increase in operating expenses and taxes between 1914 and 1918, exceeds the increase in revenue from transportation for the same period $185,433.60.

Q. What is exhibit P-7, Mr. Johnson?

A. P-7 shows the wages paid to the different departments for each of the years 1914, 1915, 1916 and 1917, and the estimated wages paid the same departments for the year 1918.

Mr. Record: There may I interrupt. I have to leave, if the Commission please, in ten minutes to catch a train; I must keep an appointment; my theory being this matter would continue and we would not be called on for cross-examination today. I would like to settle now before I go what is to be the next day and get some idea about it as to the next moves.

Commissioner Slocum: Can you close your case in another day, Mr. Hunt?

Mr. Hunt: I don't know about that. What do you think, Mr. Johnson?

Commissioner Slocum: If you can give us an idea how long a time it will take.

Mr. Hunt: It depends on our valuation.

Mr. Johnson: Our next day will be the valuation, appraisal. It depends on how much the Commission desires to go into the details.

Commissioner Slocum: You must establish your case.

Mr. Record: That means another day?

Commissioner Slocum: Yes.

Mr. Record: I didn't know what the idea was. That being so, what is that other day. I would like to have that fixed before I go away, if I might.

Mr. Hunt: What do you think about the time. We will take fully a day; maybe more.

Mr. Johnson: Take a full day.

Commissioner Slocum: We will give you Thursday, June 13th and Friday, June 14th, and expect you to present your case in those two days.

Mr. Johnson: We could put in our case in one day and the cross-examination could commence Friday. We are extremely anxious—

Commissioner Slocum: I don't know; it is customary to allow Counsel to look over exhibits and make a study of the case before they proceed with cross-examination.

Mr. Johnson: I mean cross-examine on the day's testimony.

Mr. Hunt: They have that.

Commissioner Slocum: I couldn't pass on that now.

Mr. Hunt: How long would you want for Mr. Johnson's cross examination, Mr. Record?

Mr. Record: I don't think very long. I shouldn't think over half an hour.

Mr. Hunt: We could at least hear that.

Mr. Record: My thought was this, if the Commission please (it seems to me, as the point of order was made at the 1912 Convention, that the steam roller was exceeding the speed limit; it seems to me the Commission is pushing the mourners very hard) on Tuesday and Wednesday we have to argue before the Board on this service case and on the big seven cent fare case, and we have been served with notice from the State Board of Taxation that an appeal by this company is set down arbitrarily for three days, I think that is Thursday and Friday, two days, Thursday and Friday, or Wednesday, Thursday and Friday I think it is.

Mr. Hunt: We will talk that over, Mr. Record. I think very probably that we can arrange that.

Mr. Record: I think so, too. I merely wanted to get before the Board the proposition that is going to be taken up. I can't be here before this Board and sitting in the case downstairs and—

Commissioner Slocum: Is that set for the 13th or 14th?

Mr. Record: Yes: that is for Wednesday—they have given us three days. I think it will

go off just as Mr. Hunt says, nevertheless,there it is; it is notice and we have to be ready if it goes on. And it seems to me that particular week will be very hard on me anyway. I want to be reasonable. If it could go over a week, I would like to have it. It seems to me with those two big arguments next week it is pretty nearly enough.

Mr. Hunt: Your Honor, the rate matter is a great deal more important to us even than the tax matter. I think we could make an arrangement on the tax matter.

Mr. Record: Yes; I think we can; nevertheless it is before us.

Commissioner Slocum: Those days seem to be the only available days we could give without great inconvenience to the Board, and where it is a case of the companies presenting their side—

Mr. Record: I was just going to say, your Honor wouldn't expect us on either of those days to present any of our side of the case.

Commissioner Slocum: No, sir.

Mr. Record: That lets us out better.

Mr. Hunt: Unless you propose to cross-examine Mr. Johnson.

Mr. Record: I would do that.

Mr. Hunt: We could get along that far.

Commissioner Slocum: We would be very glad to have it done providing it was agreeable to counsel, but we would not force them to proceed.

Mr. Record: What we would do on that (as we were ready to do today if you were through) would be to cross-examine on some things I have got here, and then wait for the expert for some others.

Commissioner Slocum: When we do adjourn we will adjourn until June 13th, with the understanding you can have the thirteenth and fourteenth to conclude the company's case.

Q. How did you arrive at the estimate for wages to be paid to the different departments shown on this exhibit?

A. By taking the number of employees in each department on April 15th, 1918, and the rate of wages paid for each position on April 15th, 1918, for the total working days in 1918; except as to motormen and conductors. For motormen and conductors the estimated amount to be paid for the year 1918 is based on the number of car hours operated during the year 1917 and the wages paid motormen and conductors per hour on April 15th, 1918.

Q. What is the total estimate of wages estimated for 1918?

A. $402,244,33.

Q. Are there any explanations attached about certain items of that?

A. No.

Q. Those are covered in what you have given?

A. Yes.

Q. Do you expect that further additions will have to be made to the wages of others than conductors and motormen during 1918?

A. I do. There have been some additions since this table was prepared.

Q. Are you having constant difficulty to keep your force, outside of the platform men, up to the normal number of employees?

A. We are, yes. It is very difficult to get out all the cars.

Q. What will have been the increase in the estimated wages paid in the year 1918 over those of 1914, not including any increase in wages pendant on an increased rate of fare?

A. The total estimated wages for 1918 was $402,244.33; the total for 1914 was $293,157.96; the difference was $109,086.37 which represents the increase between 1918 and 1914, both years inclusive.

Q. It is the payment of over one-third more, is it not?

A. Yes, sir.

Q. Does that wage statement include any salaries above that of superintendent?

A. It does not.

Q. Have you some figures in regard to fuel, cost of fuel?

A. I have.

Q. Please give those.

A. The cost to the company of coal consumed at the power house for the year 1914,$51,447.83; for the year 1915, $42,451.46; for the year 1916, $50,568.15; for the year 1917, $74,388.32; estimated for the year 1918, $88,221.67.

Q. How did you arrive at the estimated cost of coal to be consumed at the Power House during 1918?

A. I took the quantity of coal consumed in the power house during 1917 and applied to that tonnage the price being paid for the first three months of 1918.

Q. How about the quality of coal consumed in the power house during recent months?

A. It is very inferior to that consumed prior to 1916.

Q. You have included in your estimate an anticipated increase in the wages to motormen and conductors; you have stated you believe increases in wages to other employees will also be necessary; why do you believe these increases will be advisable.

A. Because we must increase the wages we pay to a standard that more nearly conforms to that of those with whom we must compete in engaging employees.

Q. Have you a statement showing the number of men employed and the number of men engaged during 1917?

A. I have. In April the following was the number of employees, including heads of departments in each department; this is in April, 1918: in the car barns 47; power house 23; track 43; line 5; accounting department and storekeeper 19; conductors 110; motormen 107; superintendents of transportation and inspectors and dispatcher 7; total 361.

The following are the number of men who were engaged during the year 1917 for each department: car barns there were 64 men; power house 103 men, track 309 men; line 4; accounting department and storekeeper 11; conductors 130; motormen 136; superintendents of transportation, inspectors and dispatcher 4; total 761. That is, during the year 1917 it was necessary to employ 761 men in order to retain in service 361 men.

Q. Well, does that include simply— weren't there some old employees who remained?

A. Oh, yes.

Q. Is that included in the 761?

A. Yes.

Q. They are counted once only, of course?

A. Yes. Of course, while that was more than twice as many men employed during the year as there were on the payrolls of the company both before and after, it doesn't mean that every employee, by any means, left. There were a good many places filled a number of times.

Q. But that is what you might call the "labor turnover?"

A. Yes.

Q. Do you find the difficulty of obtaining employees increasing?

A. Very much.

Q. By how much has the track special work increased over the price for such special work for the year 1914?

A. By more than one hundred per cent.

Q. How about track labor in the same respect?

A. It has increased by seventy-five per cent.

Q. Then how much has the cost of standard double truck cars, full equipment, exceeded the cost of similar cars in 1914?

A. By one hundred per cent, more than one hundred per cent.

Q. Has the cost of all other labor and materials required in the conduct of the business of this company increased by a large percentage over the cost of similar materials in former years?

A. They have.

Q. And do the conditions that gave rise to such increases in cost still exist?

A. They do.

Q. Have your expenditures for maintenance and replacement during the past four years exceeded the amount set aside for depreciation purposes?

A. They have.

Q. What has been the amount set aside each year from 1914 to 1917 inclusive for account of depreciation fund?

A. In 1914 we set aside $69,710.09; in 1915 $76,759.58; in 1916 $93,286.22; in 1917 $113,890.16.

Q. In a general way, would those constantly increasing amounts be due largely to the increased cost of both material and labor?

A. No; I should say,— to a certain extent possibly, but also to the fact that we have never been able to set aside as large a depreciation fund as is needed. We estimated in 1915 we should set aside $135,000 a year and should appropriate for that fund $76,759.58. We now think we should set aside at least $150,000 a year.

Q. How many car miles were operated during the year 1917 by your company?

A. 3,123,451.54.

Q. What were the total receipts per car mile?

A. 28.2 cents.

Q. What were the gross expenses per car mile?

A. 30.6 cents.

Q. What were the depreciation expenditures per car mile?

A. 3.9 cents.

Q. What are your estimated gross expenses per car mile for the year 1918?

A. 33.52 cents.

Q. What is the estimated car mileage for 1918?

A. 3,100,000.

Q. Do these gross expenses per car mile include the proposed increases in depreciation appropriation, wages and interest charges in case an increased rate of fare is granted?

A. They do not.

Q. What would be the gross expenses per car mile in case these increased expenditures were included?

A. 36.26 cents per car mile.

Q. What will the depreciation fund per car mile amount to for 1918 in case $150,000 is set aside?

A. 4.85 cents per car mile.

Q. In case $175,000 were set aside?

A. 5.6 cents per car mile.

Q. You state your gross receipts during 1917 amounted to 282000 cents per car mile and your gross expenses amounted to 306,000 cents—

A. That is 28.2 cents and 30.6 cents. The decimal point is in the wrong place.

Q. 28.2 cents per car mile, and that your gross expenses amounted to 30.6 cents per car mile during the same period. Have you prepared any figures showing the gross receipts from the transportation of passengers per car mile received from the operation of the tripper service?

A. I have.

Q. What are they?

A. They cover— I prepared a statement showing the receipts per car mile from the operation of our tripper service. They were made during the period from March 14th to March 27th, 1918. That time was selected because they were made at that time, and it was during the periods that the service inspection of the property by the inspectors of the Board of Utility Commissioners was taking place.

On March 14th the receipts per car mile, the average receipts per car mile from the operation of all trippers that day was 23.8 cents; March 15th 25.7 cents; March 16th, 22.1 cents; March 17th was Sunday, no trippers were run; March 18th 24.1 cents; March 19th 22.2 cents; March 20th 24.6 cents; March 21st 22.3 cents; March 22nd 23.7 cents; March 23rd 22.3 cents; March 24th was Sunday, no trippers were run; March 25th 21.1 cents; March 26th 22.6 cents; March 27th 21.1 cents. That would show that all those trippers were operated at quite a loss.

Q. Now, Mr. Johnson, in reference to the method that you pursued in estimating for 1918 your receipts, by taking the first three months of 1918, and your method of estimating operating expenses: will you kindly point out to the Commission the reasons for adopting that method?

A. As I stated, these statements were prepared in April, the receipts for the first three months of 1918 only were available. For the first three months the decrease in receipts for 1918 over 1917 was 7.61 per cent.

The decrease in receipts has been continuing, and we thought it was a fair estimate to base the total gross receipts from transportation of passengers for the year 1918 at six per cent under those of 1917.

When we came to the preparation of an estimate on operating expenses, exclusive of maintenance and replacements, we couldn't take the operating expenses for the months of January, February and March and then apportion them

over the year because— for several reasons. One is that the operating expenses are heaviest in the summer months.

Q. Why is that?

A. Because more cars are operated, and in the maintenance and replacements account, all, or a very large majority of the year's work is done commencing during April and closing perhaps at the end of September.

For the four months January, February, March and April, we have a deficit in this year's operation, if we include an estimated depreciation fund of $150,000 a year, of over $70,000 in four months.

The difficulties of getting out the service to produce receipts, and the costs of doing the annual amount of work are increasing. The cost of paving, which we estimated at $4.50 a square yard for granite block paving, is now much in excess of that. The cost of asphalt paving, paving foundation which we estimated at $3.00 per square yard, is now much in excess of that. The cost of grooved rail and T-rail is in excess of the figures which we used in estimating our expenditures for this year. The cost of a new car similar to the car we purchased, delivered last fall, we estimated at twelve thousand dollars; it is now thirteen thousand dollars. We paid $7500 for the cars in 1915, and they were six thousand dollars for that type of car.

The operating expenses, exclusive of depreciation fund or exclusive of maintenance and replacement expenses, for these four months are just about on the basis of $450,000 for the year, which is our estimate of operating expenses, and they are increasing.

Q. From month to month do the receipts from operation ordinarily under ordinary conditions amount to about the same amount per month?

Witness: May I ask the stenographer to repeat that?

Q. (Question read.)

A. Receipts from operation? You mean— I can't get that question.

Mr. Hunt: Strike that out and I will re-frame it.

Q. You have taken three months in your estimate?

A. Yes.

Q. Of 1918, have you not?

A. Yes.

Q. For the receipts?

A. Yes.

Q. Is it true in the operation of street railways that it is a fair estimate of the receipts from month to month to take a three months period and multiply it by four to get a yearly rate?

A. I didn't multiply the receipts per month by four; that is, the receipts for the three months period by four, because each month has its own peculiarities. For instance, February is a very low month as September is a high one. But it is fair to take the decrease under the previous year for any month, as being an indication of what the increase would continue to be.

Q. In your estimate is that the way you made it?

A. Yes. I didn't multiply the total receipts for three months by four; but I multiplied— I didn't even do that. I took the average decrease for the three months under last year, which amounted to seventy-six hundredths per cent, and then discounted that by 1.6, the 7.6, and called it six tenths for the year. There are fewer working in the various districts of course. There was a severe winter. On the other hand, the tendency is manifesting itself more and more for men to go away from Trenton. The difficulty of securing labor is increasing. The men we get, they stay

only a short time and then they go away, particularly to Bristol and other places.

Q. Taking the other side of it, operating expenses, is there a great difference between different periods of the year in the amount of expenses for any given period?

A. Yes.

Q. Could you illustrate some ways how that is?

A. You mean the operating expenses exclusive of depreciation or including depreciation?

Q. Take it either way.

Commissioner Slocum: No. Exclusive.

A. Exclusive of depreciation; the operating expenses are much larger in say July, August, and possibly June, July and August and September than in the early months of the year.

Q. Why is that?

A. That is true also to a lesser extent of November and December. It is because the time of the least business of the year are the months of January, February and March, particularly February.

Q. You made an allowance, did you not, for that in your estimated reduction of receipts?

A. Yes; in estimating the reduction of receipts to where the receipts compared to the receipts of the previous year, and that of course, it made no difference under that whether the normal month was a high or low month, as far as the receipts went, because it was compared with the same month of the previous year. It was merely the percentage of business done this year as compared with the business done the previous year.

Q. Mr. Johnson, all of these exhibits that are attached to the petition and all the various figures that you have given have been prepared by you or under your supervision?

A. Yes.

Q. And to the best of your ability, knowledge and belief they are correct in every respect?

A. They are. I tried by the best method I could think of to present in detail the accumulating deficit. It seemed to me the best way was by taking each one of the Utility Commission's accounts and showing what items it was composed of and how, or what was to be the expense of meeting those items during the present year.

Q. Do you or do you not think that a good method of arriving at the estimated operating expenses for the year 1918 would be to take the operating expenses for three months or four months and multiply the total respectively by three or by four?

A. That would lead to a very erroneous conclusion.

Q. And the method you have pursued in each case as to an estimate of the receipts on the one hand and the operating expenses on the other you consider would be the very best estimate that could be made, and by the very best method?

A. Undoubtedly. And if these statements were prepared at the rate of wages and prices for materials paid today the deficit for the year 1918 would be larger by a considerable amount than this figure shows.

Q. Do you anticipate and believe that the operating expenses will be even larger than the figure which you estimate?

A. There is no doubt of it.

Q. Have you anything that leads you to believe since the filing of your petition that your receipts will be any larger than you estimate?

A. No; five to six per cent; somewhere between five and seven per cent. They may be greater—the deficiency in the receipts as compared to 1917 may be greater than that estimated.

Q. Of course, I meant at the old rate?

A. Yes.

Q. And that your return, your estimate, for an increased fare of six cents would not be any greater than your estimate?

A. No.

Trenton, N. J., June 13, 1918

RANKIN JOHNSON, recalled on behalf of Petitioner.

Direct examination by Mr. Hunt.

Q. Mr. Johnson, was there certain data that you were asked for at the last hearing when you were on the stand?

A. There was.

Q. That you were to bring at this hearing. Will you produce those?

A. I was asked to give the prices of certain items of material that I mentioned, so far as those prices were available for each year from 1914 to 1918 inclusive, rather than only the years mentioned.

Commissioner Slocum: Let it be marked with the proper number and copies will be sent to counsel.

(Table of prices for various materials for years from 1914 to 1918 received and marked Exhibit P-11.)

Witness: I was asked to give the comparative income deductions for the years 1917 and 1918.

(Comparative income deductions for 1917 and 1918 received and marked exhibit P-12.)

Witness: I was asked to give the detail of the amount of revenue received for the sale of power for incandescent lights in White City Park during the year 1917. The total amounted to $169.79, and the detail is shown here.

(Detail of revenue received for sale of power to White City Park during 1917 received and marked Exhibit P-13.)

Q. Has the property of the Company been operated during many years past under any disadvantage, and at a rate of fare which it was permitted to collect which was lower than those collected upon properties operated under similar conditions elsewhere throughout New Jersey?

A. Yes, sir, both as to rates of fare collected on the City lines and as to rates of fare collected on the suburban lines.

Q. Will you state what this difference in rate of fare being collected in the City of Trenton is compared with rates of fare being collected in the cities where other companies operate elsewhere throughout the state?

Commissioner Slocum: How is that going to help the Commission in establishing a rate here? You have been charging a fare that was legal up to the present time.

Mr. Record: They have been charging it voluntarily up until a couple years ago.

Mr. Hunt: Under the recent decision of the Supreme Court it becomes a question of reasonable fare. It may have some bearing.

Commissioner Slocum: No, water that has gone over the dam is not a question of reasonable fare. Suppose 5 cents is not a reasonable fare now; could you say that a new rate should be applied to the years gone by and now that you could come in and recoup against the public the difference between 5 cents and 6 cents?

Mr. Hunt: Possibly not altogether, but it seems to me it might have some bearing because of necessity a company cannot get a new rate until it shows a condition which really demands that rate before. I believe the Commission has even put into effect rates, has it not, that relate back some time.

Commissioner Slocum: Not that I know of. I would like you to call my attention to a single case where we have allowed any rates to date back. There was one question of a few days in the reading of gas meters.

Mr. Hunt: That is what I refer to.

Commissioner Slocum: But that was not any order of the Board. It came up by way of discussion after the meters had been read, and some of the consumers said their meters were read the 25th day of February and the order did not take effect until the first day of March and there was five or six days reading that they had some debate about.

Mr. Hunt: Of course we do not offer it as being the basis, the sole basis for the increase.

Commissioner Slocum: No, but I think it is wholly irrelevant.

Mr. Hunt: I won't press it.

Q. What rates of fare do you charge on suburban lines as compared with the rates of fare charged elsewhere on suburban lines throughout the State?

Mr. Record: I object in the same way.

Commissioner Slocum: I sustain the objection.

Witness: May I state what the rates of fare on suburban lines are, as a fact?

Commissioner Slocum: No, sir, not in this proceeding. It is immaterial to us what the rates of fare are anywhere else under an old schedule and under different times.

Mr. Hunt: I think Mr. Johnson meant on our line. There would be no objection on that, what the rate per mile would work out on our own line.

Commissioner Slocum: No, not on your own line. I thought you were talking about other lines, comparative charges and comparative rates, and I would not permit that.

Witness: The rates of fare on our suburban lines from the corner of State and Broad Street, where all cars pass, to the terminus of each suburban line, figure per mile as follows: On the Yardville line 1.5 cents per mile. On the Princeton line one cent per mile.

Mr. Record: Is this car miles you are speaking of?

Witness: No, per mile of track. The Hopewell line three tenths of a cent per mile. On the Trenton Junction line 1.6 cents per mile. On the Hamilton Square line 1.3 cents per mile. On the Fair Grounds line 1.3 cents per mile. To the terminus of the line in each case.

Q. I believe you have estimated, Mr. Johnson, that by the collection of a 6 cent fare where 5 cents is now collected and by discontinuing the sale of 6 tickets for 25 cents, an increase somewhat over $201,000 for the first 12 months, if the 6 cent fare is put into effect, have you not?

A. Yes.

Q. (By Commissioner Slocum.) First, how do you make that up? How much would you receive from the withdrawal of 6 tickets for 25 cents?

A. The way that was made up was stated at the previous hearing.

Mr. Hunt: I just brought that up to connect this other question.

Commissioner Slocum: I would like to have it.

Mr. Hunt: I think perhaps your Honor was not here.

Mr. Record: About half and half, wasn't it; about $100,000 on the strip tickets and about $100,000 on the one cent. That is the way I remember it.

Commissioner Slocum: If it is in the record I don't want to delay the examination.

Mr. Record: I think it is in the record, and I think it is in the petition, too, isn't it?

Commissioner Slocum: Then don't waste any time, go on with it.

By Mr. Hunt:

Q. On that basis, Mr. Johnson, of that calculation, how much of this would be received from suburban lines beyond the first fare zone?

A. $19,154.61.

Q. And is that first fare zone practically all within the City?

A. No, the first fare zone is without the city limits in each case, but it gives the only point concerning which we have records covering revenues. It has been applied in various statements at this hearing.

Q. But the fare point is not far, generally, beyond the limits, is it?

A. Well, it varies. It is in no case more than a mile.

Q. In the case of the Trenton Junction line?

A. In the case of the Trenton Junction line it is much less than a mile. In the case of the Prince-

ton line it is nearly a mile, I should say. In the case of the Trenton Junction line the city limits extend out some distance beyond the built up part of the city.

Q. Has anything occurred since the last hearing in connection with the wage payroll which will affect your estimates submitted to this Board of the amount of payroll wages for the next six months?

A. It has. About the first of June our motormen and conductors, particularly, asked for a higher rate of wage than we were paying. We, after a number of meetings, and in order to prevent a possibility of discontinuance of service, sent them this communication, dated June 10th last; "The Executive Committee of local 540 of the Amalgamated Association of Street and Electric Railway Employees has asked, in view of the increased costs of living due to the war conditions, that the rates of pay provided for in our agreement be increased, although that agreement does not expire until July 1st, 1919."

"The company realizes that costs of living have increased for the same reason, that costs of doing business have increased, not only during the period of the war, but to a lesser extent for a number of years prior to the war."

Q. (By Mr. Record.) To a larger extent, is that?

A. To a lesser extent.

"This Company is now and has for some time past been operating at a daily loss.

"The costs of rendering service to the public have for some time past exceeded the revenues of the company derived from the transportation of passengers at the present rate of fare.

"The Company has for some time past been endeavoring to secure authority to collect on its cars the same rate of fare as is charged by other traction companies rendering similar service throughout New Jersey.

"During this period of time the rates of wages paid by the company have been on several occasions increased.

"The rate of pay covering platform time of motormen and conductors, is, according to our agreement, 29 cents per hour.

"In the expectation and belief that the justice of our application for authority to collect an increased rate of fare with which to provide increased revenues will be recognized, the Company in recognition of the increased costs of living to which the motormen and conductors are subjected, is willing to make the following increases in their rates of wages, effective July 1st, 1918."

"For the first six months of service thirty cents per hour platform time.

"Next four and one half years service thirty-five cents per hour platform time.

"After five years service forty cents per hour platform time:

"The Company will pay a minimum wage of $17.50 per week, platform time, to such motormen and conductors, in good standing as report regularly at all roll calls, including when necessary, three roll calls on Saturday, Sundays, Circus Days, Decoration Day, Fourth of July, Labor Day and Fair Week, and perform all work as directed each day for the entire preceding pay day period.

"This increase in wages will not operate to reduce present wages paid any motorman or conductor.

"This wage scale will take effect July 1st, 1918.

"In case the motormen and conductors prefer a flat rate to a sliding scale of wages, the company is willing to pay such a flat rate of wages as will require the same total wage fund that the proposed sliding scale of wages will require."

To that the following answer was received, Tuesday of this week; "RESOLUTION:

Whereas, we the employees of the Trenton and Mercer County Traction Corporation through our representative Committees have repeatedly beseeched our employers to grant us an increase in wage sufficient to maintain an American standard of living, and

Whereas, the time has arrived that it is an absolute impossibility for us to meet our obligations under the present wage rate paid by the above named corporation, and

Whereas, division No. 540 of Trenton, New Jersey of the Amalgamated Association of Street and Electric Railway employees of America has made every effort and has succeeded up to this time to keep its members at work despite the fact that for the past several months they have been desirous of quitting their present employment and seeking work elsewhere and this has all been done with the belief that the corporation would see the feasibility of granting the men a substantial advance, and

Whereas, we desire to co-operate with our Government by doing our full share in whatever manner we are capable of, to bring about a speedy and successful end to the horrible conflict now being waged by the United States and her Allies so that autocracy will be wiped out and a lasting peace with democracy reign forever,

Therefore be it RESOLVED, that we, the employees of the Trenton and Mercer County Traction Corporation demand a flat rate of 40 cents per hour for platform men and a corresponding increase for all other employees also time and one-half time for all overtime for our services, to take effect not later than Friday, June 14th, and be it further

Resolved That if we are not notified before the above date that we, as an organization will not further be responsible for the actions of our members, and be it further

Resolved That in the event of the men failing to report for work we, as an organization, will make every effort to have them return in case the Government takes over and operates the road pending an adjustment of the wage question, and be it further

Resolved, That a copy of these resolutions be forwarded to the Trenton and Mercer County Traction Corporation, the United States War Board and the press of the City.

(Signed) W. N. Frizzell, *President.*)"

The wage scale that we offered would require 35— $37,000 a year in addition to the present payroll. That would be $15,000 to $17,000 more than we estimated in our appeal to the Board of Public Utility Commissioners in case we were granted the 6 cent fare.

To accede to the demands of the employees to pay a 40 cent flat rate and give the advance requested to other than motormen and conductors would require about $80,000 a year payroll in addition to our present payroll.

Q. (By Mr. Record.) How much more in addition to what you have estimated in your petition?

A. $60,000 more.

Q. The offer that you made makes $17,000 more?

A. Yes.

Q. So the difference between you is your offer of $17,000 and their demand equivalent to $60,000, is that right?

A. The difference between the company and the men, you mean?

Q. I mean the difference between the results of the two demands and offers would be a $17,000 increase over your estimate in the petition, if your offer is accepted, and $60,000 increase if their demand—if you are forced to accede to their demand, is that right?

A. That is correct.

Q. (By Commissioner Slocum.) A difference of $43,000?

A. Yes.

Q. (By Mr. Hunt.) Does that take into consideration time and a half, is it, for overtime?

A. No, that does not allow for any time and half for overtime on the theory that we would hope to hold that to a very small amount.

Q. Are your car barn men and power house men also members of this union?

A. They are.

Q. And would receive the increase?

A. Their resolution asks that they be granted that increase of 10 cents an hour.

Mr. Record: If the Commissioner please, I would like to move (that is all on the record, so we understand it) that that be stricken off the record for the purposes of our side of the case. It does not appear as a fact yet. I think there is a theory of the case upon which they might put in testimony that they have, since the last hearing, increased the rates. Here we have some correspondence, but no facts yet. It does seem to me that before we come together here again that will eventuate into a fact, and then we can put it on the record. Now it is simply some trouble.

Commissioner Slocum: There is nothing to show any increased wage at this time. It does show a demand for increased wages and nothing more.

Witness: There was an offer for half the demand, about half the demand.

Commissioner Slocum: Yes, but that has not been accepted.

Witness: No.

Mr. Hunt: Anything further?

Witness: Nothing further?

Mr. Hunt: That is all.

(Commissioner Slocum:) It will be continued until June 25th, at eleven o'clock here.

Adjourned until June 25th, 1918, at State House, Trenton, N. J., at eleven o'clock.

TESTIMONY

BOARD OF PUBLIC UTILITY COMMISSIONERS

Trenton, N. J., Tuesday, June 25th, 1918.

Before the following Commissioners:

A. S. MARCH, ESQ.
G. F. WRIGHT, ESQ.
L. E. HERRMANN, *Counsel.*

Appearances:

For the Company, F. S. KATZENBACH, JR., ESQ., and E. M. HUNT, ESQ.

For the City of Trenton, GEORGE L. RECORD, ESQ., and C. E. BIRD, Esq.

For Pennington, C. R. RUHLMAN, ESQ.

For Hopewell Township, E. C. LONG, ESQ.

RANKIN JOHNSON, recalled on behalf of Petitioner.

Direct examination by Mr. Katzenbach.

Q. Mr. Johnson, the last hearing upon the petition of the traction corporation was on June 13th, 1918. Since that date have there any matters transpired which would in any way affect the payroll of the company?

Yes.

Q. Will you state what matters have transpired since June 13, that affect the estimates that have been heretofore given by you in this proceeding of the amount required for the payroll during the year 1918?

A. An adjustment of the wage question has been arrived at with the employees of the company by which the motormen and conductors are to receive a flat rate of thirty-five cents per hour commencing June 15th and thirty-eight cents per hour commencing July 1st. There have been certain adjustments also in wages paid in our power house and car barn. These increases in wages will increase the payroll for the twelve months following July 1st, by approximately $55,000 above that estimated in connection with our appeal to the Board of Public Utility Commissioners or $35,000 above the amount which we estimated in that appeal that we would increase the wages of our employees in case we receive a six cent fare.

Q. Then, in other words, the estimate that you made for 1918, so far as the payroll is concerned, will be increased $35,000 over and above that estimate to which you have already testified in the previous hearing?

A. Yes. To make that clearer perhaps; we estimated that we would increase our payroll requirements in case we receive a six cent fare, by $20,000. It will be increased by $55,000, so that the net increase over that estimate is $35,000 and that will be for the 12 months following July 1st, not just for the year 1918.

Q. Have you prepared a list of the dividends that have been paid on the capital stock of the company, underlying companies, from the year 1891 down to the year 1910?

A. I have.

Q. Will you hand that to the stenographer?

Commissioner March: Do you offer that?

Mr. Katzenbach: Yes, sir.

Commissioner March: Any objection, Mr. Record?

Mr. Record: Not at all.

(Statement of dividends paid on capital stock from 1891 to 1910 received and marked Exhibit P-14.)

Q. Mr. Johnson, is this application for an increased fare in the nature of an emergency application?

A. It is.

Q. It is due to the existing war conditions?

A. It is.

Q. Did you order the appraisal to be made by the J. G. White Company?

A. I did.

Q. What were your reasons for having this appraisal made by Mr. Burke and his associates of the J. G. White Company?

A. In 1915 we were before the Board of Public Utility Commissioners for an increase in rates on what we believed to be our franchise rights. There was no appraisal of the property other than admitted approximations that were submitted by us for what they were worth, in view of the desire of the Board to have something in the nature of a valuation. They were not satisfactory. In the report of the utility commission dated December 13, 1915, it was stated that the valuation of Rankin Johnson was made in a very general way, and that an examination of the Breckenridge valuation disclosed certain errors and omissions due to the use of low unit prices and to insufficient estimates of quantities. Mr. Betts, in his report on the property early in 1911, stated that his estimate of the physical property therein contained was a general approximation Mr. Betts stated that his valuation did not in

clude various items customarily included in appraisals of physical property. Mr. Betts said that he spent on his report four or five days and that he had only one assistant who spent further time on the report.

Mr. Record: I must object to this. I always try to get this Betts report into these proceedings and I cannot get it in. Now he is giving his version of the report.

Mr. Katzenbach: I think you are mistaken. He is just giving the reasons why he had this appraisal made.

Mr. Record: Under the guise of giving his reasons, which I did not object to, although I think that is objectionable. It is immaterial what his reasons were for putting some evidence before this Board, but I was going to let that pass. Now, when he undertakes to summarize and give his construction of the Betts report I object, unless the Betts report is put into this proceeding, which I am perfectly willing to have done. We cannot have his version of the Betts report under the guise of a reason. I think the reason why he gives his evidence is immaterial. The evidence is the thing. I protest against this part of it.

Commissioner March: What have you to say as to its materiality, Mr. Katzenbach?

Mr. Katzenbach: I think that it is material, particularly in connection with what further, I presume, Mr. Johnson will say. In other words, the purpose of this is to show that Mr. Johnson, having this appraisal made with the exhaustiveness that it was made, was prompted to do so by the imperfect appraisals that have been made in the ticket litigation, and also by reason of the fact that the Board in promulgating its order

known as order number 15, had expressly stipulated that there must with any petition for an increase in the rate of fare,—that such petition must be accompanied by an appraisal of the property of the company. I wanted to show by Mr. Johnson just the reasons, first that prompted him to have this appraisal made, and that was the fact that the other appraisals had been mere approximate estimates and secondly, that he was complying with the very rules of the Board in having this appraisal made.

Commissioner March: Of course that is obvious, the rule of the Board, we all know about that. I don't see where it has any material bearing.

Mr. Katzenbach: I will just ask Mr. Johnson to omit any reference to the Betts report, and just continue, Mr. Johnson, as to the further reasons that prompted you in making this appraisal.

Mr. Record: Now, just going a little further, Commissioner March, as I remember it, was not here at the last hearing, and I might perhaps be permitted to make this statement—the Mayor was not here: When the expert for the company who made this new valuation was put upon the stand, he submitted a very elaborate valuation of this property and very beautifully gotten up, a complete piece of work. I objected to its introduction upon the ground that after an exhaustive hearing only two years ago, this Board had fixed the value of this property at $3,200,000, and that that was res adjudicata, if anything was, and that all they could do was to come in here and show that new property had been bought or that some obvious mistake had been made as to certain details, and supplement them. I think I state accurately the position of the Board when I say that Judge Slocum seemed to think that

that point was well taken. He, however, withheld a formal ruling on it finally, but said we will admit that valuation for whatever it might prove to be worth. It is my intention when we are through with this to again move to this Board, for reasons which I will then tell, for a more definite ruling upon that point.

Now, obviously, it seems to me, what the Mayor is doing is trying to strengthen that part of his fences under the guise of testimony. We were here before this Board week in and week out two years ago with a valuation which then was not a guess or approximation but which was then a set of charts and exhibits, an accurate thing down to the last bolt, in those days. It seems to me this witness cannot sit up there and characterize in a different way his old testimony. Let him produce his testimony and say, the mistake in the valuation of such and such property that I made two years ago was so and so; I reckoned copper at such a price instead of such a price; I left out such and such cars; I omitted such and such property. Now, he is making here an argument under the guise of an answer to the Mayor's question why it was not a true estimate. Let him state, let that question come up, that he takes up his old estimate, picks it to pieces, tells wherein it was wrong and so on. I press that objection. It seems to me this whole line has nothing to do with this case.

Mr. Katzenbach: I think we can come to an agreement, because I just ask, Mr. Johnson, if you will just state wherein the estimates that you have referred to, that of Mr. Betts and of yourself were inexact, as one of the reasons why this estimate or appraisal of the J. G. White Company was made by your direction.

Witness: As to Mr. Betts' estimate?

Mr. Katzenbach: Yes, Mr. Betts and your own.

Witness: Well, Mr. Betts' estimate—

Mr. Record: I want my objection noted. If he goes into the Betts estimate, the Betts estimate must go in here. He cannot talk about it. I want that in here. How is he going to comment on something that is not in the record?

Mr. Katzenbach: I want to say, this appraisal, all that leads up, it is the reason that prompted Mr. Johnson to have this exhaustive appraisal, as Mr. Record concedes, made.

Mr. Record: He might as well give his reasons for hiring you instead of some other lawyer.

Commissioner March: Was the Betts appraisal, was that the one on which this other report was based two years ago, or three years ago?

Mr. Record: I think yes. The way that came about was this: When these gentlemen took over this property and formed their new company they made an appraisal, Mr. Johnson did, which came in evidence afterwards. Mr. Betts made an appraisal for your Board, to determine whether you would sanction the lease or not. That was in the fall of 1910, as I remember it. When we got into this litigation over the rates and Mr. Johnson had put in his report, I think on motion of Mr. Sommer, who was then counsel for your Board, the Betts report was brought in and Mr. Betts finally took the stand and testified as to how he made that report up, so that in the 1915 case Mr. Betts' testimony and his report of 1911 got into the case and was a part of the evidence upon which your Board fixed the value of this property at $3,200,000.

Commissioner March: We rule, if he goes into the Betts report you have a right to have it presented here for your side of the case.

Mr. Katzenbach: I don't think Mr. Johnson is going into the Betts report. He is merely to make the statement, as I understood him to say, that the Betts report was an approximate and inexact report.

Mr. Record: That is the thing, that is the question.

Mr. Katzenbach: And that was why he had an exhaustive report made in conformity with the rules of this Commission.

Mr. Record: Mr. Betts had men out three weeks, he had a half dozen men three weeks on the property.

Witness: One man, he said, he had as an assistant, and he was on it four days.

Mr. Record: There is a question about what he did say.

Mr. Katzenbach: I think Mr. Johnson can anser this question without any reference to the Betts report.

Commissioner March: We will allow the question.

Q. Without stating what was in the Betts report, just give your reasons why you had Mr. Burke prepare this present appraisal?

A. Mr. Betts stated that he spent on the report four or five days—

Mr. Record: I object.

Commissioner March: Objection sustained.

Q. Don't say what he stated. Just say—

Mr. Record: Wait a minute.

Q. Not what Mr. Betts stated, but what were your reasons for having Mr. Burke make the report?

A. Because each of the previous reports were approximations.

Mr. Record: I object. I object as to both of them.

Mr. Katzenbach: I think that is perfectly proper.

Mr. Record: He cannot characterize his own report any more than he can Mr. Betts'.

Mr. Katzenbach: He is giving his reasons now.

Mr. Record: Both reports he says.

Mr. Katzenbach: Those are simply the reasons. They don't say that that is so or is not so, but that is what prompted this witness to act. That is an entirely different matter.

Commissioner March: How is it material, Mr. Katzenbach, as to what reasons prompted him? The conference ruling of the Board calls for an appraisement to be made and filed.

Mr. Katzenbach: Yes, sir. I was just leading up to that. I want that, and then he will supplement that probably, undoubtedly give that as the additional reason.

Commissioner March: We will sustain the objection.

Q. Will you state whether the conference ruling made by this Board was one of the reasons that prompted you to have this appraisal made?

A. It was.

Q. And state when you became acquainted with this ruling of the Board, whether it was before this present application was made?

A. Yes, it was in April, and we were confronted by the situation of being under the necessity of making application for increased rates, due to insufficiency of revenue, without having an exact or complete appraisal of the property.

Mr. Record: I object to that. That is that same business over again. I insist that there has been the most exact and elaborate valuation in this controversy before.

Commissioner March: We will allow the answer to stand. It may not be worth anything, Mr. Record. We will allow it to stand.

Witness: It was therefore determined, in view of the conference ruling of the Board above referred to, to go to the considerable expense necessary to have a complete and exhaustive appraisal of the physical property made in order to meet to the fullest extent possible the recent conference ruling of the Utility Commission. The estimated cost of production of physical property as presented by the J. G. White Engineering Corporation is the only carefully made, exhaustive and complete appraisal of our property in existence.

Mr. Record: I insist upon that objection being ruled on or else the Betts report goes in; that is my point.

Mr. Katzenbach: No reference to the Betts report.

Commissioner March: I did not hear you.

Mr. Record: He says in conclusion there that the J. G. White appraisal is the only careful,

exact and comprehensive appraisal that has ever been made of this property before your Board. That characterizes as inaccurate and incomprehensive two other reports that were in evidence.

Commissioner March: That is a matter of argument. This evidence may not be material, but it is a matter of argument.

Mr. Record: What is the ruling?

Commissioner March: I say the evidence may be immaterial, but I think that is a matter of argument. The evidence will be admitted.

Cross examination by Mr. Record:

Q. Mr. Johnson, in your testimony, in estimating the gross revenue for the remainder of this year, showing that it would be less, in your judgment, than last year, as I recall it, you gave no reason except your suggestion that there were less people here; men have gone away. Have you any information that would indicate that Trenton is in any different situation in that respect than any other place?

A. Yes; large numbers of laborers are working in Bristol and Tullytown who were formerly employed in Trenton, and I am informed some of the factories here, which last year were working at reasonably full capacity, are working at less than full capacity now. I refer chiefly to the potteries.

Q. With reference to Roebling's, aren't Roebling's running heavier than last year?

A. They are not the potteries.

Q. I am asking about them.

A. Oh, yes, they are running probably at as full capacity as they were last year. I don't know as to the exactness of that statement.

Q. Have you any information, definite information as to the number of workmen who have left this town, and the number who have come in, as against a year ago?

A. I haven't definite information.

Q. Then your suggestion, or the statement that workmen have left, is based not upon any accurate figures from any industry?

A. No, sir.

Q. You say in this petition and in your testimony that you want $500,000 additional money, to be spent in what you call, as I recall, betterments, or something like that. Will you state what you need that money for?

A. My estimates, covering more or less that amount, which have been made from time to time, have included additional modern cars, an additional car barn with the track facilities, additional machinery for the machine shop, additional units at the power house, with certain auxiliary equipment, some additional trackage.

Q. Did you not say in the service case that the service rendered by this company was adequate, and that if you had additional money you could not improve the service?

A. No. I think that my statement at that time was that I believe the term "good service" or "adequate service," whatever form the question took, was a relative term, that it was necessarily compared with service in similar properties elsewhere. I was then asked whether, if we had the money to purchase additional plant or equipment, what we would buy, and I named additional cars, additional car barn equipment, additional unit at the power house, and I don't recall what else.

Q. I read you from Page 520 of the record in the service case, which is now made a part of this record. "Q. If you had a surplus in the

treasury of your corporation, would you devote it to dividends, or would you devote it to additional equipment, or purchases of plant?" "A. I would devote it first to certain additions." "Q. Will you name them?" "A. I have named them." "Q. Is that all you would do if you had the money?" "A. It would depend upon the amount of money." "Q. If you had sufficient money in your treasury would you put on any additional cars in the rush hours?" "A. I would put on our present rush hour schedule, and if we had the funds, and were able to do it, I would replace the single truck cars with a modern type of car; and in doing that I would want to keep an open mind as to the type. I would want to consult, as far as the patrons of this road have ideas, the preferences, the type of car most satisfactory to the people of Trenton. That has been our plan; we have replaced the single truck cars by a car which we think is the most satisfactory for Trenton, by degrees, buying ten modern cars, the new cars, at a time." "Q. But you would not buy additional cars over and above your present rush hour equipment?" "A. No." "Q. Are the improvements that you have suggested all the improvements that you would make in your service if you could, had the money?"

"A. Those are the ones, yes, the only ones I would consider justified."

Do you say that in some other part of your testimony you added other ones?

A. You have omitted, I believe, in that where I said that I would add the power house machinery, car barn machinery.

Q. That is not on this page. It may be somewhere else, but it is not here.

A. That may be true.

Q. My recollection was, you said somewhere else that you might—if you had the money you would add an additional unit?

A. Yes.

Mr. Hunt: Read Page 517; there you will find it. You start in the middle.

Q. "Q. Have you at any time publicly stated that under certain conditions you could render better service?" "A. Yes." "Q. Can better service be rendered?" "A. Yes." "Q. In what respect?" "A. It would be better, for example, if— that is, better service, for example, if the cars which we operate during evening service were all of the latest type. We would like to have an additional unit in the power house for reserve, that would be, if not called on, would result in no apparent improvement of the service; but it would be a reserve unit." "Q. How would the additional unit in the power house improve the service?"

Do you find anything about the car barn there? That seems to end that.

Mr. Hunt: It shows some other additions.

Mr. Katzenbach: There is more.

Mr. Hunt: Read right on.

Q. Page 518: "Q. How would the additional unit in the power house improve the service?" "A. As I say, it would not directly affect it. Just as that might be, what might be called an indirect improvement in the service." "Q. Did you say you would like to have an additional unit?" "A. In reserve." Q. Yes." "A. So if there were one excess unit, or two of them on a breakdown there would be no interruption to service." "Q. Under the existing conditions have you had any experience with one or both of them breaking down, so as to demonstrate the need for a further reserve?" "A. No. We know that is possible. We have, fortunately, not had an occurrence which interrupted the service for more

than about twenty minutes, that is, at intervals of two or three minutes, for twenty minutes, this winter." "Q. Would you say your company today, in order to have the proper equipment to establish this service in Trenton, ought to have that reserve of another unit?" "A. I don't think there is any necessity in the matter. Of course, something might happen in any case that would put several out, no matter how many you have. I would like to have another; I don't think it is a necessary addition." "Q. But as a trolley operator, that is your judgment, there ought to be another one there." "A. I should like to have another one, yes." "Q. What other way could you improve the service?" "A. I should like to have one or two additional machines in the car barns which would be more an indirect improvement in aiding those in charge in operating the property, than any direct improvement in the service." "Q. What other additional equipment?" "A. So far as trackage is concerned, I think the City of Trenton is covered. If,however, the South Clinton line could be shifted a little farther to the north, without an additional ultimate capital increase, I think that would be an improvement."

Then I go on to my question about the surplus and so on. That seems to cover it. Do I understand you now to say that you want money for a new car barn?

A. Yes, sir.

Q. Will you state in a general way how you divide this $500,000?

A. I should say I would put it this way: Approximately half of it for rolling stock—

Q. New double truck cars?

A. Yes, sir.

Q. How many?

A. Well, say fifteen, sufficient to replace the single truck cars in operation, whatever that number should be.

Q. You mean—Pardon me just a minute—You mean sufficient to give the same carrying capacity as the carrying capacity of the fifteen, or would you now put a new car on for the old car discarded?

A. A new car on for the old car discarded; a sufficient number so that our present schedules could be operated entirely with double truck cars, or modern cars. There is one car, or rather one operated on Market Street, which might be continued as a single truck car, even though we had an ample number of double truck cars, because the seating capacity of the single truck cars is almost never filled, even in rush hours. I should say sixty thousand dollars on the car barn building and machinery, seventy thousand dollars power house equipment.

Q. For what?

A. Power house equipment. The remainder for trackage.

Q. Outside of the additional space in the cars of the new type, as against the smaller space in the type discarded, that would not enable you to earn any more money, would it?

A. No. This additional expenditure which I have mentioned would not increase our earning power, except possibly in the greater attractiveness of the modern cars over the older type, so far as that might induce a few additional riders to ride.

Q. What is your judgment about that?

A. I think it would affect it very little.

Q. Have you any estimate as to the number, as to the increase in receipts that would come from the additional seats provided in the new double truck cars over the discarded dinkies?

A. No, sir. We are operating now a sufficient number of seats to carry a great many more passengers than are being carried.

Q. In the rush hours?

A. Yes, sir. We could carry a large increase in

the present number of passengers during rush hours.

Q. And your cars are not now overcrowded in rush hours?

A. Some cars are; many are not.

Q. What do you consider your rush hours?

A. From 4:15 to 6:15 at night, although that varies a little on different lines, and from, say, 6:00 to 8:00 in the morning, although that varies a little on different lines.

Q. Does your rush business commence a little after four o'clock?

A. In the afternoon, yes, sir; and a quarter past six it is generally pretty well cleared up, P. M.

Q. Between five and quarter past six, between quarter past five and quarter past six, which is the congested hour, do you pretend that you have accommodations for all that offer now?

A. On some of the lines we have not at all overcrowded conditions. By overcrowded conditions I would say a standing load, equal to, say, seventy or eighty per cent. of the seated load.

Q. If you had these new double truck cars then, you would not anticipate any particular increase in the receipts; is that your conclusion?

A. There would be some I would anticipate, but not much.

Q. Not much. You would not, as I understand it, with these double truck cars, you would not run cars any quicker than you do now; you would maintain your present schedule, simply substituting the modern car for the old type?

A. Yes.

Q. Then outside of the greater attractiveness of the new car, and what additional seating capacity they might have over the other cars, that is the only additional service that you would render if you had this money, to the people of Trenton?

A. With the other things that I mention.

Q. I am talking about the service of actually carrying the people back and forth?

A. Yes, sir.

Q. That is, you would not give them any better service with this $500,000 than you do now, except whatever additional seats there might be in the double truck car, as against the old type car; is that your position?

A. In so far as the additional cars only are concerned, of the things I mentioned, you mean?

Q. I am trying to get you down to a definite statement.

A. I have stated.

Q. You want $500,000; you say you want to spend it in a variety of ways?

A. Yes.

Q. I am trying to get, what is the net result to the car rider on the street? The only additional service you would render to the car riders of Trenton, after you had spent your $500,000, would be the additional comfort of riding in a new car, as against an old car, and the additional space the new car would afford, as against the old car; that is the additional service that you would render to the man on the street, isn't it, and the only service?

A. Yes, the new cars would replace the old ones and the present schedule would be continued.

Q. And that is all that the car rider would gain; that is all the people would gain in service, just that change?

A. Due to purchasing the new cars, perhaps so, yes.

Q. Now in the service case, did you not endeavor to give the Commissioners the impression that these changes were not necessary and should not be ordered?

A. You mean these additions that I have mentioned?

Q. Yes.

A. Why, at the present rate of fare, I don't think they should be ordered.

Q. Didn't you practically give the Commission the impression they were not needed for adequate service?

A. I think they are not necessary at the present rate of fare.

Q. Do you think they are necessary for adequate service, irrespective of fare?

A. No, for the reason that, as I stated in the other case, adequate service or good service is a comparative term. Similar single truck cars are operated on properties generally throughout the State. For that reason I do not believe they should be ordered.

Q. Do you believe that you are giving to the people of Trenton adequate trolley service?

A. Yes, sir, at the present rate of fare.

Mr. Record: I would like, if the Commissioner pleases, to have an answer to that question. Here is a man in charge of the business; the rate of fare has nothing to do with it. He is entitled to a proper rate of fare, to be determined by the considerations which we have adopted here. I am asking him now if he considers he is giving proper and adequate service to the people of Trenton. I think I am entitled to an answer, and would like to get it, if I can.

Mr. Katzenbach: I want to submit that is an answer. That is an answer.

Commissioner March: I hardly think so, Mr. Katzenbach. He can answer it, and if you desire to bring out anything, you can do so on redirect. I think he ought to answer the question without any qualifications.

A. Yes, I do think we are giving safe and adequate service.

Q. Do you remember what you spent for repair account during the year 1917?

A. You mean repairs and replacements, or do you mean to separate the repairs from replacements? In our accounts that is all handled together; we have not separated it.

Q. What I was carrying in my mind was, when we commenced these litigations, you were spending something like $60,000 for an item which you designated in some way, which I carry in my mind as repairs and replacements, or what you call perhaps depreciation account.

A. That was it. In 1917 we expended $130,000 for repairs and replacements, so-called depreciation.

Q. In 1916 do you remember how much it was?

A. In 1915 it was approximately $69,000.

Q. That is the first figure we had. Then didn't you go the next year to about $90,000, something like that?

A. I can give you those figures. They were offered in my direct examination.

Q. Yes, they were. I thought you might remember them.

A. They are in one of the exhibits.

Q. I won't press you on that for the moment.

Mr. Katzenbach: We can get it in just a minute. Mr. Record.

Mr. Record: All right.

Witness: In 1915, $72,927.20; in 1916, $98,623.58; in 1917, $130,753.44.

Q. Those additional sums actually expended, not counting your estimate for this year, were the increases from one year to the other, due to increase in prices, or due to the larger amount of repair work?

A. Chiefly to the larger amount of repair work.

Q. Why did that necessity arise?

A. Well, we did a larger amount of repair work each year, because we found more places

to repair, more points, more items of physical property had reached the end of their useful lives and were replaced.

Q. You estimate that you would like to have $175,000 a year to put in this depreciation fund, if you had the money. On Page 35 of your settimony you say—I asked you the question: "You consider it would be to the public interest to spend that sum, $175,000, if you had such a rate of fare as would permit the setting aside of that fund?" "A. I do." "Q. (Continuing.) On the property."

Now, is it not a fact that this property needs a certain amount to be expended on it to keep it in proper repair, no matter what the fare is; isn't the necessity for proper repair a necessity, no matter what the fare is?

A. It is a necessity if the property is to be repaired.

Q. That is to say, if you do not have a rate of fare sufficient to allow you to set aside $175,000, and you do not spend $175,000, then the property must deteriorate, isn't that so?

A. Yes.

Q. Does it not follow then that this property has been deteriorating in recent years?

A. I do not think that $175,000 was necessarily the amount prior to the recent increase in prices. Perhaps $150,000 would have been sufficient.

Q. In other years?

A. Yes.

Q. Then that $150,000—

Mr. Katzenbach: He hasn't finished. Let him answer the question fully.

A. (Continued.) Many items in the property were replaced since 1910 by expenditures in addition to the amount of this depreciation fund expenditure which we have been discussing, so that that does not represent the entire amount expended in replacements since 1910.

Q. Of course, I cannot understand that. I asked you a few moments ago what you spent in the different years under this title, whatever you choose to give it, and you started with $69,000 and brought it to $130,000. Do I understand you to say that was not all under that title?

A. It was not all under that title. It was not all under that title. There were $258,000, I believe, was the amount that the Public Utility Commission estimated had been expended for replacements between 1910 and 1915.

Q. I am not talking about that.

A. In addition to this depreciation fund.

Q. I am talking about 1915.

Mr. Katzenbach: Let me just explain it to you. Mr. Johnson is right. If you will recall, in 1910 this property went through, commencing with that period, for several years, a rehabilitation.

Mr. Record: With the $500,000, or $800,000?

Mr. Katzenbach: Yes, $821,000. Now then, of course, there was not as much that was necessary to expend for repairs and replacements, nor as much necessary to expend for repairs and replacements during the years that immediately succeeded, but as the years go on, you get back to a condition where there would be a normal amount that should be spent on the property.

Mr. Record: That is a very intelligent explanation, but what I was trying to get out of the witness,—and I don't think, after you have stated it in that way, you ought ever to call me to account for sparing a witness.

Mr. Katzenbach: That is exactly what he said. I am only explaining it.

Mr. Record: I don't think he has said it. I am perfectly willing that explanation should come out.

Mr. Katzenbach: I stated exactly what I understood the witness to mean.

Q. Do you adopt your counsel's statement?

Mr. Katzenbach: I object to that question.

A. I stated that we had expended $258,000, approximately, since 1910, on replacements, in addition to what was expended under the depreciation fund.

Q. Then that money must have been expended upon some other work than the depreciation work, wasn't it, another account?

A. It was in another account.

Q. That is to say, in effect, what you mean is that in 1910 this property was so run down by virtue of the fact that it had not had this—

A. I don't mean that.

Q. Wait until I get through. —by virtue of the fact it had not had the necessary upkeep put upon it each year, that extra money had to be used in rehabilitation; is that a correct statement?

A. No, sir.

Q. Mr. Johnson, either you provided a fund from 1910 on, to take care of the replacements and repairs, out of earnings, or you provided that fund out of new money, which is the fact?

A. We did both.

Q. Then so far as from 1910 to 1915 is concerned, you used new money for repair account?

A. For replacements.

Q. I am taking the repair account.

A. No, sir, not repairs. If you make a distinction between repair and replacements, we used no new money for repairs; we used some new money for replacements.

Q. Will you define the term that you use in connection with the $175,000? Let us see if we

cannot get one term that applies right through all the years. What do you propose to devote the $175,000 to? What is your term?

A. For repairs, replacements, and depreciation reserve.

Q. Repairs, replacement, and depreciation reserve? Give me an illustration of repair?

A. The painting of a car.

Q. Give me an illustration of replacement?

A. Rebuilding a half mile of track.

Q. Give me an illustration of depreciation reserve?

A. Accumulation of a fund with which to purchase new cars in replacement of cars becoming worn out, or accumulation of a fund to replace a large power house unit in replacement of a unit which has reached the end of its useful life.

Q. Wouldn't that fund also do that other illustration that you gave, replacing a half mile of track? Wouldn't that come out of that fund?

A. All three of those things would come out of that fund.

Q. Then your fund you would use one year with another is a fund that over an average of years is necessary to replace the parts as they wear out, and to keep those that can be mended, mended so that they are efficient; isn't that a fair statement?

A. Yes.

Q. And the depreciation reserve is nothing but an amount of money, accumulated on the theory that that will vary from year to year, is that right?

A. Yes.

Q. Then during 1910 to 1915 you did not replace these replacements of worn out materials, and you did not repair those materials that could be mended out of earnings entirely?

A. No.

Q. But partially out of new capital?

A. That is true.

Q. Now, they should be paid for out of earnings, should they not?

A. I think so.

Q. Then you say that from 1910 to 1915, $258,000 of new money was devoted to that purpose, instead of money from the earnings?

A. That, as I recall it, is the figure.

Q. Something like that?

A. Yes.

Q. If you had the $175,000, you wouldn't have to raise any new money, if your estimate is correct, for repairs and replacements, would you?

A. That is correct.

Q. Then that is equivalent to saying that a proper operation of this road would require that the repairs and replacements be made out of earnings?

A. In my opinion, yes, sir.

Q. And to the extent that they have not been made out of earnings, that is not a proper operation of the road, is it?

A. That is not necessarily so, if the revenues have not been sufficient to provide that amount necessary to make repairs and replacements.

Q. If the revenue has not been sufficient to provide for the necessary repairs and replacements, then they have been neglected, haven't they, or you have had to raise fresh additional capital to do it with?

A. Yes.

Q. One or the other follows, doesn't it?

A. Yes.

Q. Do you say to this Commission then that you are unable, and have been unable for two or three years, to take enough money out of earnings to properly replace and repair this property?

A. I do; over a period of years we have not been able to take out the average annual requirements, in my opinion.

Q. Then you have not spent the money on the road for those purposes?

A. Not out of that fund.

Q. Have you spent it at all?

A. Yes; this $258,000.

Q. That was between 1910 and 1915, was it not?

A. Yes; we stopped, I think, in 1916.

Q. And then you began to spend what you did spend out of earnings, having no more capital account to draw on?

A. Yes.

Q. Exhibit P-2, attached to your petition, shows at the bottom of the column entitled "Estimated for the Year 1918", in red ink figures, $212,000, in round numbers. Doesn't that red ink figure indicate a deficit for the year 1918?

A. Yes, sir, at the present rate of fare.

Q. And that does not include the new rate of fare?

A. It does not.

Q. You are sure about that?

A. I am sure about that.

Q. How much did you estimate the new rate of fare would bring in?

A. $201,194.27.

Q. $201,000?

A. Yes, sir.

Q. Since you made that estimate you have testified to an additional expenditure made necessary by this demand of the car workers?

A. Yes, sir.

Q. How much is that additional to this estimate?

A. As I recall, that was $55,000. I gave it in my direct testimony accurately.

Q. Now, turn the page, on Exhibit B you estimate that you want an increased depreciation fund for the year 1918 which would require—You want $500,000 additional capital, which you put down at eight per cent.: that makes a $40,000 item?

A. Yes.

Q. You then ask for $25,000 for an increased depreciation fund?

A. Yes.

Q. Which you think you ought to have. You then ask for increased wages of conductors and motormen, $20,000?

A. Yes.

Q. Which figure you now place at $55,000 or $50,000, or what?

A. $55,000.

Q. Then you show now a total deficit of $297,000, in round figures, if the $55,000 was added, after the $20,000 is charged off, that would make $35,000 you would have $297,000 plus $35,000, $332,000 would be your total deficit, brought down to date, with your new labor increases, would it not?

A. Yes, at the present rate of fare.

Q. At the present rate of fare. And your increase, due to the six cent fare for the twelve months, would be $201,000?

A. Yes.

Q. Now, for the remainder of this year, assuming this increase was granted, we will say, to take effect today, for easy reckoning, you would have six months of the year left, wouldn't you; then you would get only $100,000 this year?

A. Yes.

Q. Of course, to be fair to you, you would also have to cut your estimate on your capital, and so on. But let us take it for the full year; if we take that on a yearly basis, as you stand now, and you get your anticipated increase of fare, and it works out as you hope it will work out, in increased receipts, then you would be $130,000 still in a deficit, would you not?

A. We would.

Q. Now, would you mind telling me where, in the face of that situation, you can borrow $500,000?

A. We had hoped to borrow that in connection with an authorization of the War Finance Committee. It remains to be seen what can be done.

Q. It is obvious you could not borrow it from private capital, isn't it?

A. Yes.

Q. You would have to get that out of the Government some way?

A. We could not in any case borrow from private capital without authority from the War Finance Committee.

Q. If you had the authority you could not get it, could you?

A. Not unless they authorized it in some substantial way, so that they would re-discount.

Q. If you borrow that money from any source, and you have got $132,000, $130,000 deficit facing you in the next year, after you get all of these things in operation, where is your anticipation that that is going to change that deficit? Do you expect it to change as the years go by?

A. I hope so.

Q. What do you owe now, how much are you behind now?

A. Approximately $150,000.

Commissioner March: That is for 1918?

Witness: $160,000. No, $80,000 for 1918, and I took $70,000 for previous, but it is more than that.

Q. The company today owes $150,000, against which it has no assets except this lease, is that right?

A. No, some of that money is borrowed on security, if that is what you mean.

Q. That is not borrowed on the company's security?

A. On some of the outstanding bonds security.

Q. What outstanding bonds? Do you mean to say the company has issued bonds for that money?

A. No. About $70,000 Trenton, Hamilton & Ewing Traction Company bonds.

Q. You have taken the bonds instead of issuing and selling them, you have pledged them as collateral?

A. Yes.

Q. But there are no assets of the company itself behind that, except these bonds?

A. Yes.

Q. How much of a deficit—How much do you owe that is not secured by collateral of bonds; the difference between $70,000 and $150,000?

A. Yes, sir. That $150,000 is low. Those figures, of course, are approximately being asked offhand, but the difference is, yes, about $90,000, probably.

Q. And so far as you can see, your testimony to this Commission is that if you were granted all that you ask, and borrow this money, and did these things which you say, at the end of the year your deficit would be an additional $130,000?

A. Yes, sir.

Q. You say that if you got this additional money you would increase the wages of your men. I take it that that is changed now, by the latest developments?

A. That has been done.

Q. Did you state in your former testimony how much you needed per car mile to meet this bill?

A. I did. That was in my direct testimony.

Q. Yes. That got by me a little. I did not recollect. If you know what it was, I just wanted to know, for information.

A. I don't recall it exactly. It was about thirty-six cents a car mile.

Mr. Record: I was just talking to the Mayor about Mr. Witt. I want to make sure Mr. Witt gets away from here by a quarter of three. Mr. Katzenbach suggests that we could adjourn now for an hour.

Mr. Katzenbach: When you are through with Mr. Johnson.

Mr. Record: I cannot tell when I get through with Mr. Johnson. I might take a half hour yet. I would really like to have Mr. Witt secured to get away. He has an appointment in Ohio tomorrow that is important, and that is the only way he can make it.

Commissioner March: What have you to say, Mr. Katzenbach?

Mr. Katzenbach: I think the Commission usually takes an hour for lunch, and if we adjourn at half past twelve, I would be ready at half past one to cross-examine Mr. Witt, and probably would not take a half hour.

Mr. Record: I am taking up a new subject with Mr. Johnson.

Commissioner March: Make it twenty minutes of two. We will recess now until twenty minutes of two.

RANKIN JOHNSON recalled on behalf of Petitioners. Cross-Examination by Mr. Record.

Q. Mr. Johnson, did you hire Mr. Burke to make this valuation?

A. I did.

Q. Did you tell him that you wanted to have made a cost of reconstruction valuation?

A. I told him we wanted to have a complete and exhaustive estimate of the cost of reproduction.

Q. Have you read his report?

A. I have.

Q. In your judgment are the quantities and weights of the physical property therein mentioned correctly stated, so far as they are stated by measurement or weight?

A. I should say so.

Q. Do you agree with him that the so-called normal valuation is a fair estimate of what it

would cost to reproduce that property at the time he made the valuation?

A. It would cost a great deal more to reproduce it at the time he made the valuation, but I think it is fair not to take the extreme present high prices in such an estimate.

Q. Why?

A. Well, because we can anticipate some reduction, hope for some reduction in the future.

Q. Do you agree with him that the figure that he took as the cost to reproduce this property new is about twenty-five or twenty-two and a half per cent., or whatever he said, above pre-war prices?

A. I think that is a fair normal price, yes.

Q. I did not ask that at all. I am asking you if that normal price in your judgment is about twenty-five per cent over pre-war price?

A. Pardon me. I thought you asked whether that was the present price.

Q. I am not trying to catch you on anything. He said, as I understand it, that his so-called normal price was neither the pre-war price nor the present price.

A. Yes.

Q. But that it was somewhere about twenty-eight per cent below present price and twenty-two to twenty-five per cent above pre-war price, that is as I remember his statement.

A. Yes.

Q. If that is a correct statement of what he said.

A. I think that is a correct statement.

Q. Do you agree with that?

A. I do.

Q. Then your judgment is to reproduce this property new prior to the war prices it would have cost within twenty-five per cent of what he says.

A. Yes.

Q. That is your judgment?

A. Yes.

Q. Did you not testify before the State Board of Taxation that on the basis of cost reproduction new as to track and overhead very much below that proportionate item?

A. My theory, my belief as to the valuation of the property for taxation purposes has always been that it was the price that a willing buyer would pay a willing seller for each piece, and in my estimate, it was for example, the amount we could secure for each car. I did not go into the cost of reproduction new.

Q. Did you in the tax case state that in your judgment one half of the physical life of the track and overhead had expired?

A. Straight line depreciation, I did.

Q. And you still confirm that?

A. Yes.

Q. Did you state that in your judgment as to the other elements of property, that at least fifty per cent of its life had gone, generally speaking.

A. I don't believe I did on the double truck cars.

Q. You stated there I think exactly about those, didn't you, you gave the life of each of them?

A. I stated, yes, the exact life, as I did on the track, but I stated that we, in my judgment could secure a certain price for each car from a willing buyer and that also applied to power house equipment and other personal property.

Q. Do you remember what your aggregate valuation of your whole property was before the Tax Board?

A. For taxing purposes my recollection is about one million, two or three hundred thousand dollars.

Q. And your definition is that that is what this property would bring as between a willing buyer and a willing seller?

A. What the sum of each piece of property, yes sir, of each car, each piece of car house machinery, each piece of car barn machinery, each building.

Q. Separately?

A. Separately.

Q. Taking that and selling that separately as best you could in the market?

A. Yes, exclusive of the franchise, that is, with the franchise withdrawn.

Q. I am talking about physical property. But now you testify that upon the basis of reproduction new, figured at the pre-war price, your judgment is that the cost of reproduction new on such price would be within twenty-five per cent, would be about twenty-five per cent below the normal price fixed in Mr. Burke's valuation.

A. Yes.

Q. Did you state in your tax case the amount of depreciation of the power house machinery as to the lapsed life?

Mr. Katzenbach: That seems to me to be first immaterial; this is not a re-hearing of the tax case; and secondly the witness ought to have read to him the exact statement to which his attention is to be directed. All of that testimony has been printed and he ought to have the exact statement. This is merely,—the only purposes that I could see would be to test the recollection of the witness. If he wants to test the memory of the witness, if it is merely to test his memory I have no objection to it.

Mr. Record: Of course I can dig up all that testimony and do as you say. What my present object at the moment was, he said the physical depreciation or life of the track and overhead was fifty per cent and I thought I would like to get a similar statement on the record as to power house machinery, if it was true, without going back and hunting up those questions.

Commissioner March: I will allow the question.

A. My recollection is that I did give the age, as nearly as I could of each important piece of power house equipment. But in giving the value for taxing purposes of that equipment, I did it based on the statement of experts as to what a willing buyer would pay for each piece of that equipment separately.

Q. But you did state the lapsed life of each?

A. I gave the age, not the lapsed life, it may be the same thing.

Mr. Record: I think that is all.

Re-direct Examination by Mr. Katzenbach:

Q. Mr. Johnson, do you recall that Mr. Witt made a recommendation in his report to the city with reference to a change of schedule on the Princeton Avenue and Hamilton Square lines?

A. Yes.

Q. What change of schedule did he recommend?

A. At that time we were operating a half hour headway on the Princeton line and a half hour headway on the Hamilton Square line and a ten—twenty-minute headway on the Princeton Avenue, Brunswick Avenue and East State Street. He recommended that we operate an hour headway instead of a half hour on the Princeton line and the Hamilton Square line, and we apply the car hours so saved inside the city on the Brunswick Avenue, Princeton Avenue and East State Street lines. We put that recommendation into effect on February 1st.

Q. What statement, what amount of money did Mr. Witt testify would be saved to the company by that operation, or in other words what would be the addition to the gross receipts?

A. He estimated we would increase our net receipts by $21,000 approximately.

Q. Was that put in operation on February 1st?

A. On February 1st.

Q. And how long has it continued?

A. Until the present time.

Q. Have you a statement there of the effect of that change during the months of February, March, April, May, and have you it also for the month of June?

A. Yes, for the first twenty-five days of June.

Q. Will you produce that summary and state just what the effect of it has been?

A. When we had the half hour headway on the Princeton and Hamilton Square lines and the schedule then in operation on the part of the same lines within the city limits, we had six cars in operation on the Princeton and Hamilton Square lines, and those six cars all ran through the city on Brunswick Avenue, Princeton Avenue and East State Street, and we had five additional cars operating over those same streets within the city limits, making a total of eleven cars. We put his recommendation in effect on February 1st. After that date we have had three cars in operation on the Princeton and Hamilton Square lines, giving an hour headway, and eight cars on the streets, Brunswick Avenue, Princeton Avenue and East State Street within the city limits, making a total of eleven cars, the same total number. For the month of February in 1917 we operated on these through runs and city runs on these streets, this route, 6234 hours, 1917; 6311 hours, car hours, that is in 1918 with a resulting decrease in gross receipts for the year 1918 under the year 1917 of $1,845.38.

For the month of March 1917 we operated on this route 7026 car hours, 1918 7093 car hours, with a resulting decrease in gross receipts for the month 1918, under 1917, of $1,549.31.

For the month of April 1917 we operated 6705 car hours, 1918 6846 car hours, with a resulting decrease in gross receipts 1918 under 1917 of $1,449.13.

For the month of May 1917, 7172 car hours, 1918 7336 car hours, with a resulting decrease in gross receipts 1918 under 1917 of $1,689.06.

For the first twenty-five days of June we operated 1917, 5360 car hours, 1918 5637 car hours with a resulting decrease in gross receipts of $1,-741.06, 1918 under 1917.

Q. Now, Mr. Johnson, have you made a study of what the effect has been in various cities of increasing a rate of fare from five cents to six cents?

A. Yes.

Q. What cities are there of approximately the same size as Trenton to your knowledge, where the rate of fare has been increased from five cents to six cents, and what has been the effect in each of those cities upon the gross revenues?

A. In Reading, Wilkes Barre, Scranton, Wilmington, New Haven and Hartford, Connecticut, the last two, the increase has varied from twelve to sixteen per cent, due to the six cent fare collections over the previous five cent fare collections.

Q. That shows that there has been some diminution in travel.

A. Yes.

Q. But it also shows there has been an increase in gross revenues in every instance?

A. Yes.

Q. From your knowledge of the Trenton situation is the proposition made by Mr. Witt yesterday for a three cent and five cent fare without transfer practicable, in your opinion?

A. It would be, coupled with the one man car proposition, it would be very difficult to put into effect, and the risk of a very large deficit would be entirely on the company.

Q. (By Mr. Record). Would be entirely what?

A. On the company, on the Traction Company.

Q. (By Mr. Katzenbach). Any further statement you desire to make in connection with any matter that I have overlooked?

A. Not that I recall.

Commissioner March: Do you want to offer those summaries, Mr. Katzenbach?

Mr. Katzenbach: Yes, sir, I did want to offer those and I have a copy here for Mr. Record and Mr. Bird. We will have them re-typewritten and send a copy.

(Statement of operation of Princeton and Hamilton Square lines as per Mr. Witt's recommendation, February 1 to June 25, 1918 received and marked Exhibit P-16.)

Mr. Record: That is all. Mr. Bird has called my attention to the fact that in stipulating in these ordinances, there is no need of all the ordinances going in, we can stipulate the section about the rate of fare that shall be charged and so forth.

Commissioner March: That is sufficient.

Mr. Record: Then I think this ordinance to provide for the sale of six tickets, by the Trenton Street Railway Company, which was known as Exhibit C-55 in the case in the New Jersey Court of Errors between the company and the Commission, Mr. Donges and associates, defendants, ought to go in, in full. What I want to get in is not only the ordinance, but there was an agreement, we claim, that they accepted this ordinance in advance. I think that ought to go in. I would like to stipulate in the resolution passed by the Trenton Street Railway Company appearing as Exhibit C-68 in the case just referred to.

Mr. Katzenbach: And I will ask to put in the resolution C-69.

Mr. Record: And C-70; 68 and 70, we want them both.

Commissioner March: Do you want 69?

Mr. Katzenbach: Yes, I will put in C-69.

Commissioner March: Have you everything that you want in the record, Mr. Record?

Mr. Record: I think we have everything in now.

Mr. Katzenbach: I think so.

Commissioner March: Do you desire to file briefs?

(Informal discussion)

(Adjourned until Tuesday, July 9th, at State House, Trenton, N. J. at 10:30 o'clock, at which time Mr. Katzenbach and Mr. Record are each to have one hour for argument.)

(Briefs to be filed by both sides by Tuesday, July 16th.)

W. M. DICKINSON, sworn on behalf of Petitioner.

Direct examination by Mr. Hunt.

Q. Where do you live, Mr. Dickinson?
A. Trenton.
Q. What is your business?
A. Real estate and insurance.
Q. What experience have you had in buying and selling real estate?
A. We have bought and sold real estate in the City of Trenton and vicinity for twenty odd years.
Q. And in Mercer County generally?
A. Yes, sir.

Q. Were you furnished with various blue prints of property of the Trenton and Mercer County Traction Corporation, property belonging to that system?

A. Yes, sir.

Q. What do those blue prints show?

A. The blue prints show the different pieces of land in the City of Trenton and throughout Mercer County, where the traction company runs.

Q. Did you view these various properties?

A. Yes, sir.

Q. Did you make an estimate of their value?

Mr. Record: If your Honor please, I would like to make the same objection there, and I would like to have Mr. Hunt state whether these blue prints show any additional property that has been acquired since the last valuation.

Mr. Hunt: We never had blue prints of the property; it was never shown as such before in the valuation. An instance of how that was not in any sense a real valuation.—

Mr. Record: I would like to have an answer to the question as to whether these blue prints show any property that was not owned by the company at the time of the previous litigation.

Mr. Hunt: I don't know you are entitled to such an answer.

Commissioner Slocum: That is a very simple question; I think he is entitled to it. It all depends on what theory the Board is going to handle this case.

Mr. Record: I want it so as to make my proper motion.

Mr. Johnson: If I may be permitted to answer that question. These blue prints show pieces of land which were never included in any previous valuation in any detail. The valuation previously said in some cases, land or private right of way. but no layout, no plotting of the land included in these was ever made to the Board.

Commissioner Slocum: But were all the properties shown on these blue prints valued in the previous valuation fixed by this Board?

Mr. Johnson: No, sir.

Commissioner Slocum: How many of them were? Just point out where those that were and those that were not in the valuation.

Mr. Record: May I make a suggestion. I think he may misunderstand your Honor's suggestion. "Were they valued." Their point is, they were not separately valued. If you put the question: were they included in the valuation, which they made and which we made.

Mr. Hunt: So far as there was a valuation, I suppose it was included. It was supposed to include all the property and therefore these would have been included, but never before—

Commissioner Slocum: In other words none of these properties were acquired since the last valuation?

Mr. Hunt: I don't think there has been any change in that respect.

Mr. Johnson: No.

Mr. Hunt: No change in that respect.

Mr. Record: Upon that then I make my same motion as I made before with the other witness that having been valued it is res adjudicata.

Commissioner Slocum: Mr. Record's objection will be noted on the record.

Q. On what basis did you value these properties?

A. We valued them— I valued them on the basis of actual market value today in the City of Trenton, and what we thought, what It hought would be the selling value in the county. taking off portions of land like these are taken, but in so far as rights of way are concerned, not what a right of way would cost, because I never had any experience in acquiring any rights of way for railroads, and I am not competent to give a value on several pieces of land, pieced together and made into a continuous right of way.

Q. Where these were in the country would you say then your valuation was on a farm acreage basis?

A. On a farm acreage basis plus maybe an additional cost for taking off of frontage or a certain part of land that might be better than some other piece of land, being on the front instead of in a whole piece running through the farm.

Q. What are your estimates for the various pieces of property?

A. The car barn property at Lalor, Davies and Second Street, I valued— I am speaking now of the land alone, I am not speaking of any improvements, but it is taking in every one of these cases the value of just the land; I valued the land at $18,000. Go right along with it?

Q. Yes.

A. The power house land where the power house is located on Lincoln Avenue, I valued at $6,500. North Clinton and Sheridan Avenue land $5,000. Princeton Avenue, where the old building is,

$2,000. The property commonly known as the White City Park, consisting of about 125 acres in Hamilton Township, $35,000. Private right of way from the Lawrenceville road to the old Princeton-Trenton Road $350. Private right of way along the old Princeton-Trenton Pike, a piece of land approximately a mile long, $750. Private right of way from the old Trenton-Princeton Pike, running towards Princeton, a continuation of the private right of way from the Lawrenceville Road to the old Trenton-Princeton Pike, $500. Private right of way, continuation of the last piece on toward Princeton $900. Private right of way, continuation of the last piece running on into Alexander Street, Princeton, $600. Private right of way from Alexander Street, up into University Place and including property at University Place, $8,000. Private right of way from Whitehead Road to Klockner Avenue, consists of about 4 acres of ground, $5000. A piece of lowland on this same right of way consisting of thirteen and a half acres approximately, $1300. Private right of way from Klockner Avenue to Nottingham Way, consisting of a little over six acres, $1800. A piece of land at Yardville, at the Camden & Amboy Railroad, $4500. A piece of land in Ewing Township west of the Philadelphia and Reading Railroad, that is a piece about a hundred feet wide, $1000. A piece of land along the Pennington-Hopewell line, known as Hawkes Switch, $100. Piece of land over private right of way at the county bridge on the Pennington-Hopewell Road, $25. Piece of land at the Philadelphia and Reading Railroad bridge, just across on the line of the trolley beyond Pennington, $150. Curved piece of land just east of the Philadelphia and Reading Railroad bridge at Pennington, $100. Piece of land known as Cox's switch on the Pennington-Hopewell line $100. Private right of way running on the Hopewell-Pennington line at Glenmore, New Jersey, running over a low piece of ground, $100. A small piece of land

on the Pennington-Hopewell Road off a piece of James Shelby's property $100. A piece of land consisting of about eleven one-hundredths of an acre, marked on the blue print, "Purchased from the First Baptist Church" along the Pennington-Hopewell line $100. I think I left out a piece of land on the Trenton Junction road, just east of the road, just east of the Philadelphia and Reading Railroad, a little place where the station is; I put that in at $250. That is all the land that is shown on the blue prints.

Q. Have you a total, Mr. Dickinson?

A. I don't know whether I have or not. It is approximately $95,000, of the land that I valued.

Q. Do you know the Traction Companies in purchasing land have to pay much more than the market value for the land?

A. I never had any experience in purchasing land for traction companies. My opinion would be it did, but I don't know.

Q. But you have not included any such value in your valuation?

A. No.

Mr. Hunt: That is all.

Mr. Record: Did you put those in evidence, those blue prints?

Mr. Hunt: I didn't think it was necessary. I would be glad to put them in evidence for reference.

Commissioner Slocum: Do you want them in evidence?

Mr. Record: I don't care anything about their being in evidence as long as we can refer to them if we need to, that is refer to blue prints. It would seem to me to make the record right they ought to be perhaps put into the record.

Mr. Hunt: That is the way I would like to have them introduced.

Mr. Record: So we would not have to print them or anything.

Mr. Hunt: If the Commission would accept them. We have done that before.

Mr. Record: Have them identified and annexed in some way so that they are part of the case but not a part of the printed record.

Commissioner Slocum: Twenty-five blue prints showing properties referred to by the witness attached with a clip and marked Exhibit P-8.

(Twenty-five blue prints of property received and marked Exhibit P-8 for identification.)

Mr. Hunt: They come in in connection, your Honor, with this other estimate, enter into that.

Mr. Johnson: There will be a bound set of them with that other estimate.

Cross-examination by Mr. Record.

Q. Mr. Dickinson, did you appear in any tax controversy, as an expert, between the City of Trenton and this company?

A. Yes, sir.

Q. The values for the year 1916, or the tax values for the year 1916?

A. Yes, sir.

Q. Were any of the properties about which you have testified in that case any of these properties which you have testified to here?

A. Yes, sir.

Q. All of them, or parts of them?

A. No. The city of Trenton property, I think it was, to the best of my recollection, I testified on the City of Trenton property.

Q. Those items of City of Trenton property, property situated in the City of Trenton are included in these blue prints which you have offered here today?

A. Yes, sir.

Q. Were the values that you gave in that case on the City of Trenton, or property situated in the City of Trenton, the same as you are now giving?

A. No. If my recollection is correct, my price on car barn property at the corner of Davies and Lalor Streets is about $1500 less, we figured it less than we did before.

Q. Less this time than before?

A. Yes, sir, less this time. And I think we made a little change in the power house land of maybe $1000, we are a $1000 less this time in the power house land.

Q. Is that all the land that was in the City of Trenton?

A. No. There was Princeton Avenue, I put in the same and Clinton and Sheridan Avenue properties the same.

Q. So that as to all of the properties that went in on the tax estimate you have not put any higher figures here but have put in in two instances lower figures?

A. Yes, sir, a little lower.

Q. These estimates you have made are solely upon land and not upon buildings?

A. Just upon the land.

Mr. Record: That is all.

J. C. BRACKENRIDGE, sworn on behalf of Objectors, City of Trenton.

Direct examination by Mr. Record:

Q. Mr. Brackenridge, you made a valuation of this company's property in the so-ca led Six-Tickets-For-A-Quarter case two years ago?

A. Yes.

Q. In conjunction with Mr. Rand?

A. Yes.

Q. And you have here a summary of the valuation, the total valuation that you made, and the deductions for depreciation?

A. Yes.

Q. And you have in that the amounts that you allowed for overhead?

A. Yes.

Q. And contingencies?

A. Yes.

Q. Have you read or examined the exhibit offered here by Mr. Burke, containing the valuation and a summary of it?

A. I have, in a general way.

Q. Will you state what criticism you have to make of the Burke valuation, or the summary of it, as to the percentages of allowances for overhead and contingencies, and any other items, other than the mere cost of reconstruction, without those extra items?

A. I have taken a summary of his different amounts, and only a few items—I think probably I can read them off—for the purpose of showing the overhead charges that Mr. Burke has put in, which amount to 29.8% where I, in my estimate or valuation, allowed 15%.

Q. Will you state, if those are not too long, just state what those items are which you criticize, and contrast them with what you allowed?

A. Mr. Burke's figures are, track work, $2,055,438; overhead construction, $366,574; power

plant, $392,130; car barns and shops, $128,650; making a total of $2,942,792. Contingencies and omissions, seven per cent. of above, that is an item of $206,000; general contractor's profit, seven and a half per cent. of above, that is an item of $220,700. Following down, rolling stock, $564,480; shop and miscellaneous equipment, $20,195; furniture, $3,198; stores and working capital, real estate, engineering, law—well, those first three items, stores and working capital, $587,873; real estate, $100,000; engineering, $25,-450; and then another item is engineering, $168,-500.

Q. Is that a percentage?

A. No, that is an amount of money which represents a portion of his $4,800,000 total estimate. $4,875,615 is his total estimate.

Q. And the engineering comes after that?

A. No, this is included in that total amount. Engineering, $168,500; law, $25,000; interest during construction, $333,800; injuries and damages, $23,600; taxes during construction, $1,900,000; miscellaneous, $140,000.

Q. You must have read that taxes during construction wrong; you did not read that right.

Mr. Katzenbach. It is $1900 instead of $1,900,-000.

A. $1,900. That would appear to make his net cost to reproduce, $3,756,115, with an overhead of $1,119,500, making a total of $4,875,615.

Q. And that overhead is composed of the items which you have mentioned?

A. That I have read from Mr. Burke's figures.

Q. Now, assuming for the moment that his unit prices are right, what is your criticism of those overhead items?

A. My criticism of the overhead items is that they are too large, and have already been allowed in his other figures, His net cost to produce does not vary so very much, from my estimate, when I apply his twenty-two per cent. over pre war

prices to my figures to bring them up for the purpose of comparing with his figures.

Q. I want to keep that out for a minute. want to assume you and he don't differ as to unit prices, and get your criticism of this percentage allowance, assuming these prices are all right, for the minute.

A. Well, this 29.8% for overhead charges is entirely too high, in my opinion. I think fifteen per cent. is ample.

Q. Then all those items that he has included there, which aggregate twenty-nine and a half per cent., you think, would be properly allowed for if fifteen per cent. upon the reproduction cost was figured?

A. Yes.

Q.His items aggregating this $1,100,000, based on twenty-nine per cent., are figured upon his reproduction cost, on the basis of what he called his normal figures, not pre war figures?

A. His normal figure as of June, 1918.

Q. Yes.

A. What he considers a normal figure.

Q. Mr. Brackenridge, let us take up the question of figures a bit. Mr. Burke said that his figures, what he called normal, were neither present prices or pre war prices, but he said that the pre war level was, as I recall it, from twenty-two and a half to twenty-five per cent. below what he called normal. Have you examined his figures to any extent to determine whether or not pre war prices, as you understand them, were twenty-two to twenty-five per cent. below his figures, or more than that or less than that?

A. More than twenty-two per cent. below his June prices. For instance, I only took a few of the larger items. He has put rail in, girder rail, at $59 a ton, about $59 a ton, and T rail at about $50 a ton, as a price as of June, 1918.

Q. How much below that was the price of pre war figures?

A. Well, the T rail were, in June, about $33 to $38 a ton.

Q. $33 to $38?

A. Somewhere along there—I am wrong about that—not pre war. Pre war, they were $28 a ton at the mill. There has been a normal increase of $10 a ton in rail; that increase might be considered normal.

Q. That came after the European War started?

A. That is a normal increase, but this $50 for T rail is not, in my judgment, a fair price.

Q. I am not after that; I am trying to find out how much above what you call a pre war price that is, that item, for example; what would you said was a pre war price?

A. I should say that he was about thirty per cent. above the pre war price on that item.

Q. Can you mention any other item?

A. Well, as I recall it, I think he had Belgian block pavement in at $4 a square yard, which is rather high.

Q. This rail is one of the big items, I suppose, in the reproduction of the property?

A. That is one of the larger items.

Q. Can you testify as to any other items?

A. No, I did not itemize it to any great extent.

Q. You simply compared his items?

A. Simply compared his totals with mine.

Cross examination by Mr. Katzenbach:

Q. You said that Mr. Burke had figured 29.8% for the overhead charges?

A. Yes, he has figured $1,119,500 altogether, which is equal to 29.8% of his cost.

Q. What items do you say go into the overhead charges, making up this $1,119,000?

A. This is simply an analysis of Mr. Burke's figures that I have. You want the items he has put in, that Mr. Burke has put in?

Q Yes, I want you to state the items.

A. Contingencies and omissions, 7% of above. That above was $2,942,792.

Q. You say that is an overhead?

A. Beg pardon?

Q. You say that is an overhead charge, contingencies and omissions? Is that your understanding of an overhead charge?

A. Well, it is an overhead in this sense, that it takes the place of my fifteen per cent. that I allowed for engineering, overhead, contingencies and omissions, insurance and interest during construction.

Q. You are fifteen per cent. and he has allowed seven per cent.?

A. He has allowed seven here, and seven and a half in another case, and different percentages, which altogether, when you take the amount of money, take those percentages reduced to a money value, equals 29.8% of the cost of the road, 29.8% of the $4,800,000.

Q. Will you just read off what you consider the overhead charges that amount to 29.8%?

A. Contingencies and omissions, seven per cent. of the above; that is, $206,000.

Mr. Record: Might I make a suggestion? They are the items in your exhibit aggregating $1,119,000?

Mr. Katzenbach: I want him to read what they are.

A. (Continuing.) General contractors' profit, seven and a half per cent. of above, that is, $220,700; interest during construction, injuries and damages, taxes during construction, miscellaneous, add up $692,800, making a total of$1,119,500, which I consider is overhead, or the same items that I put in my estimate as overhead and covered with fifteen per cent.

Q. You say that the items of $206,000, contingencies and omissions; $220,700; general con-

tractors' profit; $330,800, interest during construction; $23,600, injuries and damages; $1,900 for taxes; and $140,000 for miscellaneous; add up to $1,119,000?

A. Yes, sir. Engineering in there; I don't think you read that, $168,500.

Q. You did not read that?

A. Yes.

Q. Do you consider that engineering as an overhead charge?

A. Yes, for the purpose of these figures, I do. That is usually considered in a percentage that is added to the net estimated value.

Q. You say that you estimated all of those charges, such as Mr. Burke has made, and which you have read, as fifteen per cent. of your physical valuation?

A. Yes.

Mr. Katzenbach: That is all.

Louis Focht, sworn on behalf of Objectors, City of Trenton.

Direct examination by Mr. Record:

Q. Mr. Focht, you are engineer of the State Board of—what is its name now?

A. Taxes and Assessments.

Q. You have been, prior to being engineer of that Board, you were engineer of the old State Board of Assessors?

A. I was.

Q. For how many years?

A. Since 1898.

Q. In the State Board of Assessors' work what were your duties?

A. Valuation of railroad property.

Q. In the valuation of railroad property, what was your specific duty? Just state to the Commission what you did, specifically?

A. Make estimates of railroad property.

Q. How did you make up those estimates? On the basis of cost of reproduction?

A. Yes, and depreciation.

Q. You took an embankment and figured—

A. The contents.

Q. And then figured the unit price?

A. Yes.

Q. And then figured depreciation?

A. Well, not on embankments.

Q. I mean—

A. Any perishable—depreciation on any perishable elements.

Q. I mean you figured depreciation where it belonged, and where it did not, you left it in?

A. True.

Q. Your method of valuation was to figure the cost of reproduction and then deduct a depreciation, based upon what, upon the lapsed life or—

A. Upon the lapsed life, and taking into consideration any possible salvage value that there might be in the structure or the articles.

Q. Then, as a matter of valuation, you arrived at all of the results that you arrived at in the service of the State Board of Assessors on Railroad Property by that method?

A. True.

Q. With relation to cars, you took the market price of cars?

A. Cost price, and depreciated them down to a certain established or accepted salvage value, you might say.

Q. You took the condition of the cars as they were and depreciated them?

A. According to age, yes, down to a fixed minimum, which represented the salvage value.

Q. But you did not use any arbitrary figure, such as what you thought they would bring second-hand, with a second-hand dealer, or like that, did you?

A. Well, those values were perhaps somewhat above that, above the scrap value.

Q. I mean, you did not take the scrap value and use that as your foundation? You started with a new car and depreciated it?

A. Yes. Where the life of the new car, or its age, had exceeded its estimated life, it was pretty hard to ascertain what the value was, and our practice has been to just double the scrap value while continuing in service. It was an arbitrary assumption, but we followed it for a good many years.

Q. But where it had not used up its lapsed life, you figured it on depreciation?

A. On depreciation, a uniform depreciation; straight line, if you want to call it that.

Q. Were you called upon by the State Board of Taxes and Assessors to make a report in reference to the physical property of the Trenton & Mercer County Traction Company?

A. I was handed the testimony and asked to analyze it.

Q. The testimony was the testimony given before your Board in the tax case, was it not?

A. Right.

Q. And that testimony was testimony as to the value of the property of the Trenton & Mercer County Traction Company, was it?

A. It was the testimony of the plaintiff and defendant in regard to the value of that property.

Q. And some of that testimony as to value was arrived at by this process that you have described, the reproduction cost, less depreciation, and some of it was arrived at by another process of determining or estimating what second-hand material would bring if sold, was it not?

A. Well, now, I don't know whether I fully grasp your idea.

Q. Whatever it was, whatever that testimony was, it was handed to you?

A. Yes.

Q. Now, the Commission asked you to analyze and report that testimony?

A. Yes.

Q. And that testimony was the testimony on the part of the municipalities of Messrs. Rand and Brackenridge, was it not?

A. And Wiswell, I think, too. There was another man.

Q. I have forgotten his name.

A. I have forgotten his name. He testified on track.

Mr. Record: We will supply it. It slipped my mind.

Mr. Katzenbach: Brigham.

Witness: Brigham, that is his name.

Q. Now, the condensed testimony, do you remember who those witnesses were?

A. Mr. Johnson appeared before the Board, and there was offered into the case the testimony of Mr. Heingle, and there was another man who testified on machinery, McDonald, and there was some local man here, Mr. Dickinson; his testimony was in relation to the buildings, I think, and the land.

Q. Will you tell the Commissioner what you did after you received all that testimony? What did you do?

A. I analyzed it and tried to reconcile it, and compared the results of the different experts; and as I recall the testimony of the Traction Company, the figures and estimates presented by the Traction Company, represented what in their opinion was present value. There was nothing in their testimony, or their appeals, to show upon what foundation they based that

present value. On the other hand, the testimony for the municipalities, their idea of the cost of reproduction new was given without any deductions for depreciation.

As I recall—Well, we couldn't—We had two ends without the middle; that is about what we had.

Q. Did you take the two estimates of items wherever they were comparable, and use any that they agreed upon, the opposite sides, or did you make up a new estimate for yourself?

A. Well, we made up—we could not—to arrive at the present value, as reported by the company, we had no foundation, and the differences seemed mainly to be in the estimates, ideas of depreciation.

Q. That is the difference between the two sides?

A. Between the two sides. And we had to establish for ourselves a value new, a reproductive value for ourselves.

Q. Did you do that work?

A. I did.

Q. What did you do in arriving at that conclusion? What kind of work did you do?

A. We analyzed the different types of track, we classified the different types of track, to take that as an illustration, that were testified to, and the types of construction, and took the prices of the rails, the ties, the ballast, cost of doing the work, that is the labor charges, and made up an estimate of what we could, as nearly as we could ascertain, what it would cost to reproduce it, without making a personal inspection or an investigation on the ground, except in cases where we found there were palpable errors in some of the lengths of track reported and some of the overhead construction. For instance, feed wires; I think there were three miles difference in that, and then the company, I think, made an estimate; they over-estimated some track, which we corrected; and then I think there was a stretch of track which had been omitted entirely.

Q. And you made those corrections?

A. We made those corrections. That is, wherever we found anything which seemed to be—wherever we found what appeared to be a glaring difference. We did not go into every item, we hadn't time, only when we were called on, to go into minute differences.

Q. These were important differences?

A. What appeared to us, yes, that caught our eye as we went along.

Q. It isn't quite clear to me how you arrived at the other things where there were no errors. How did you take the question of rail, for instance, and arrive at that depreciation?

A. We took the rail this way: We estimated what it would cost to put that rail in place, or what the rail would cost, rather, the rail alone, and we took the life about twenty years, which seemed to be the consensus of opinion of the men who testified, about twenty years, which appeared to be reasonable and all right, and then we ascertained about what would be the salvage value of that rail at the end of its useful life, and deducted a certain amount for the recovery of that rail, and as a taxable value we took the average value between the cost of the rail new and its value, its net salvage value, you might say.

Q. That figure you took and charged as a depreciation figure?

A. Yes. We have followed that in our railroad track work where renewals are made piecemeal, and there is a sort of a cycle of events, one follows the other, a rail is renewed here, and another renewed in another place at another period; ties follow the same rule; you cannot follow up these individual items, so we put it at an average constant value.

Q. Made up of the salvage value on the one hand and the cost of reproduction new on the other?

A. Right. It follows a sort of saw tooth. You have it in the beginning at a hundred per cent.

and it depreciates down to salvage value, and then after it is renewed, each element comes up again, and it runs like the teeth of a saw, and what we did was to strike an average between the deepest peaks and the basis of those saw teeth.

Q. That was a percentage which you deducted for depreciation?

A. We did not deduct it. That was a residual value that we assumed to be constant.

Q. You did not deduct a percentage; you struck an average?

A. Struck an average and called that a residual constant value.

Q. You went over this testimony and made the examination of such items as the testimony disclosed were erroneously stated, and then took, balanced the quantities and sizes that had been testified to, and made your appraisement that way?

A. Yes.

Q. Did your statement to the Board show the amount of the reproduction value?

A. It did.

Q. And then showed the salvage value?

A. No, it did not show the salvage value, but it showed the residual value.

Q. But it showed two items, the value new and the residual value?

A. Right. That is a constant value, a residual value that is a constant uniform value.

Q. And it did show the value new?

A. Right.

Q. And that value new was, as you have said, made up on your estimate of what it would cost to buy the stuff and put it there?

Mr. Katzenbach: He did not say that. He said he took the testimony of all these witnesses and analyzed it and came to his conclusion.

Mr. Record: Suppose we let him say what he said.

Mr. Katzenbach: That is what I recall he said.

Q. You say you put in this report or valuation a value new of all the property?

A. Yes, sir.

Q. And the value new was figured upon the cost of material as of the day you figured it, plus the labor of putting it there?

A. Yes.

Q. That is, you figured it in place?

A. We figured it in place, yes.

Q. So that in your report there appears a statement of the items of this property, divided as you divided it, into such subdivisions as you use, on the basis of what you considered would be the cost to put it there, as of a specific date? That is your first proposition, and from that you built up your average taxable value?

A. Right.

Mr. Record: Now, I have examined him thus far, merely to get your Honor to see what it is he did.

Q. You submitted a report to the Commissioners, did you?

A. I did.

Q. Containing that information?

A. I did.

Mr. Herrmann: Can I cross-examine the witness on his qualifications to testify, now?

Mr. Record: I don't object to that, of course.

By Mr. Herrmann:

Q. What price did you apply to rails, for instance?

A. Forty-one dollars.

Mr. Record: May I ask one more question to make the record complete?

Q. (By Mr. Record.) As of what date did you make this appraisement?

A. I think the prices we took were prior to the advance in prices, about 1915, or something about that.

Q. It was as of May something, the tax date, May 20th, 1915 or 1916?

A. I think it was May 20th, 1915. This is 1916, but the prices were prior to 1916, prior to the advance in prices of that year.

Q. (By Mr. Herrmann.) Where did you get those prices from?

A. I can give you the prices in a moment. I took girder rails at $41 a ton; T rail at $31 a ton, delivered.

Q. Were those prices that were testified to by the witnesses in the case?

A. I don't think any specific prices were testified to by the witnesses, but there were some prices that were introduced in tables which were submitted as exhibits; that is my recollection; and I compared them with prices which seemed to be current at that period, or a short time prior to that.

Q. What I wanted to find out was whether you obtained these prices and applied them yourself, and if so, what they were, or if you took the testimony of witnesses as to what the prices were, and applied them?

A. I don't think there was any direct evidence—I may be mistaken—I am speaking from recollection now; it is two years since I have been over that—I don't think there was anything in the testimony to indicate what unit prices had been taken. There were some tables submitted, I think by Mr. Brigham or someone, which contained prices, and I think his price for rails appeared to be fair.

Q. The prices finally accepted by you were prices prevailing in 1915?

A. About that year.

Q. (By Mr. Record.) That is, of your knowledge?

A. Yes. I had other figures in other places; that is, for instance, I knew that in Phillipsburg they paid that, about that price a year or so prior. I compared them and looked up current quotations.

Mr. Katzenbach: I would like to cross examine.

Cross examination by Mr. Katzenbach.

Q. Mr. Focht, I understand that your function in this matter was to reconcile and dissect the testimony of the various witnesses that appeared before the Board?

A. Yes, sir.

Q. And you did not go out and make any measurements and make any examination yourself, did you?

A. I did not, only where we discovered errors, what appeared to be errors in measurements, in distances, length of track, and that feeder wire, I sent some men out.

Q. That was the only instance?

A. I think so. I think there was another. There was some trouble in reconciling the testimony in regard to bridges, some of those bridges. They did not amount to very much, only a few thousand dollars, $20,000, something like that.

Q. What I wanted to know was whether you relied on the testimony of the witnesses whose testimony was given before the Board, or else admitted by stipulation before the Board, or whether you relied upon your own judgment as to all of these measurements and as to this property?

A. I relied on the testimony as far as I could.

Q. And your purpose was not to find an investment value of the property, but the taxable value, was it not?

A. The taxable value of the physical property under the conditions existing at that time.

Q. And you recognize a difference between an investment value and taxable value, do you not?

A. Oh, yes, there is.

Q. And that is an acknowledged difference, is it, is it not?

A. I think it is beginning to be recognized.

Mr. Record: Wait a minute.

Mr. Katzenbach: That is perfectly proper cross-examination.

Mr. Record: I am not introducing this man in that way.

Mr. Katzenbach: You are introducing him for the purpose of testifying and I—

Mr. Record: Kindly let me put the objection. I object to that for this reason: I am introducing Mr. Focht upon the express and limited ground that he took the quantities going into this property as agreed upon by us all, or where we differed, he went out and verified them, but as to quantities and measurements, he took what we all agreed upon, and that then he fixed unit prices to them on the basis of cost of reproduction new. That is what I want to get in this case. It is immaterial to me whether that is investment value or taxable value, or whatever he calls it.

Commissioner March: I will allow the question, Mr. Record. I think it is proper.

(Question and answer read.)

Mr. Record: It seems to me that is clearly inadmissible. I know of no decision of any Board to that effect, that there is any difference between investment value or a taxable value.

Commissioner March: Maybe there is not. That is a matter of argument. Mr. Katzenbach certainly has a right to ask him how he arrived at his conclusion, what his difference was, what he considered one value, and another value. It strikes me it is pertinent. It is a matter of argument. I think it is proper, and I will allow it.

Q. (By Mr. Record.) In this question of reproduction new that appears in your report, or was arrived at by you, by taking the quantities that were admitted by both sides in the case, and if there was a difference, personally finding out which measurement was correct; is that right?

A. That is substantially correct, yes.

Q. Then with the quantities that have been thus agreed upon in the case you applied figures of reproduction cost new, which were figures known to you to be substantially the market price as of the time you fixed—not as of the time you made the calculation, but as of the time that you reached back to find the prices?

A. Yes.

Q. That is a fair statement, is it?

A. I think so. Of course, I took—Where values had been testified to that appeared to be reasonable, those were put in.

Q. Those appeared to be reasonable because of your knowledge of the market?

A. Largely so, yes.

Q. You did not take anybody's word for the market price of rails without knowing anything about it yourself?

A. Not at all. There was a question came up on the cars. A question came up on the cars, these large cars; I think we objected to Mr. Wiswell's

figures for the larger cars, and accepted his for the small ones.

Q. You did that because you knew what cars of that kind would cost?

A. Yes, about what they were costing.

Q. You checked it up by your own knowledge of market prices?

A. Yes, and accepted the company's figures in one case and the city's figures in another case.

Q. According to your knowledge of the market price?

A. What I thought represented the fair figures.

Q. And you know about those figures? You had knowledge of the market?

A. Yes, I had knowledge of those figures, about what they could run at.

Mr. Record: If the Commission please, whichever way is the shortest, I want to put that report in, or have this witness testify to it.

Mr. Katzenbach: I want to object to it. It seems to me that Mr. Focht, although I am not criticising his ability whatsoever, just simply acted in this matter for the State Board of Taxes and Assessments in adjusting the testimony of other witnesses.

Commissioner March: You need not proceed any further. Mr. Record, it strikes me that his conclusions are merely based on the statements of other witnesses. How can Mr. Katzenbach read that testimony; it isn't here.

Mr. Record: I think I can answer that. Your Honor misunderstands the scope of this witness's testimony. He is brought in, after we have had a case just like this case, like you might bring in your assistants. Witnesses differ, not as to the number of cars, agree as to that, no difference about that at all; they differ as to the price; we say they are $5,000; they say $5,500 or

$6,000; he says to the Board, I know the market price of cars; I say to you, the market price is $5,000, $6,000, $7,000, whatever it was, and he fixes, as a man knowing the prices, the price. The amount, the quantity is agreed upon. If we say there are fifty-five cars and they say there are fifty-six, he goes and counts them, but if we agree as to quantities, he takes that agreed quantity, and wherever there is a difference, he says, as there was three miles of track, he goes and measures it.

Commissioner March: There was what?

Mr. Record: Three miles of track difference.

Commissioner March: He measured it?

Mr. Record: He measured it to see which is right in the statement of quantity. Quantity and price are two different things. Quantity is a fixed fact that anybody can go and measure. They may blunder. But what is the market price is more or less a matter of opinion. There are different prices within certain limits. He takes our agreed-upon foundation, there are so many miles of copper wire, so many poles, so many ties, so many miles of rail, every item is there accounted for, a car barn, so many machines, so many electric machines, so many furnaces and boilers, every item is there, and where we dispute the amount or the quantity, he goes and measures it, so as to the quantity he starts with either an agreed-upon amount, or an amount that he corrected.

He takes that and says exactly what Mr. Burke said. Mr. Burke came down here and he took these figures in large part from the company, and then upon that he applies his unit prices. Now, Mr. Burke did not personally take a tape and measure all these lines of track; that has all been worked out. He did not personally count

the number of cars; you say you have fifty cars; he puts that down; he did not count them. In other words, this man did exactly what Burke did. Burke did exactly what he did. Burke starts first with the cost of reproduction by applying unit prices to an undisputed quantity. We have threshed this out so there is no dispute as to quantities, there is absolutely no dispute as to the physical facts here, that there is a power house, a car barn, and that it may be so much and so high.

Commissioner March: What has the Board got before it to know there was a stipulation as to the quantities, Mr. Record?

Mr. Record: No, but this man—The Board has a raft of information now, all this testimony that has gone in as to every bit of this property, as to its quantity; also you have a variety now of estimates, Burke's and Brackenridge's, Mr. Rand's, Mr. Wiswell's, a lot of people, as to what it is worth, and the only variation of this witness is that he introduced an arbitrary method of arriving at the depreciated value. I am willing the Board shall throw that out, as far as I am concerned. I am after the foundation of all this business, which is, what will it cost new to reproduce this property. You have to start there. Here is a witness who has undertaken to say what it would cost to reproduce this property as of May 20, 1915. He has done that. Instead of measuring it, he has taken our agreed upon measurements; that is what he says; that is his testimony.

Commissioner March: What have you to say, Mr. Katzenbach?

Mr. Katzenbach: That is not the statement. We never agreed upon anything. Mr. Focht did the best he could with irreconciliable testi-

mony, and of course, everything he arrived at a conclusion upon, his conclusion was arrived at by taking the testimony of one side and the testimony of the other side, and determining in his judgment which was correct, or not, and therefore, just exactly as he said, he was an arbiter or reconciler of conflicting testimony. That testimony is not introduced, and therefore, you cannot introduce the testimony of Mr. Focht, who was virtually a judge in that matter. It seems it is just as clear as it can be. I insist upon it, that no valuation arrived at by such a method can be given by this witness.

Commissioner March: Do you dispute the facts on which his conclusions were reached? Is there any question as to that?

Mr. Katzenbach: Yes, certainly.

Mr. Record: The number of feet of track?

Mr. Katzenbach. Yes.

Q. (By Mr. Record.) Have you in this report the length of the track?
A. I have.

Mr. Record: This report contains the quantities. Mr. Katzenbach can controvert it. Mr. Brackenridge says seventy miles; this witness says seventy-three miles.

Commissioner March: It raises a very nice question. In the case of Mr. Burke's testimony, was there any dispute there as to the facts, or personal knowledge?

Mr. Katzenbach: He had personal knowledge, went out and did them himself, or they were done under his direction.

Commissioner March: Did you dispute as to whether he had personal knowledge?

Mr. Katzenbach: It was based on his personal knowledge.

Mr. Record: He said he came down here and inspected it. He did not say he went out and measured with a tape or any other method, every piece of track.

Commissioner March: In order to be perfectly fair in the matter, I am going to take the matter up with the other members of the Board and rule on it tomorrow.

Mr. Record: Won't you listen to me a moment?

Commissioner March: You will admit yourself it is rather a nice question?

Mr. Record: It does not so appear to me. I try to be honest, I don't press a thing that does not appear to me to be fair. This witness has done nothing but this sort of work for twenty years, railroad embankments and all this work is similar work, copper and everything enters into all this kind of thing, cars are cars, they may be street cars or may be the other. He comes in here and the Board says, here is conflicting testimony, reconcile it. We say there are seventy miles, Mr. Katzenbach says seventy-three miles. He then, instead of taking and reconciling, as Mr. Katzenbach says, that is, sitting in a corner and guessing which is which, goes out and measures the proposition, or has it done, so when he has gotten through, that is not reconciling two pieces of testimony, that is ascertaining a fact. He testifies that as to every quantity about which there was any dispute, he verified it by original investigation, and where there was not any dispute, why should he go and measure it.

He stands before you with either the quantities accepted by the two opposing sides, or defined by original investigation on the ground.

Commissioner March: I was not so sure that it stood that way.

Mr. Katzenbach: I don't think it does stand that way.

Commissioner March: I understood it was based on the testimony; he read the testimony and this is his conclusion.

Mr. Record: Isn't it important that should be settled before we decide the law point? We must know.

Commissioner March: Yes, I think so.

Mr. Record: Let me question him some more then to get that clear.

Commissioner March: Yes.

Q. (By Mr. Record.) Mr. Focht, is it a fact as to the quantities, take the rail, that you have arrived at the quantity, the length and tonnage of the rail, either because the conflicting witnesses agreed upon those amounts, or if they differed, you ascertained, by independent investigation, what the quantity ought to be; is that a fair statement?

A. I think it is.

Q. Is that true?

Mr. Katzenbach: He wants to answer further.

A. The bulk of it was accepted, that is, the parts which we measured to reconcile differences represented a small portion of the total.

Q. But you, wherever there were differences of any substantial amount, as to quantities, you established that by independent investigation, as to which was right, or if neither was right?

A. Yes.

Q. That is right?

A. Yes, sir.

Q. If there was a mistake as to the counting of the number of cars, one side claiming there was fifty-five and another sixty, if that was the condition, you reconciled that by counting the cars, if there was any difference?

A. On cars I don't think there was any difference.

Q. I am just putting that hypothetical question. Wherever any substantial quantity or amount or tonnage of material was involved, you either found we agreed upon it, or if we disagreed you made independent investigation to see which was right?

A. So far as we could, yes.

Q. So far as you could, embraced substantially all of the property, didn't it?

A. Yes.

Q. There was no big item left out?

A. No, I don't think there was.

Commissioner March: I think that meets the objection, Mr. Katzenbach?

Mr. Katzenbach: I don't think that meets the objection. It doesn't meet the objection.

Q. (By Mr. Katzenbach.) What you did, Mr. Focht, you did not start out and make a visual examination of this property, did you?

A. No, I did not.

Q. You did not have anyone in your office make any visual examination of this property and report to you?

A. I did not. That is as a whole, you mean?

Q. Yes.

A. No.

Q. You did not make any measurements yourself, or anybody in your office, as to the track, the length of track, or number of miles of rails, or the ties?

A. Not as a whole.

Q. And this testimony that was offered in evidence upon the part of these various witnesses differed very materially on different matters, did it not?

A. Yes, on some there was quite a difference.

Q. A great difference, and you simply reconciled that testimony and made your report as you thought it ought to be, as a judge, between these different witnesses, didn't you?

A. That is what I attempted to do.

Mr. Record: Let me say this: Your Honor hasn't the mental picture I have of these controversies. Let us take the first, six tickets for a quarter. Mr. Brackenridge, whom you have listened to, is a man who has built a large number of trolley roads in and around Brooklyn and New York, mainly; Mr. Rand was a financial expert; they worked together. Mr. Rand took the quantities, went over the road and measured it, took some figures from the company, and did not check them up, took them and assumed them. They both assumed real estate values which they did not know anything about. But Mr. Brackenridge's values were unit prices, affixed to quantities in large measure computed by Mr. Rand, or in part computed by Mr. Rand. You cannot have a valuation in ten years made by one man with one note book; it cannot physically be done. Now, this man has in his hand a report. That report will show seventy-three miles, or whatever it was, of rail; the price, May 20th or May 15th, to my certain knowledge, was twenty-eight dollars a ton. That is direct and positive evidence. If the seventy-three miles is a mistake, and there are only seventy, Mr. Katzenbach can correct

that. But he says he either got the seventy-three from Mr. Katzenbach's client or measured up the discrepancy, if it was disputed by either side. How can you have a valuation made up in any other way? There it is, given in his report, so every single mistake he has made they are open to controvert, exactly as they are Brackenridge's testimony. To my mind it is exactly on all fours.

Commissioner March: There may be a slight difference. An engineer making an appraisal, he makes a personal investigation. Here the question arises whether he was justified in reaching conclusions from testimony taken in the case.

I will talk the matter over with the other members of the Board, and if you can shed any further light on it tomorrow by your arguments, we will be glad to hear you further.

Adjourned until Tuesday, July 2, 1918, at the State House, Trenton, N. J., at 11:00 o'clock A. M.

LOUIS FOCHT, recalled on behalf of Objectors, City of Trenton.

Re-direct examination by Mr. Record.

Q. You testified yesterday that you had made up in the manner that you indicated, a report to the Board?

A. Yes, sir.

Q. Will you present that report in such a way that we can mark it altogether, the whole business?

A. You have the original.

Mr. Record: Will you mark that as an exhibit?

(Mr. Focht's report received and marked Exhibit Trenton-1.)

Q. Mr. Focht, the diagrams were made up as a part of your study to illustrate the way you arrived at this thing you called average taxable value?

A. That was the purpose.

Q. And they were filed with the Board?

A. They were filed with the Board, yes.

Q. Containing this report?

A. Yes, sir.

Q. You don't know whether the report itself refers to or explains them?

A. I do not remember now whether it does. The text of the report, if those are the tables, there was a text I gave you.

Q. There is a text, isn't there?

A. I think it is under that book there (indicating.)

Q. Is that a part of the report?

A. Yes sir. May I add; those tables, those diagrams, they accompanied the report for the purpose of illustrating the method by which I arrived at the taxable value.

Q. Now, will you take page one—how would you identify this part of the report?

A. That is statement number one.

Q. Will you take statement number one and upon it I find that you have put down the items of the length of the track in the city and in the municipalities as shown, as gathered by you from the exhibits of the Trenton & Mercer County Traction Corporation and your figure is 69.11.

A. Yes, sir.

Q. That 69.11 represents their estimate of the value, according to you—I mean, estimate of the length.

A. 69.11 represents the total length of track of the whole system as contained in the state-

ments of the Trenton & Mercer County Traction Corporation.

Q. Now, under the head of Brigham total?

A. I would like to add there that includes Princeton Borough which was not under appeal; Princeton Borough is included in this statement but that was not under appeal at that time.

Q. The Brigham estimate on behalf of the municiaplities is how much?

A. 70.8.

Q. Your estimate is how much?

A. 71.93.

Q. How did you arrive at that figure?

A. Well, that was arrived at by making adjustments. In Trenton City there was, I think, there was a special track which the company reported as double track, which we found later to be single track, and I also believe that there was left out in some of the other statements a special track of several thousand feet out near the State Hospital, and one to some extent balanced the other.

Q. And you arrived at it by independent investigation and satisfied your mind that that was the true length of the track.

Mr. Katzenbach: That is objected to as leading. Just ask him how he did arrive at it.

Commissioner March: It is leading, Mr. Record.

Mr. Record: I think it is.

Commissioner March: Let the witness testify, please.

Mr. Record: He has testified as to how he did it. I think I can leave that there.

Q. Did you, wherever the Trenton & Mercer County Traction Company statement of quanti-

ties was concerned, or numbers or units, leaving out quality now, did you take their statement and compute it, or when it was disputed did you investigate and find out your own figure of quantities.

A. You refer to the track?

Q. I refer to everything. You have now spoken of the track.

A. It is rather hard to say at this time. There are a lot of details which are not fresh in my mind.

Q. What was your method?

A. Well, in a case of track, for instance, as I recall, when we found that this section of track which had been reported as double track was single track, I think we got that distance by taking the city atlas and scaling from the city atlas. I did not feel we were called on to go to the expense of going out and making a re-survey of the whole property.

Q. But you adopted some method of your own of getting the correction of the disputed testimony?

A. Yes.

Q. Is that true of all of the cases as to quantities or sizes or weights, wherever there was a dispute?

A. Well, one of the principal differences was in the size and length of feed wire, as I recall it. I think there was a difference there of about three miles and that was scaled off of the city atlas, I think after sending a man out to trace up these wires. I think as far as size went, I think I applied to Mr. Johnson because we could not measure the size. The dimensions, I think I applied to Mr. Johnson for the dimensions.

Q. Well, as to the principal items of that report, that was your method of making it up?

A. In general, yes.

Q. Will you explain to the Commissioner this map, briefly as to your theory of it and how you made it up?

A. Well, this is simply a diagram to illustrate method of arriving at the taxable value, that is

the present value, the constant uniform value. We assumed if you take any element it would, when it was first placed, take a rail for instance, it was one hundred per cent value, and that depreciated down in twenty years, the end of the useful life of that rail, to its net salvage value.

Q. Which is that line?

A. That is depreciated down on that line to that valuation there (indicating) there is one hundred per cent, and that net salvage value is 30.8 per cent. That is renewed at the end of twenty years and goes up to one hundred per cent and this goes on.

Q. Commences to go down again?

A. Those are the saw teeth I tried to explain yesterday. The value of that track is somewhere between those two limits, one hundred per cent and thirty per cent, and as these renewals are not made at uniform periods, we assumed that the average value is, or the constant value is the average of those two limits. In other words in this case the average value would be 65.4 per cent.

That was applied to rails and ties—ties would have no salvage value, they were taken at fifty per cent.

Q. (By Commissioner March.) What is the distance of per cent from your last line up to your lowest point there?

A. This (indicating)? That would be 30.8 per cent, that would be the net salvage value of the rails.

Q. (By Mr. Record.) And each big item is reckoned in that way, independently, is it, as to life, like track?

A. I won't be sure about that being the net salvage value of the rails, but it was the net salvage value of all the material in the track.

Q. (By Commissioner March.) It was the lowest value?

A. It was the minimum value. In other words, whatever recovery value there was after that track had reached the end of its useful life.

Q. And the red line is your average value?

A. The average.

Q. (By Mr. Record.) Now, Mr. Focht, that is a formula, or method which I understand you pursued year after year in valuing railroad property, is that right?

A. Where the renewals have to be made piecemeal.

Q. That rule is based upon the theory that when each piece reaches the end of its useful life it is renewed?

A. Yes, sir.

Q. Now, in the main report that you have here I find scattered through each of the tables, unit prices which you have applied to track and to all other of the details that you have in your report. I would like to make clear how you arrive—whether that unit price represents your judgment based upon a knowledge of the prices as of May 20th or whatever was the date fixed for the valuation.

A. For what elements?

Q. Well any elements. You have got so much a mile for track, for instance, on page one.

A. I don't remember now.

Q. I mean, are these unit prices your unit prices and if so how did you arrive at them? For instance on statement 3 A sheet four, you say per foot value new $2.55; this is grading, I guess?

A. Sheet 3 A?

Q. Yes, statement 3-A.

A. The unit rates, those rates I think those rates were built up by ourselves.

Q. The point I am getting at is, the rate which you applied—Is the rate that you applied to the quantity that you ascertained a market rate or a rate which represents your judgment as to the fair rate to be applied at that time based upon market prices?

A. Yes, sir, I think so.

Q. That is, you did not simply take somebody else's figure without knowing whether that was a reasonable figure or not?

A. No, we had to build up, in the track, we built up rates for comparative purposes.

Q. That is, you tested up whatever you found in the evidence by your own knowledge, is that right?

Mr. Herrmann: He said in the track, Mr. Record.

Mr. Record: I am trying to get at whatever he said.

A. Yes, I recall the track. I would have to look that up, if you give me time to study this thing; there are so many figures here I have really forgotten.

Q. I am trying to get at the method. The Board is interested in the method. Did you in fixing a value of anything use a figure that you did not know personally was reasonable?

A. No, before I took any figures I tried to satisfy myself that that was reasonable.

Q. That is to say, you did not take Mr. Katzenbach's witnesses or our witnesses and adopt either figure without knowing whether—without applying your independent judgment as to whether that was a reasonable figure or not?

A. No, I did not. For instance, that is shown in statement number eleven, in your cars. In the cars I did not accept Mr. Wiswell's figure.

Q. What I am after is a general statement, that you accepted nobody's figure without having your own independent judgment upon it as a reasonable figure; is that a fair statement?

Mr. Katzenbach: That is rather a leading question. Ask him what he did.

Mr. Record: Perhaps it is— it is not really leading. This witness is perfectly honest.

Mr. Katzenbach: I am not disputing that.

Mr. Record: I am asking that this way; I state a position and I say, Mr. Focht, is that the way you took it. That is my real question. He is an officer of the state and he can inform us.

Mr. Katzenbach: I don't see why you can't say, "Mr. Focht, what did you do?"

Mr. Record: I can do that and we will take ten minutes to get at something we could get at shorter. I am willing to do it that way.

Commissioner March: I suppose it is the preferable way, Mr. Record.

Q. Did you put down a price applied to a quantity or weight of any material in this property without applying to it your judgment of the reasonableness of that price?

Mr. Katzenbach: That is just the same thing, exactly.

Mr. Record: I don't see it is, I don't see how that is leading.

Mr. Katzenbach: You could not ask a more leading question than that.

Commissioner March: Doesn't it suppose that the answer is yes?

Mr. Record: Suppose the answer is no, it would not be leading. That is precisely what we want to know out of this witness. All we want to know out of this witness is, did he use his own judgment and test up their figure and

know it is reasonable or did he use some other method?

Commissioner March: The umimpeachable method is to ask him what he did and let him tell.

Q. How did you arrive at the prices?
A. In track I built up values for comparative purposes.
Q. You built them up from what?
A. I built them up from the price of rails.
Q. As ascertained where?
A. $41.00 a ton which seemed to be the market price, which was about the market price of rails at about that period, the period when these were laid and a short time before this case came up.
Q. Did you know that to be the fact?
A. Yes. That was about what was being paid for them.
Q. Did you build up your other prices that you applied to this property in the same way?
A. In the track I took in the splice and bonds at about as near as I could ascertain what they would cost, spikes, excavation and labor laying and applied those to—applied the rates I ascertained to the track and I built those track values up. I had to do it. The others were so far apart. In the case of the overhead construction, for the copper I took twenty cents per pound which was not the market price at the time, but it was the price which had been agreed upon, seemed to be accepted between the company and the city for the copper.
Q. What was the market price, above that or below that?
A. It was over thirty cents at that time. It has gone down now to about twenty three and a half cents, that is, the Government price is that.
Q. I don't want to spend the time on every item if I can help it.

A. I know at that time that was not the market price, but as twenty cents seemed to be accepted I used that.

Q. Can you rapidly mention the main items and tell how you arrive at them. You have mentioned track and overhead.

A. Bridges, there was some controversy as I recall over the bridges, and we could not— no, I don't think there was much controversy over them, but we could not— I was not satisfied from the details, that the bridges, that the figures reported for the bridges represented them correctly, so I went out and sent out a man and had an examination made and the result was there wasn't very much difference between those. The overhead construction I just stated how I reached that and I know that price was low.

Q. Did you at any time use a price—

Mr. Katzenbach: He hasn't finished.

A. (Continuing) than the rolling stock, the rolling stock as I recall Mr. Wiswell's figure on the larger car I thought was too high. That is, I think they ran I think $6500 or more, and I made a further examination of that and took a lower price for those. $5400 for those I think is what I took.

Q. That was your judgment?

A. Yes, based on prices that seemed to be current at that time or a short time prior. The car barns and machinery, car barns, shops and machinery, there I think I was satisfied—we went out and made an inspection, the Board, you will remember, everyone, and there was a steel building out there; I was pretty well satisfied that some of those buildings, that Mr. Brackenridge's valuation on those was too high, one or two, and I made an investigation of that.

Q. And fixed your own value?

A. We did, yes. Except I think I went to Mr. Johnson and got some vouchers for that new car

barn, wasn't it? I think he got the vouchers and then I added something to that because the company had done some additional work.

Q. But you arrived at your own conclusion.

A. I had arrived at a conclusion but I wanted to confirm it. I think I state that in my report here.

Q. Mr. Focht, did you in any one of these unit prices, use a figure above what you knew to be the market price.

A. No, I tried to keep within the market price.

Cross-examination by Mr. Katzenbach.

Q. Mr. Focht, what you were endeavoring to arrive at in checking up the conflicting testimony on this tax hearing was the taxable value of the property, was it not?

A. Yes, sir.

Q. And you as an expert recognize the distinction between an investment value and taxable value, do you not?

A. Certainly.

Q. It is well recognized?

A. Yes, sir.

Q. And the question of the ascertainment of the taxable value of the property rested to a considerable extent upon the amount of depreciation, or the use to which the property had been put?

A. Yes, sir. That seemed to be the main point in that controversy.

Q. And the way that you made up this report to the Board was, that you took the testimony offered by the traction company through witnesses and the testimony that was offered by the municipalities through witnesses and you acted as a judge or arbiter between the conflicting evidence as given by these two sets of witnesses, did you not?

A. Yes, sir.

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Q. And you from that evidence picked out some middle ground that you thought was a tenable ground for taxation purposes, that is the way you did it?

A. Yes, mostly I did it that way, except that I had to make in some cases an independent estimate which I submitted for comparative purposes. I compared them. You will find on statement number ten where the whole thing is compared so that there is a comparison of all the evidence.

Q. Now, you did not, as I understand it, go out and make any actual measurements of track by tape or rod?

A. Not of the whole property, no. I am not sure whether we measured that track that was omitted out near the State Hospital, I am not sure whether we did that or took it from the map of Ewing Township.

Q. You do recall you did some scaling from the city atlas?

A. Yes.

Q. Of course the correctness of that scaling depended upon the correctness of the city atlas.

A. True.

Q. And it was not a city atlas you had made or had any part in making?

A. Not at all.

Q. Where there had apparently been, you say, between the Traction Company and the taxing authorities an agreement as to price, for instance, twenty cents a pound for copper—

A. Yes.

Q. —that remained the same in your report as to the taxable value of the copper in the property, notwithstanding the fact that copper was higher at that time?

A. Yes that was the unit rate. I adhere to that unit rate.

Q. When you say the Government fixed the price of copper at twenty-three and a half cents, that does not necessarily mean that you could

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go out and purchase copper at twenty-three and a half cents?

A. Oh, no. I don't believe you could buy it for fifty cents today, that is in the market.

Q. So that you did not take the Government price as to copper?

A. It had not been fixed at that time.

Q. But you took an agreed price as between the Company and the city for taxation purposes?

A. The price which both sides seem to have accepted.

Q. And that obtained throughout the report, that is where there was any agreement as to price between the taxing authorities and the company you did not disturb that; it was only where there were discrepancies that you acted as an arbiter.

A. Well, I won't say that I did not disturb it, but I tried not to.

Q. Now, in your report, did you make to the Board a statement reading as follows: "The value new as ascertained by our estimate would not be considered in the nature of an investment value. There are elements in an investment value which cannot be properly included in a value for taxation purposes. As an illustration, the cost of paving, which in this case would probably range from three hundred thousand dollars to four hundred thousand dollars, is not a proper taxable element, although it would be proper to include it for the purpose of proving the investment. There are other items of minor importance in this case which it is not necessary to enumerate as the one cited is sufficient to illustrate the reason for the statement that one value can be made for proving investment and another for taxation."

A. Yes, sir.

Q. That was a part of your report?

A. It was.

Re-direct examination by Mr. Record:

Q. When you say what you do say in that report about investment value, do you mean that the reproduction cost new of any item of physical property would be reported by you differently for taxation or rate making, that is if you were putting in the physical cost new, would you put it in differently as to amount?

A. No, but if I was making it for an investment, to prove investment, there would be other elements which I would use.

Q. But not other elements as to reproduction cost new of a specific thing? For instance you would put a car in the same either way, the cost of the car new?

A. Yes, that is a specific element, yes.

Q. Would you put in track, iron track laid differently, except as to paving?

A. No. There may be in special cases— if I knew any special cases that there were other elements of legitimate value or legitimate cost I would add those and add them separately.

Q. It costs a certain amount to reproduce a piece of property that is physical, doesn't it? That is a fixed fact.

A. Yes.

Q. That is a fact irrespective of what you are going to use it for?

A. True.

Q. Then if the cost of reproduction new of physical property, if you were instructed to ascertain that cost, it would be the same no matter what the use of it was for?

A. Well, there are usually some items of collateral—collateral items which in an estimate where you are confining yourself directly to the physical would come in, they would come into almost anything. They may amount to small, they may not appear, and in other cases they might appear.

Q. Can you give an illustration different from paving? Paving is a clear illustration; it costs to put the track down and the paving down so much money, doesn't it?

A. Yes.

Q. Now, for taxation you would not use the cost for putting the pavement down?

A. True.

Q. For investment on your theory, you would, because they put it down?

A. Exactly.

Q. But the cost of reproduction of the track plus pavement is always the same, isn't it?

A. Oh, yes.

Q. What I am trying to get at, is there any physical item there that you have figured the cost of reproduction new different from what you would on rate making, except where you dropped out a portion of the physical work?

A. Not on the track, take track, not on the track itself.

Q. Nor of the overhead?

A. Not on the overhead, no.

Q. Take the car barn, isn't the car barn put up and depreciated, and its cost of reproduction new the same whatever use you are going to make of that information?

A. Yes, it is.

Q. Isn't the power house the same, the steam boilers and everything, if you are going after the cost of reproduction new, wouldn't it be the same?

A. Yes, but there might be elements in the power house which you would not observe, elements of costs which might have gone in, which you would not observe in making an estimate for taxation purposes. For instance—

Q. If you were instructed—

Mr. Katzenbach: Just a minute.

A. (Continuing) for instance there might be trouble afterwards with the foundations, after

you had the thing up, or there might be troubles which might not appear and you could not include them in an estimate made on a clear cut proposition like that. In other words I have known cases where bridges have been put in and you would not see— and additional expense had been incurred which you could not observe from the surface. I don't know whether you get me.

Q. I think I do. Let me see if I can help you. If you as an engineer are sent to figure the cost of reproduction new of a bridge, for example, you would figure what it would cost on the theory that was built right and did not cave in, wouldn't you?

A. Yes, sir.

Q. Do you mean, if it was ascertained the first time it caved in and had to build over, you would not put that double cost in on taxation and you would on investment value? Is that an illustration?

A. No— well, yes, that might be one illustration. Then it may be possible that they may have experienced a lot of trouble in putting that bridge in which would increase it above the normal, and in making a valuation of the physical, as you see it, as it appears on the ground, you assume it was being done under normal conditions.

Q. Suppose you knew that the bed of the river was quicksand and it was not done under normal conditions and could never be done under normal conditions, wouldn't the cost of reproduction new contain that element of extra cost?

A. Yes. Of course that would be an abnormal —that would be an abnormal condition which might not represent an average for that class of structure.

Q. But if you strike abnormal conditions in building you have to figure abnormal conditions as to the cost of building on that spot, don't you?

A. Yes.

Q. That is, a bridge costs more than an embankment across a big stream?

A. That is true. But when you make an examination on the ground unless you know the back history of all these things, you are apt— there are apt to be elements which you cannot observe or cannot take in, you now have no knowledge of?

Q. You would make that up for taxation purposes on the theory that it was normal?

A. Normal, yes.

Q. Would you not make it up for investment purposes on the theory that it was normal, if you had no knowledge to the contrary?

A. I don't know whether that— the way that would be. If I was putting it in and was building a building and wanted to get a return on it, it would seem to me, if I was under an abnormal expense it was through no fault of mine, and I would want to get a return on it.

Q. I agree with you. I want to know what you would do as a man sent to do something, if you go to a building or bridge or anything else and are told to get its reproduction cost new? You would do that on the theory it was built under normal conditions, as appeared to the eye, wouldn't you?

A. Yes, sir.

Q. And you would do that in either event, whether you were sent by this Board or your Board, wouldn't you, so far as that cost, unless it was brought to your attention?

A. I would.

Q. If it was brought to your attention that there was an abnormal expense that did not appear, naturally you would retain that or consider it in making the estimate.

A. I would consider it probably as a collateral expense.

Q. And in this report that you made up you have taken the whole thing as built under normal conditions?

A. I couldn't do otherwise.

Q. Mr. Katzenbach asked you if you took— if all you did in this case was to take our testimony and their testimony and then you hit upon some middle ground. Is it not a fact—

Mr. Katzenbach: This is not re-direct. This is nothing new. We have been over this I think each of us twice so far, yesterday afternoon once.

Commissioner March: That may be true; we will allow it.

Q. Is it not a fact that repeatedly in your report your figure is not in between the other two, but is above or below one or the other or both of them?

A. Yes, sir, and it is partly due—

Q. That is a fact, isn't it?

A. Yes, sir. You can see by statement number ten, that is a summarization of the whole thing.

Q. You did not simply take one figure of ours and one figure of theirs and just average it in between?

A. Oh, not in lump, not in bulk.

Q. If you found any price that we agreed upon and you thought that was too high, did you accept it— above the market rate, did you accept it?

A. I cannot say as to all cases. In the case of cars I did not. That was one that I recall distinctly. There is so much of that, there are so many of those things and it is over a year ago that I do not recall all the details.

Q. But you tried to get the market value as best you could?

A. I did.

Re-cross examination by Mr. Katzenbach:

Q. Mr. Focht, in other words you have got to know the history of a property and you have got to make a personal investigation and obtain a history of the property as well in order to make an appraisement for the investment value which will contain all the hidden costs that may be in the property?

A. Yes. I would never undertake— I would never undertake a piece of work of that kind without going into that. I would never be satisfied with the result unless I knew the history of each item.

Q. Of course you did not take anything of that kind in this instance, did you?

A. No, sir.

Mr. Record: Your friend, Burke, said he didn't know anything about the history of the company.

Q. Where there was a valuation by the experts for the municipality and a valuation by the experts of the company you endeavored to find some middle ground of reconciliation of their testimony, is that the way in which you did it?

A. Well, I attempted that, and then as I said in my report, part of it, a large part of it I could not very well, that is I could not obtain uniformity by doing it, and so in the case of track I simply established units myself and then compared them to see how the units which I established compared with the others, which is shown, the values which I ascertained, the units which I had established, with those of the other witnesses, the other experts, which is shown on statement ten. I put them side by side there.

By Mr. Herrmann.

Q. I must confess, Mr. Focht, that I still have not absorbed just how this report was gotten up as to each element of property. You understand that the present proceeding is for an increase in rates based upon the fair value of the property. You are an engineer, are you?

A. Yes, sir.

Q. Would you, if you were employed to make a cost to reproduce or to ascertain the value of this property, have made it up in the manner in which this is made up, for the purposes of this case?

A. Well I would have made up part of it as I have.

Q. Which part would you have made up?

A. Well, the track, I think, the track, yes. Well, as far as the appearance of the physical, I think I would have done just as I have.

Q. That is in calculating your depreciation?

A. No, I mean outside of the depreciation,but if it was for an investment I would have gone further.

Q. Now, then, in calculating the cost to reproduce your track, first, I understand you took the prices then prevailing of track at so much per ton?

A. No I took the rails.

Q. After that you took the ties?

A. Yes.

Q. At the then prevailing price?

A. Yes, I took the ties, yes.

Q. Then you calculated the number of spikes necessary to nail the rails to the ties?

A. True.

Q. Then you added the other elements to make the track continuous at their prevailing prices?

A. Yes, took in ballast and labor.

Q. Then you calculated the time it would take, the number of men to be employed and the price paid for that labor per mile, did you not?

A. I did not take it exactly that way. I took the excavation and the hauls at so much a foot, and estimated about what it would cost and then the labor laying and surfacing.

Q. Would the aggregate of all of those items make up your unit cost?

A. Yes, for each weight of rail.

Q. You then paid no attention to what we know as overheads?

A. No.

Q. Interest during construction?

A. I added ten per cent for contingencies and engineering and items of that kind.

Q. What did you include in items of that kind? What did you allow for example for contractor's general profit?

A. I did not take contractor's general profit in there as a specified item.

Q. What did you allow for contingencies and omissions?

A. I allowed ten per cent for that, and that would include engineering, say about four per cent for engineering and six per cent to cover the interest, whatever interest might accrue, and contingencies.

Q. So that your total overheads then would be ten per cent, do I understand?

A. If you want to term that an overhead. I did not term it an overhead, because I termed it an allowance for items that might be overlooked in an estimate, in an estimate of this kind. Understand, you cannot consider an estimate of this kind an exact proposition.

Q. I understand, but we are trying to ascertain the fair value of this property for the purposes of ascertaining what a fair return would be?

A. Yes.

Q. Now, then, as the element of track, that was your method, wasn't it?

A. It was.

Q. On that you calculated the depreciation or what you call the usual taxable value?

A. Average.

Q. Average taxable value.

A. Yes.

Q. And you have explained the method by which you calculated what we know as depreciation?

A. Yes. What you term depreciation would be the value, the loss in value after a certain period of years?

Q. Yes.

A. In my calculation I eliminated the time and simply put it at the average, which eliminates time and puts it, places it at an average going constant value.

Q. Would you call the method adopted by you the straight line method?

A. It would be a special application of the straight line method.

Q. What other elements of property besides rails and tracks did you build up in that way?

A. Overhead construction.

Q. And in overhead construction you allowed a lesscr price for copper than the then prevailing price?

A. I did.

Q. And you took that price because it was agreed upon between the two parties?

A. I did.

Q. If you were making an appraisal of your own, is that the price you would have taken to ascertain the cost to reproduce new?

A. I think I would have taken a somewhat higher price at that time.

Q. Now, then, as to rolling equipment, what price did you take on those?

A. I took the price on some of the equipment, the smaller cars which were out of date, long out of date, they are off the market, had been off the market for a number of years, I took the price that was then reported by Mr. Wiswell, who

was one of the city's witnesses— I think those were— if you will let me, I will hunt those up.

Q. Had you any knowledge as to the worth of the second hand dinkies?

A. Not as second hand, I didn't consider them as second hand.

Q. Well, as used cars or used dinkies, used small cars?

A. Well I have some knowledge. I did not pay any attention to the price at that time because I did not treat it that way.

Q. In other words as to rolling stock, you took the testimony of the witnesses and then arrived at a conclusion from that?

A. No, not altogether.

Mr. Katzenbach: Statement number six, sheet one.

Witness: The smaller cars, I think I took Wiswell—yes $2500— he estimated some $2400, and they are all about the same size and there were three lots there; three types and I put all at the same price $2400.

Q. What guided you in that?

A. Those cars were built, I guess they were twenty years old, and I looked back and searched through some of my old figures to find out what cars sold for at that time, and as I recall they went about three thousand dollars, but my figures were not for quite that type of car so I assumed his figures were probably fair as the cost of that type of car at that time.

Q. That was the basis of your information there?

A. It was. I think I tried to find out what those cars would have sold for at that time but I could not get any information from the builders.

Q. Now, then, as the other types of cars.

A. The other types, the larger type $5403 I put that at, against— well, Wiswell had some of those at $6200 and I put those at $5403 and I think that was based on the testimony of— some

details given by Mr. Johnson in his testimony where he gave the age, an exhibit of his, where he gave the exact cost, and I think it was verified later by comparing those with the vouchers in the files of the company.

Q. That is the method by which you arrived at the value of those. Let us go to power stations, what did you do there?

A. Made an estimate of the building.

Q. By measurement?

A. Yes— well, yes, I think that was measured.

Q. And the type of construction?

A. The type of construction. It was rather hard to get at. That may be open to some variation.

Q. Was that original with you or did you accept the testimony of witnesses there or were you guided by it?

A. My report will tell exactly what I did. Do you want me to read it?

Q. If it is in the report it is not necessary.

A. Yes, power houses and equipment, it tells exactly what I did.

Q. As to the contents of the power house, machinery, how was that appraised?

A. I say here, the machinery in the buildings was valued— that is part of the reports— Wiswell's estimates were noted, values were noted, values new were noted at once as being too high in a number of instances, particularly in the case of boilers and some of the prime movers. MacDonald's values on the other hand largely represented second hand values, in some instances scrap values, in others closely approaching that level. The Traction company had on file among its records the cost of the 750 K. W. De Laval turbo generator and the 1500 K. W. De Laval unit, also cost of the No. 6 and No. 7 Edge Moor boilers.

We looked those up, searched their records, and those units which represented the principal portions of the mechanical equipment of the plant were used in estimating the values of those parts of the plant.

TESTIMONY

BOARD OF PUBLIC UTILITY COMMISSIONERS

Before A. S. MARCH, ESQ., *Commissioner*

Appearances:

For the City of Trenton, GEORGE L. RECORD, ESQ., and C. E. BIRD, ESQ.

For the Borough of Pennington, C. R. RUHLMAN, ESQ.

For Hopewell Township, ALVIN W. SYKES, ESQ.

For Lawrence Township, H. T. SATTERTHWAIT, ESQ.

PETER WITT sworn on behalf of Objectors, the City of Trenton.

Direct Examination by Mr. Record:

Q. You understand, Mr. Witt, that the stipulation now is that you are to confine your testimony to such new matter as you have considered since you were on the stand before, that all of your testimony given before is now a part of the record, just exactly as if you had just finished going through with it; and now what we want of you is such suggestions as you have, additional to that situation, growing out of your study and reading of the testimony of the witnesses in this case, and in line with that, I start and ask you this question: Have you read the testimony in this case?

A. I have.

Q. You understand that the application is for a six cent fare?

A. I do.

Q. Have you considered the effect of a six cent fare upon the finances and the operating part of this company?

A. I have.

Q. What is your opinion as to the effect of a six cent fare charge here in Trenton by this company, what effect will it have, in your judgment, upon the finances of the company?

A. I think it would be suicidal.

Q. Would it increase the revenues that the company are now receiving, in your judgment, or decrease them?

A. I am of the opinion it would decrease them.

Q. Why?

A. Unfortunately, there is very little statistical data upon the effect of the car riding habit by either a decrease or an increase in the fare charged. It comes from the fact that there has been a unit rate of fare all over the country, in good times and bad. The only data that I know of is the data that we have in Cleveland, where we have had a fluctuating rate of fare, supplemented with the actual conditions in Massachusetts, affecting the Bay State and the Massachusetts Northeastern. From the information that I have, especially from Cleveland, I know that it takes a very slight increase, in the charge for transportation, to kill the riding habit. On the other hand, it takes a large decrease to stimulate it.

Q. State some facts from your frequent experience that support that idea?

A. The best I can do is to give you what happened in two years. In 1910, when the Taylor ordinance went into effect, the rate of fare was three cents, with a cent charge for a transfer, without rebate. In other words, three cents and a cent charge for a transfer. That continued until the first day of June, 1911.

Q. That is a year?

A. That continued from March 1st, 1910, until June 1st, 1911.

Q. More than a year?

A. Now, the increase in fares of 1911 over 1910 was 18,427,000, in round figures, the transfers increased 12,831,000. Now, in 1912, and this illustration is not fair, for this reason, that in the first five months of 1911 the cent for a transfer was charged, so we are really comparing a short year, and yet in 1912 there was an increase of 14,000,000 revenue fares, but the transfers, which had become free, increased 11,000,000.

Q. Now, the transfer became free on what date?

A. On the first day of June.

Q. 1910?

A. 1911. I am now comparing 1911 and 1912.

Q. And in 1912 the increase was?

A. The increase in fares was eleven to fourteen.

Q. From eleven to fourteen?

A. No. The fares are 14,000,000 increase, and the transfers increased 11,000,000. The ratio of transfers to revenue fares is about thirty-six per cent. Here the increase in transfers to fares is about eighty per cent., so you can readily see, the moment the transfer became free, how many more were used.

Now, let us take the next change in the rate of fare, which was in 1914, and again that is not fair; we had free transfers in 1914, up until the first day of September, then the cent was charged in the remaining four months; and yet in 1915, which is the first full year, the fares increased 10,237,000, but the transfers decreased 2,169,000, they were less, showing conclusively the effect upon the riding public with an increase in the rate of fare.

The Bay State Railway Company, in the summer of 1915, made application before the Public Service Commission of the State of Massachusetts for an increase from five to six cents. The case was heard and decided in September of 1916

against the company. Several months thereafter the company did get an order from the Public Service Commission to increase its rate of fare from five to six cents, a twenty per cent. increase in the rate of fare.

At a meeting of the American Electric Railway Association, held in New York several months thereafter, the President of that company, Mr. Sullivan, in explaining to the railway men present what the effect of the twenty per cent. increase in the charge for transportation had been upon the earnings of the company, said, we had in Massachusetts what we designate as fourteen traffic centers, meaning Fall River, Lawrence Lowell, Salem, Lynn,, Brockton, and Taunton, and the effect was, the highest increase of revenue was nineteen per cent. in one city, and in another place it produced a deficit of two and a half. There was a range of twenty-one points, conclusive to everybody present that that was not the remedy.

Now the Massachusetts Northeastern—

Mr. Katzenbach: I object to that; "conclusive to everybody present."

Mr. Record: I think that is all right. We will strike that out.

Commissioner March: It may be stricken out.

Mr. Record: That is your conclusion.

Witness: I will try not to state my conclusions.

Mr. Record: You can state your conclusions, but not anybody else's.

Witness: The Massachusetts Northeastern, operating in the northern part of Massachusetts and in the southern part of New Hampshire,

largely an interurban proposition, received the right to increase its rate of fare from five to six cents, and after an experiment with that change in the rate of fare for some time, its president, Mr. Beldon, gave it up, came before the Utility Commissioners, and said, instead of charging six cents, I would rather make an additional zone and stay to the nickel, because the increase that the Board has granted has not materialized in the revenue it produced. That is about all the information one can gather upon this subject.

Q. From your study of the Trenton case, what is the effect of that reasoning, when you take into account the low riding habit of this town?

A. Well, Trenton, you have to begin with, this extremely low riding habit, if not the lowest in the United States. Now, the rate of fare at the present time, to eighty-three or eighty-four per cent, of the car riders is 4.16. The proposed rate is six cents. That is almost an increase of fifty per cent. When you consider that the riding habit has not been developed, and add to that that you are going to confront the car rider with an increase of fifty per cent. in transportation, my opinion is that the new rate of fare will not produce the desired result.

Q. The short distance contributing to induce those people to walk?

A. Absolutely.

Mr. Katzenbach: Isn't that a little bit leading?

Mr. Record: I think it is leading, but nevertheless, I think it is properly leading. I have got to get it out.

Mr. Katzenbach: I know you have got to get it.

Witness: Of course, I might say all the hauls in this city are short hauls; there is no long dis-

tance riding in the city, and that being the case, with a fifty per cent. increase, almost fifty per cent. increase in the rate of fare, which has its bad effect, supplemented with the mental condition of the people who pay the fare—I don't want to be put in the attitude of denying to any corporation the getting of the assistance it should have, and I don't think my conduct here in the service case was other than helpful to the company, but we are in the habit of thinking in nickels. In Pittsburgh where they went to a six cent rate of fare, they couldn't make it go, merely by a great abuse of power. People get on the car and hand them ten cents, and they give them a receipt for four cents, not the change, finding it is impractical for the conductor to supply himself with pennies in sufficient quantity to make the change for the car riders that present themselves. If there was a six cent coin, it would change that. But that is the mental condition. It is like a man selling peanuts; he don't raise the price from five to six cents; he shrinks the bag. If, instead of shrinking the bag, he increased the rate, children would not buy. Men and women are merely grown-up children, with a little less sense, because you can only stick the kid once, but after we grow whiskers we can be stuck more than once with the same game. That is unfortunately a condition, and not a theory. I know of any number of enterprises that are in bad shape, that cannot earn their way, and yet, by the attempted increase, instead of making the condition better, they really make it worse.

Q. Have you any suggestion to make, in addition to your suggestions in the service case, as to re-routing, and the change in the suburban fares, and the number of cars run; have you a suggestion to make with reference to any other change here, for the consideration of the Commission?

A. Yes, I think I can point out a way whereby the revenue can be increased.

Mr. Katzenbach: Isn't that going into the service question?

Mr. Record: Perhaps it is. Mr. Witt, in the service case, showed how he thought this revenue could be increased. Now, by studying this testimony, and further consideration, he has another suggestion to how it could be increased.

Mr. Katzenbach: I will withdraw my objection.

Mr. Record: It is a new suggestion.

Witness: I want to supplement my testimony in the other case, to change the figures. I said that there would be a saving of thirty-five thousand dollars a year in one-man operation. I understand there is a higher rate of wage now to be paid, and that would change my figures. The saving would be greater than thirty-five thousand dollars. I also want to add to it that I am stronger for one-man operation today than ever, with the lack of man power in the United States. It is wrong for this corporation to put two men on a car where one man will answer. They ought to release those men to do other needful work that this community and the Government needs. I might say that I did not propose the abandonment of the line to Princeton; I proposed a curtailment of the service, in fact, cutting the entire suburban service in two, saving around $70,000 a year. I go further now; I say that the line from Lawrenceville to Princeton ought to be abandoned. The rails, as scrap, will bring more in dollars than the original construction cost, and that money could be employed in buying other equipment which the company needs. There is no need for two railroads running to Princeton. It is criminal, and should be stopped.

I have worked out another scheme by which I think this company can increase its revenues.

You will have to take it for what it is worth. It is my opinion, based upon the very meager statistical information anybody can have on this question as to the change in the rate of fare, as to what it does with the riding habit. In the City of Trenton last year, in round figures, this company carried 18,000,000 passengers, 18,000,000 revenue passengers and 4,500,000 transfer passengers. In view of the fact that the ride is short, and that the people are not riding as they should, I am of the opinion that if you reduce the rate of fare to the really short haul rider to three cents that is, from the outlying sections of their line to the corner of—I don't want you to smile at that, because I am going to help you; of course, you don't like help when it is a reduction of the rate.

Commissioner March: Mr. Witt, confine yourself to the testimony.

Witness: From the outer end of any of the lines to the corner of State and Broad Street, make the rate of fare three cents. That, I estimate, or would know, would produce $540,000. I am of the opinion, and I think my figure is low, that a reduction from five cents to three cents for the short haul rider, or the shortest haul rider, because there are no long haul riders here, would at least produce an increase of twenty per cent. in business. That would net another $108,000. I am of the opinion, and I think my figure again is low, that of the 18,000,000 people who originate, 12,000,000 pass through the city. I would charge that twelve million an extra two cents, raising their rate of fare from 4.16 to 5 cents. That would produce $240,000. I would issue no transfers. Last year they issued four and a half million transfers. I will cut that figure in two and make it two million—the fellow who only has a few blocks to go would not pay the additional fare, but two million of the four and a half million would have to take another line and pay another three cents,

because that is the transfer point. That would net $60,000. Making the total $948,000, an increase over last year of $68,000 in money.

Q. It is more than that.

A. $880,000 last year.

Q. $808,000, wasn't it?

A. In the city—No, $805,000, I mean. Yes you are right. It was $805,000. That is an increase of $143,000 in money.

Q. What would you say to the criticism that such a scheme is not practicable, in that the fares could not be collected and handled?

A. Anticipating that, I have worked out, this method of fare collection: People coming from the outer ends to Broad and State Streets would enter as pay-enters; the man desiring to go to Broad and State Streets would pay his three cents; the man desiring to go through—of course, this is all based on the fact that the company will install fare boxes—the man who desires to go through will deposit a nickel, and receive from the conductor an identification check. As the car passes the center, all other passengers get on and pay as they leave. The people who already have paid in their nickel hand in their identification check, and the other passengers, who have originated the other side of the dead line, tender their three cents.

Q. As a practical operating man, do you consider that is a practicable system?

A. There would be less trouble in doing that than issuing transfers, at the present time. Although the identification slips would be greater in number, there would be no need to stamp the day and hour and the line; merely a check to identify.

Q. Have you any further suggestions than these two, growing out of your reading of the testimony in this case, in addition to any given in your former service testimony?

A. I merely want to say that in the other case it was testified that thirty cents a mile was ample

to operate the city lines. It is now contended that thirty-five cents is needed. That makes a difference of from $805,000 in the old case, to $891,000 today, which leaves a deficit of $86,000. I still contend that the $35,000, which is now increased by reason of the higher rate of pay, one-man operation and the installation of fare boxes would wipe out that deficit.

Q. Did you reduce the car miles this gross that you estimated would come from the three cent fare, from the short haul?

A. That $948,000, I think, would produce about thirty-eight cents a car mile.

Q. As against the present—

A. As against the present for city operation last year of 31.60.

Q. (By Mr. Johnson.) How many car miles?

A. 2,500,000; that was your city mileage, practically, in round figures. Just verifying my figures; I am giving them from memory now. $948,000 and two and a half million miles.

Q. That is just the city lines?

A. That is just the city lines.

Q. When you say the city lines, you mean to the end of the first zone?

A. In Trenton, I mean Trenton proper.

Q. Although that first zone may extend beyond the city limits?

A. Yes, but what you regard as a city zone.

Commissioner March: Anything further, Mr. Record?

Mr. Record: I think that is all, unless Mr. Witt has something I overlooked.

(Cross-examination deferred.)

After recess.

PETER WITT resumes the stand on behalf of Objectors, City of Trenton.

Cross-examination by Mr. Katzenbach.

Q. Mr. Witt, what was the population of Cleveland in 1905?

A. Oh, I would say 550,000.

Q. What was it in 1910?

A. I made a mistake. It was 381,000 in 1900; it was 560,000 in 1910; no it was between those two figures in 1905.

Q. That is, the population in 1900 was 300,000?

A. 381,000.

Q. And the population in 1910?

A. 565,000.

Q. Has there been a census taken since 1910?

A. No.

Q. What is the population today, in your opinion?

A. Oh, I think—I would say around Cleveland proper, at a very minimum, 750,000 to 800,000.

Q. Do you know the population of Pittsburgh at the present time?

A. Oh, somewhere thereabouts, I imagine.

Q. Somewhere about 750,000?

A. Yes. Greater Pittsburgh, I imagine, is very close there.

Q. You say that these are the only cities in which you have made a study of the effect of an increase in traction fares?

A. No; I said that Cleveland and the Massachusetts places, they were the only places that there was any available statistical data.

Q. You know, as a matter of fact, that increases have been granted to the traction companies, from five cents to six cents, in Reading, Pennsylvania, do you not?

A. I understand in many places all over the country there have been increases made.

Q. And in Wilmington, in Wilkesbarre, in Scranton, Hartford, and New Haven, they have all been granted increases, to your knowledge, have they not?

A. Yes, there have been increases all through New England.

Q. Are you familiar with the fact that there has been in Erie, Pa., an increase to seven cents?

A. I don't know what their situation is. Of course, there is a peculiar situation there by reason of the General Electric, with all the war work going on. The present increase in their capital is all being financed by the National Government. What it is, I don't know, but even at the present time they are having quite a few cars built. It is an extraordinary situation.

Q. You know what the population of Trenton is, do you not?

A. I imagine a little better than 100,000.

Q. And these cities, Reading, Wilmington, Wilkesbarre, Scranton, New Haven, Hartford and Erie are all nearer the size of Trenton than Cleveland?

A. Sure.

Q. In your opinion, it would be always better to compare the traction situation in a city of 100,000 to 110,000 with a city of substantially the same population, rather than with Cleveland, a city of 750,000 population, would it not?

A. Undoubtedly, I would rather compare like things, of course.

Q. As a matter of fact, do you know what the effect upon the gross revenues of the traction companies have been in the cities of Reading, Scranton, Wilmington, Wilkesbarre, Hartford, and New Haven, by an increase of fare from five cents to six cents?

A. No, I do not. I haven't any information, outside of what I testified to, the Massachusetts cases and Cleveland.

Q. The City of Cleveland is a city of dense population, is it not?

A. It is, according to how you mean dense.
Q. I mean a large number of people.
A. A large number, yes.
Q. In a fairly limited area?
A. No, Cleveland is rather spread; it spreads over fifty-five miles, that is, Cleveland proper.
Q. Square miles?
A. Fifty-five square miles.
Q. Do you know how many square miles there are in Trenton?
A. Nine or ten.
Q. Then, of course, it is more densely populated than the city of Trenton?
A. Well, again you will have to correct yourself or correct me. Largely populated. I take dense with congested.
Q. Yes, in the sense of congestion?
A. Yes.
Q. Cleveland has always had a rather high riding habit, has it not?
A. No, I think the riding habit in Cleveland has largely been produced by the low rate of fare.
Q. What is the riding habit in Cleveland?
A. Well, as I recall the figures, last year there were 300,000,000 revenue passengers and 115,-000,000 or 120,000,000 transfer passengers. That would give us a riding habit of over 450,—475.
There were 300,000,000 revenue passengers.
Q. The rate of fare in Cleveland has advanced, has it not?
A. Four times since last November.
Q. Four times since last November, that is, since November, 1917?
A. Yes, there were four advances only by peculiar construction of our ordinance, two of the advances produced less net, or less gross. You see, when the company and the city could not agree on jumping the next higher rate of fare to take the one still higher, it had to go automatically, and when we had the three cent fare, with a cent charge for a transfer, that would produce, for one hundred riders, three dollars,

and thirty-seven per cent, taking transfers, would be $3.37 a hundred. The next higher rate of fare was four cents cash, but nobody pays cash; three tickets for a dime and free transfers. When you sell 100 you get $3.33; you are four cents worse off than under the other rate. So in that way it was advanced four times, but really two advances produced more revenue, and now today the maximum rate of fare is in effect, which is seven for a quarter, with a cent charge for a transfer, without rebate.

Q. Then, of course, there are lines within the City of Cleveland itself where the rate of fare is more than that?

A. Well, in the outlying district, in the small town called Lakewood, there is about 30,000 people, and up on Cleveland Heights, the fare is five cents, with free transfers, and East Cleveland, which has been for years riding at the low rate of fare at a great loss to the car riders of Cleveland, that has been changed lately to five cents and a cent for a transfer. That is a nine mile haul.

Q. Making six cents?

A. Making six cents for the transfer users.

Q. You do know, from your study of the Trenton situation, that the rider is transported between eight and nine miles for four and one-sixth cents, do you not?

A. Yes, but they do not ride that far.

Q. But I mean to say, he can ride that far?

A. Yes.

Q. Of course, you do not mean to say that none do ride that far?

A. A few do, of course.

Q. Now then, in your opinion, it has been a mistake to increase the fare in Cleveland, is that your idea, since September 1st, 1917?

A. No. When the rate of fare of three cents, with a cent charge for a transfer, proved insufficient, of course, the fare had to be increased, but the increase is so slight, that I do not think

it had much effect. The last figures I have got from the secretary of the railway company show that there was an increase of thirteen per cent. revenue, but a loss of two per cent, in car riders.

Q. So that these increases in the City of Cleveland have produced a greater gross revenue?

A. They have produced a greater gross, but you must remember that the people of Cleveland, in the long distances, must ride. That is a thing I don't want you to get up against here, if I could advise your client; you have so many short haul riders who won't stand for a fifty per cent. increase.

Q. Of course, the traction company naturally want to get the largest gross that they reasonably can, do they not?

A. That is true but they do not—

Q. And therefore, if an increase from five cents to six cents, or from four and one-sixth cents to six cents, would decrease the gross, the traction company, of itself, would go back to the former rate of fare, would it not?

A. Yes, as they did in the Massachusetts Northeastern.

Q. So that there can be no harm in trying out the experiment of whether an increased fare will produce a greater revenue? It is a thing which will be demonstrable within a very short time after it is put into effect, would it not?

A. That is true, only I wish to add right there, the rate of fare you should have in effect, which can only be arrived at through a series of experimentations, is the rate of fare which produces the greatest gross, whether it is high or low, if that is what you need.

Q. As I understood it, you have made no study of what the effect has been of the increase from five cents to six cents in the cities that I have mentioned that are substantially the same population as Trenton?

A. No, I have not.

Q. Mr. Witt, I understand you to say that in your opinion at this time that all traction companies should operate their cars with one man?

A. No, I did not say that. There are places where you cannot operate with one, where the business is too heavy, but I do say that any place where the business is not so heavy, that the companies ought to get rid of the one man, of the conductor, make the fare box do the collecting of the fares.

Q. They have two men in Cleveland?

A. Oh, yes.

Q. And would you consider they should get rid of the man in Cleveland?

A. No; they cannot do it, because they are carrying sixty, sixty-five people on a trip, where they are carrying seven and eight here; that is the difference.

Q. And therefore, of course, there are ample facilities for riders here in Trenton, as I understand it, from that remark?

A. Oh, on the base table, I have always testified that you are over-serviced, so far as seats are concerned, you have seats for sale and for-rent and no takers. That is the point I am making.

Q. Have you made any study of the traffic readings that were made by the inspectors of the Public Utility Board of this State in the Trenton situation?

A. No, I made no study.

Q. You, as I understand it, advocated for the City of Trenton, a lowering of the rate of fare, rather than an increase in the rate?

A. Don't misstate me. I recommended a lower rate to some, and a higher rate to others.

Q. You said, from the outer end of the lines, you would advocate a fare of three cents to the corner of State and Broad Streets?

A. Yes.

Q. What did you mean by the outer end of the line?

A. The termini; for instance, out here at the end of West State Street, as an illustration, the Pennington line at the Odd Fellows Home, the South Clinton Line at State and Broad Streets.

Q. Where would it be on those lines that extend out to Yardville, Hamilton Square, Princeton?

A. I mean now where you have your city zone, where you are collecting the present five cent fare.

Q. Then you would suggest that each rider, as he enters the car, would pay to this one man in the operation of the car, three cents?

A. Three cents, unless he was going past the dead line, which is State and Broad Streets; then it would be five cents.

Q. Then that would depend upon what the statement was, as made by each rider as he entered the car?

A. That is a very simple matter.

Q. What would you give to distinguish between the two classes of riders, those that pay three cents and those that pay five cents?

A. The one that pays three cents needs nothing to identify him; he dies at State and Broad street, or pays the other three cents. If he remains on the car and has no identification slip, which is notice to the conductor or fare box motorman, that he has paid five cents, he, of course, will be under the necessity of paying another three cents.

Q. What do you give to the man who pays five cents?

A. Any kind of an identification slip. He drops his nickel in the box and you give him a ticket.

Q. If a man got on, we will say, at West State street and wanted to go to State and Broad Street, and there exchange for South Broad Street over to the Court House, what would he get?

A. His fare would be six cents; he would not get a transfer. I would do away with the transfer business.

Q. You would do away with the transfer business?

A. Absolutely.

Q. His fare would be six cents.

A. His fare would be six cents.

Q. And you would have all these transfers and the identification slips?

A. No, there would be no transfers.

Q. No transfers?

A. No transfers at all.

Q. How would he be able to get on the car at State Street, at State and Broad Street for South Broad, without some identification slip or transfer?

A. He would not need it. He would pay his three cents as he originates on West State Street, and when he gets to the corner of State and Broad Street he is through with that car. Then he gets on the other car and pays three cents on that car when he leaves.

Q. He pays three cents on that car when he leaves?

A. Three cents on all lines from the center of the town to their termini.

Q. Do you think that one man on the cars, during all hours of the day, could operate any such system as that?

A. Easily, except in the rush.

Q. What would you do in the rush?

A. I would hire women. In fact, I will go further, Mr. Katzenbach; I maintain that when the fare box made its appearance, man should have disappeared as a conductor. It ceased to be a man's job. In justice, it belongs to the women. It is a shame to have big, strong, burly men standing in street cars, looking at fares dropping in a box, and punching an electric button and women doing heavy work.

Q. You have men in Cleveland?

A. That is true. I cannot help it. I am merely telling you my opinion. If I was operating the railroad, all the old men would be kept, but no new men would be hired for the position of conductor.

Q. Then during rush hours you would have to have women on the cars?

A. Yes.

Q. And they would attend to that work?

A. Yes.

Q. How do you fix, on what data, that the three cent fare on all lines to the center of the city would produce $540,000?

A. Eighteen million riders, who are now riding; I am taking the present number of riders, I mean the eighteen million who rode last year; if they would have paid three cents from the point of origin to State and Broad Street, it would have produced $540,000 in revenue.

Q. You are not making any deduction because of the decreased travel of the present year?

A. Oh, no, I am taking last year's figures, basing it on that.

Q. That is the 1917 business?

A. Yes, sir.

Q. Now then, how did you supplement that by finding out how many people out of the eighteen million riders would pay the additional two cents, what data did you use for that?

A. Standing at State and Broad Street, I told you I gave it to you as my guess, and I think an investigation would prove I am wrong, that my figure is too low; I think of the eighteen million people who originate at a point east, west, north or south of State and Broad Street, more than sixty-six per cent. ride past that corner, but I have only taken two-thirds, or twelve million, to ride past the corner; I have taken six million as dying at the corner.

Q. That is just purely a guess?

A. Absolutely.

Q. Now then, of the six million that die at the corner of State and Broad Streets, how many of those would get on another line and pay three cents?

A. I don't take them at all. I take the four and a half million who were under the necessity of

using a transfer in 1917, the company issued about four and a half million transfers. I know that if you do use, with transfers, a charge, an additional fare for an additional ride on an additional line, there will not be four and a half million, so I lop off two and a half million, and merely put it down as two million who would be under the necessity of providing the extra rate of fare to ride on an additional line.

Q. That was another guess, wasn't it?

A. That was a guess, yes. A guess to the extent of the known factor that they did issue and receive, or did receive four and a half million transfers. I think I am very fair when I lop off against me two and a half million, and only credit the road with two million who will pay the extra fare.

It is, of course, an approximation or a guess?

A. Oh, sure; sure.

Q. You are not putting up any Government bonds that it would come out that way?

A. No.

Q. What have you to say with reference to the abandonment of lines? Did I understand you to say this morning that the only line that you now recommended should be abandoned, was the line from Lawrenceville to Princeton?

A. No, I said, in addition to the recommendation of the abandonment of the Trenton Junction line, in addition to my testimony, or rather, to my report in the previous case, not only would I recommend a reduction in the service to Princeton, but I would recommend the abandonment of the line proper from Lawrenceville to Princeton, tear it up and sell the rails for scrap, because they will produce more money than they cost originally.

Q. That is, than the road cost originally to lay?

A. Yes.

Q. How many miles of road are there between Lawrenceville and Princeton?

A. As I recall, I think there are about four miles. I am not sure; I don't recall just now.

Q. The only thing that would really be available as scrap would be the rails?

A. The rails.

Q. How many tons of rail are there to a mile?

A. Let us not get into that.

Commissioner March: Answer the question, if you can.

Witness: I could not say.

Q. What I want to get now, have you made any calculations to the amount of scrap rail that you would get from the abandonment of the line from Lawrenceville to Princeton?

A. No, no; I cannot say. Only I do know that if that rail is fit to relay, it will bring twice what they paid for it when they put it down, and if it is not fit—

Q. What I want to find out is the accuracy of your statement as to whether you could get from the rail as scrap the full cost of the building of the road, the grading and the right of way, the labor, the ties, and so forth?

A. There is very little grading on the line. That line did not cost much to put down. You have got the rails and you have got the copper wire. But even if you could not get a penny for it, it would still be advisable to do it, because you have a liability there that you ought to get away from.

Q. What I want to find out is whether you have made a calculation in figures as to the amount of scrap that you would get from the abandonment of that line, and also whether you have made any calculation to ascertain the cost of building the line?

A. No, no.

Q. You say that a reduction of the schedule to Princeton from a half hour to an hour, and the

same to Hamilton Square, from a half hour to an hour, would produce added revenue to this company, provided the car miles saved in the reduction of the schedule to Princeton and Hamilton Square were used in the city, within the city limits; that, as I recall it, was your recommendation the last time that you were here; you would change the schedule to Princeton from a half hour to an hour, and from Hamilton Square from a half hour to an hour?

A. Yes, that is true.

Q. And you calculated that the saving in that operation would be what amount to the company, do you recall?

A. I think that we figured it out at that time, as I recall it, allowing three cents for power, four cents for maintenance, seven cents for platform, one cent for accidents, the cost to manufacture a ride was fifteen cents a mile, and as I recall it, there were something like 275,000 miles to be saved, so that would be $45,000, $40,000 to be saved.

Q. $40,000 to be saved?

A. Yes.

Q. And you still believe that?

A. Oh, that is an absolute fact, merely a question of pencil and paper to produce it.

Q. I know, to produce those figures, but you are still of the opinion that if that were done the company would be in $45,000?

A. I know it.

Q. That is, if the experiment were tried, you would determine the result in what, two months, three months, or one month? You could do it in any one of those periods couldn't you?

A. You could do it in a day; you could see what you save. What you are getting at now is what you fired at me last time, that there was a loss of revenue. If you are leading up to that, my answer to that is, you are now pleading in this case there is a reduction in revenue; the same element that is causing a reduction in revenue in

Trenton, is causing the reduction in revenue in Princeton.

Q. What do you consider that element?

A. I don't know. Mr. Johnson testified that people were moving to Bristol; that your population was less.

Q. That is only approximately seven per cent. a month; that is the decrease this year in travel over the corresponding months of last year is approximately seven per cent., and that would only account then for seven per cent. of it, wouldn't it?

A. Yes. If you are going to give me your figures, I will still give you my answer, abandon the line.

Q. What would you do—I will still ask you then the same question I did before—What about abandoning the bond interest?

A. I would answer that the bondholder would be better off if he did not have the liability to carry. I would rather be the bondholder of that property without that end; I would give it away to the junkman, because my bonds would be more secure, because the earning, while it would not be greater, the operating expense would be lower.

Q. But the holder of the bond would still have to have his interest, would he not?

A. Oh, sure; but you could pay him the interest on the money you saved in motormen, power and maintenance.

Q. Of course, you realize that the road cannot be abandoned without the consent of the Public Utility Board?

Mr. Recrod: I think any legal question ought not to be asked Mr. Witt about that; he is not here as an expert on that.

A. I imagine the Utility Commission of this State is composed of reasonable men that know their business, and I do not think that they would

insist on your running your line out there when there isn't any business.

Q. Or that there is not sufficient business to make it profitable?

A. It never will pay.

Q. The increasing of the fare on the suburban lines, would it not solve the situation?

A. I imagine the people of Princeton who may go to Trenton, they have no alternative but to ride the street car. Of course, they should pay higher. I will again reaffirm my previous testimony: Those people should pay more, and I would say the same thing of Trenton if the condition of affairs was different. If this company needed more money or a higher rate of fare to operate this property in Trenton, I would be the first to admit it, but I do not think you ought to come in here, asking for a higher rate of fare, or asking for relief by the State, until you have first exhausted your own remedy. I think the rule of a Court of Equity ought to apply here.

Q. The exhaustion of the remedy, as I understand it, is to put into operation your suggestion?

A. Mr. Katzenbach, you admitted to me, and Mr. Johnson admitted, you are losing all this money on the missing fares, and still you insist on running those cars without fare boxes. I say it is a crime.

Q. Did you read the opinion of the Public Utility inspector, the head, that he saw no advantage in fare boxes, never had?

A. I did not.

Q. Of course, you cannot buy things unless you have the money to pay for them, can you?

A. No, but you can get credit long enough, and the stealing would pay for them.

Q. Have you ever made a study as to whether the installation of fare boxes by themselves, without any other readjustment, produced higher gross receipts?

A. Every line in the United States has gone to fare boxes, practically, with the exception of—

Philadelphia has put them out, and Trenton they haven't got them ,and a few struggling places that haven't got them, and Indianapolis—every other traction line is equipped with fareboxes, and the universal showing has been an increase of revenue, some so high that it is almost past the point of understanding.

Q. Then your opinion is that the low gross revenue is very largely due to the money that is paid by passengers and not received by the company?

A. Well, I said you had a low riding habit, and of course, that is influenced by this money that does not come back. There might be a little larger riding habit, or a larger riding habit that does not show because the money is appropriated.

Q. Have you made any calculation of the amount of money that you believe is appropriated every year in Trenton?

A. No, I rather leave that to you. Your client ought to know how much he is losing. I pointed out the way where it was very easy to beat.

Q. You do recall that in your previous statement you fixed the amount as $87,000?

A. I said I think it would go ten per cent.

Q. Do you think that one man cars, operated by one man, should be used on suburban lines where there are zone systems?

A. No, I would not use the one man on the suburban line, where you have a high speed line, no.

Q. You would think the ideal situation would be to use women then?

A. Oh, I would have women for conductors, sure.

Q. On the suburban lines?

A. Oh, just as well as in the city. I think they will give you better service.

Re-direct examination by Mr. Record:

Q. When you say in these different figures you have given here what Mr. Katzenbach calls a

guess, you don't mean by that, that is made up without any reference to the facts of your experience?

A. Oh, no. When I said "guess," when he spoke about the cost of construction and the junk value of that stuff, I said yes, because I don't know how many ton are down there, how much it will measure, but I am putting that in comparison with the price that junk is bringing, and what new rails cost at the time it was put down.

Q. I was not speaking of that. You made an estimate that of the four and a half million passengers who took transfers last year, under your suggested plan of a three cent fare and no transfers, that only two million of them would go on the other end of the line, and the Mayor asked you if it was not a mere guess. You don't mean by that that you just hit on that figure, without any experience in this business?

A. Absolutely no. I know. I know that a good crowd of them have got to transfer, but I did not want to get into the position of making my figures larger than they should be.

Q. Then you are confident that the figures would be less anyhow?

A. Yes.

Q. And in arriving at those estimates, as you made them, which Mr. Katzenbach terms a guess, that is an estimate based upon your experience in the actual street car business?

A. Yes, sir.

Q. And the best you can make?

A. Yes, sir; the best I can make upon the data that anybody can get.

Q. But it is not a guess made without reference to data?

A. Oh, no; no.

Q. (By Mr. Herrmann.) By the method you propose, of three cents from any of the termini of the present city zone to the corner of State and Broad street—I understand that your objection to the flat rate of six cents is that there

will be such a falling off in traffic that the company will lose, rather than gain?

A. That is right.

Q. Which class of traffic do you think will there be the greater loss in, the long haul or the short haul?

A. The short haul, of course. The long haul cannot help itself.

Q. Now, assume, if you will, a passenger lives beyond, or within the terminus of any of these lines, and desires to go to a point beyond State and Broad street, he would be obliged to pay six cents, would he not?

A. Yes.

Q. Isn't that the class of traffic that would be affected by the raise to six cents?

A. Yes, the man who lives a half mile on either side of the dead line. Of course, that is true. I have a remedy for that, but I do not care about proposing it here because this company don't take kindly to proposals. I would reduce my zones to half miles, to produce the most money.

Mr. Katzenbach: I don't think we ought to have that on the record.

Commissioner March: I don't think you should characterize their attitude, that is a matter of argument.

Witness: Excuse me, then.

Q. That being the short rider class, wouldn't they be just as much inclined not to ride if the fare was three cents, if they had to pay three cents twice, as to pay five cents and one cent for a single ride?

A. No. People who live very close to the dead line are not riding now. The fellow I have in mind is the fellow who lives a mile or a mile and a half away; he is today walking, but he, if there was a lower rate of fare, would do the riding.

Q. What is running through my mind is this,

that isn't your plan in effect an increase of one cent?

A. My plan is an increase in fare to the man who travels through the town, also an increase to the man who has to take two different cars.

Q. And also abolishing the transfer?

A. Abolishing the transfer.

Q. (By Mr. Katzenbach.) You spoke about the difficulty in Massachusetts—or in Pittsburgh—it was in Pittsburgh—of the six cent fare, that is, the difficulty of making change? A. Yes.

Q. And also the traveler having the one cent. There would be more difficulty with a three cent fare in that respect than there would be with a six cent fare, would there not?

A. No, because if you have your three cent fare, put it down on a ticket basis; have them buy their tickets.

Q. Why couldn't you put a six cent fare on a ticket basis then the same way?

A. That brings you to the place where you are killing your business. I would make it convenient.

Q. I mean, why couldn't you use the tickets the same way for six cents as for three cents?

A. Certainly, there is no doubt about that.

Q. (By Mr. Herrmann.) Do you think by your method you would increase the riding habit in Trenton?

A. I think so. I cannot see where it would fail. But whether it would or whether it would not, I think the thing to do here is to experiment. They are in the dark; they do not know what is going to happen. They admit themselves there is going to be a reduction of ten per cent., by reason of the increase in the rate of fare, and that reduction, of course, will come from the short haul fellow. There wouldn't be any damage to this company, or any harm to it, if it will at least go into an experimental stage and produce the result.

Q. And your assumption is predicated upon the theory that the company actually needs the money to operate?

A. Well, that brings up another question that I have never gone into, the question of valuation.

Mr. Record: I should like—I do not object to going into this, but this is another branch. I have not gone into that with this examination here today, as to whether they need more or less money. His whole testimony in the service case was, they could make more money by these improvements he speaks of.

Mr. Herrmann: I entirely misunderstood Mr. Witt's testimony then, for I thought he said this $800,000 additional revenue could be raised by this method.

Mr. Record: He did—not $800,000.

Witness: $143,000.

Mr. Record: He thinks his experiment would result in an increase in revenue. That is why he recommends it. In the service case he said all these other reforms he mentioned would result in a great increase in revenue.

Mr. Herrmann: Isn't that very important for the Commission to know, whether or not this $143,000 is necessary, and if the witness has proceeded on that theory, whether this system should be allowed.

Mr. Record: He don't know whether it is necessary or not. He don't know the internal affairs of this company.

Commissioner March: I will allow the question. If he don't know, he can so state.

Witness: I don't know what they need. I don't know the value of the physical property.

Q. (By Mr. Katzenbach.) Of course, you could just as well put in as an experiment six cents, as you could three cents, couldn't you?

A. Yes, you can make it a dime. If you want to commit suicide, you make it a dime.

Mr. Katzenbach: I ask that be struck out.

Mr. Record: It seems to me that is fair.

Mr. Katzenbach: "If you want to commit suicide, make it a dime;" that is not responsive to the question.

Commissioner March: We will allow it to stand.

Q. (By Commissioner March.) Mr. Witt, in the matter of your adjustment of fares, as indicated by you, will that amount to the same amount of increased revenue as the company would receive under its application?

A. Well, from what I understand—I have not gone into that. The revenue last year—I am merely dealing with Trenton—there were $805,000 or $880,000 in the entire system, and I think you are claiming a million and something under the increased rate. I merely tied myself right to Trenton; I did not take into consideration the outlying stuff. We can reach it this way: $948,000 plus the earnings last year on the outlying branch, $75,000, so that would give us over $1,000,000, and that is all they claim they will get under this new rate.

Q. In other words, the public then, would pay just the same amount?

A. Practically speaking.

Mr. Record: But not the same public.

Witness: But not the same public.

Mr. Record: Additional riders; whereas under their system, the less riders would pay more.

Q. Your testimony is predicated on additional riders?

A. On additional riding. I cannot see it otherwise than but you can cultivate that habit here.

Q. If there is the same amount of riding, the public would not pay as much under your system?

A. No.

Q. (By Mr. Katzenbach.) Mr. Witt, wasn't your whole testimony with reference to the increase in the city from $805,000 to $948,000 predicated upon the eighteen million riders that there were in the city during the year 1917?

A. Yes, it was on 1917 figures.

Q. So that, in other words, you use for your purpose in fixing these fares at three cents, five cents and six cents, the same number of riders as there were upon the company's lines in the year 1917?

Q. So that from the same number of riders, you calculated, by the adoption of this suggestion as to fares, that from the same number of riders you would get $143,000 more revenue?

A. Yes.

Q. That is right?

A. From the same number, yes.

Q. So that the same number of people riding, would pay $143,000 more to the company within the limits of the City of Trenton—

A. Yes.

Q. —than they did pay in the year 1917?

A. Yes.

Q. (By Mr. Record.) You computed twenty per cent. of additional riders in your estimate, where did that come in?

A. I took twenty, because I again wanted to be on the safe side.

Q. That was in addition to the riders of last year?

A. Yes. I figured there would be an increase of twenty per cent. in the riding habit.

Q. And that was a part of the increase making up this $143,000?

A. That was part of the increase.

Mr. Record: I don't think we understand it.

Commissioner March: I would like to know just exactly.

Q. Mr. Witt, make that perfectly clear.

A. In round figures, there were carried last year by this company eighteen million revenue car riders. The same eighteen million riding this year, paying three cents, would produce $540,000 in money.

Q. All those eighteen million, on that basis, so far, eighteen million have saved two cents, so far as you are talking now?

A. Yes.

Mr. Katzenbach: They haven't saved that.

Witness: It is four and a sixth cents. Then my opinion is conservative at that, that by the reduction in the rate of fare there will be an increase in the riding habit of at least twenty per cent. That gives you an additional revenue. That will make 3,600,000 passengers.

Q. New passengers?

A. New passengers. At three cents, that will produce $108,000 in money. Now, of the eighteen million, leaving out the new passengers, the increased travel which I attribute to short haul, but of the eighteen million passengers, my opinion is that twelve million will pass the dead line, come from west to east or north to south, or vice versa,

and if they do, the charge to them is an additional two cents. That will produce $240,000. Now, last year the company received 4,500,000 and some transfers. Under my scheme there will be no transfers; consequently, the man that comes from West State Street, who wants a transrer to Broad, to ride two blocks, will not pay the additional fare, so I lop off 2,500,000 of these transfer riders, bringing it down to 2,000,000 who are under the necessity of paying an additional three cents because they are riding on another car, and that will produce $60,000, making a total of $948,000 in money.

Mr. Record: That seems to me to be clear.

Commissioner March: It is clearer than it was before.

Q. (By Mr. Katzenbach). Then of this amount, $108,000 is predicated upon an additional number of riders?

A. Yes.

Q. To the extent of 3,600,000?

A. Yes.

Q. Over and above what they were in the year 1917?

A. Yes.

Q. And those will all be short riders?

A. I am putting them in that class.

Q. And there would be no falling off in the other riders, under your theory?

A. No, the long fellows have got to ride,they cannot walk.

Mr. Katzenbach: That is all.

DISCUSSION

Mr. Record: That is all. If the Commission please, I would like to spend a moment in finding out how we can proceed. I have Mr. Focht ready to come up, and I have Mr. Brackenridge, who is down here much as Mr. Witt was, except he is not ready to go on. If we stipulate in his testimony, I want to put Mr. Brackenridge on, if we stipulate in his testimony, to have him criticise briefly Mr. Burke's estimates, his summary, some features of it. I will put him on, in any event, for that purpose, even if we stipulate in his testimony in the other case. But I want the Rand-Brackenridge testimony either put in here at length by these gentlemen from the other case, or stipulated in.

Commissioner March: I understood you would not object to that, Mr. Katzenbach?

Mr. Katzenbach: No. The agreement was the last time, that the appraisal of Mr. Brackenridge, and possibly to some extent it was confirmed by Mr. Rand—I have forgotten about that—Mr. Rand anyway, was a witness—

Mr. Record: I think they helped one another.

Commissioner March: His name is mentioned.

Mr. Katzenbach: That appraisal, I stipulated was to go in.

Commissioner March: You mean by the appraisal, their testimony?

Mr. Katzenbach: Their testimony, and the cross-examination on the subject of the appraisal.

Commissioner March: What case was that?

Mr. Record: That was the first case that came before your Board.

Mr. Katzenbach: That was known as the ticket case, back in 1915.

Commissioner March: Will you recite a stipulation for the record?

Mr. Record: It is stipulated between counsel that the testimony of Messrs. Rand and Brackenridge, in the case of the application of the Trenton & Mercer County Traction Company for the abolition of six tickets for a quarter, and the substitution of a straight five cent fare, heard before this Commission, shall be admitted in this case.

Mr. Katzenbach: It is the appraisal and the testimony with reference to the appraisal.

Mr. Record: Was there any other testimony of those two men?

Mr. Katzenbach: I don't know there was, but I don't want to get this record any more voluminous than is necessary. That is what you said, the appraisal you wanted in, and their testimony with reference to the appraisal.

Mr. Record: My understanding is that is all they did testify to.

Mr. Katzenbach: Then we can limit it to that. That was all we agreed to. You asked about the appraisal.

Mr. Record: You don't want to catch me in any trick about it. If they did testify, I don't

want it to turn on a word; that is all. I offered Messrs. Rand and Brackenridge as men who had been down there for some weeks and made an appraisal of that property. That is all I offered them on.

Mr. Katzenbach: That is all that this is.

Commissioner March: That is all the testimony would be material for anyway.

Mr. Record: Yes, that is right.

Commissioner March: Then it would be limited to the appraisal and any testimony in reference to it.

Mr. Record: That is all right.

Mr. Katzenbach: Certainly no catch in it at all, as far as I can see.

Mr. Record: I only wanted to make sure our minds meet on it.

Mr. Katzenbach: That was exactly what we agreed to last Tuesday.

Mr. Herrmann: That brings up a very interesting question for the Commission. There has been moved in this case, or made a motion by Mr. Record, that the findings of the Board in the ticket case, or the case referred to, was res adjudicata on this Board in this case. There was some argument on that, and Judge Slocum, who was then sitting in the case, admitted the appraisal of Mr. Burke, but took it under advisement at the time, and it was subsequently announced the appraisal would be admitted for what it was worth. The findings in the other case were based upon the appraisals of Mr. Johnson, Mr. Brackenridge and Mr. Rand, and Dr. Betts, so to have

Dr. Betts' testimony isolated from this case, if the Commission is going to consider the Burke appraisal as correcting the former appraisals, or just how it will operate, I don't know, because the Betts appraisal did have a very large consideration with the Board in the former case.

Mr. Record) Why not put that in?

Mr. Herrmann: It seems to me that should go in at this time as well.

Commissioner March: We discussed that at the last hearing. I was not a member of the Board when the Trenton case was heard. I think the Betts report ought to be in.

Mr. Record: So do I.

Commissioner March: Was it an appraisal?

Mr. Herrmann: Yes.

Mr. Record: I think it ought to be in.

Commissioner March: And any testimony in reference to it. Is that satisfactory?

Mr. Katzenbach: Then you go back to another question, which has always seemed to me to be conclusive of this entire matter. The Betts appraisal was an appraisal submitted by Mr. Betts to the Board at the time the Board was considering the approval of the leases held by the petitioner in this case, the Trenton & Mercer County Traction Corporation, and after considering Mr. Betts' report, and all the other testimony given at that time before the Board, the Board, with full knowledge, approved these leases, which called for the payment of specific rentals, and therefore, the Board has sanctioned, by its order or

approval of these leases, the rentals that are provided for in these leases, so that in my opinion there never was any necessity for any appraisal.

Of course, the primary purpose of the Burke appraisal was to conform to the rules that this Board had promulgated, which seemed to exclude us from the consideration of this Body, unless we did have the appraisals.

Commissioner March: The Board acted ministerially in approving the leases.

Mr. Katzenbach: No, absolutely judicial.

Mr. Record: If you want to put in that procedure before the Board, I have no objection to that.

Mr. Katzenbach: That is already in, the approval of the leases.

Mr. Record: I call your attention to the fact that the Betts' appraisal was not just that way.

What happened was, we skirmished around as much as we are now doing, about the Betts' appraisal when we came up before the Board, and it did transpire that that valuation was made at the time of this application, as it also transpired that Mr. Johnson's valuation was the valuation he made at that time. Mr. Johnson went on the stand and there were offered here, and produced, these blue prints and this elaborate valuation, which we claim was accurate and which he says was not, now, and then went into new testimony before the Board. Then Mr. Betts was put upon the stand, and instead of having the 1910 procedure stipulated in, it was brand new. He produced his valuation, the sheets were there; he said, I made the valuation under such and such circumstances, and the prices have not changed, or they have changed; so Mr. Betts

went on the stand in 1915 and stated what he had done in 1911, and that was brand new testimony, so far as this particular case was concerned. It simply happened to be in the other case, and it was brought in here and made verbally a part of the case, not by stipulation, but by brand new testimony.

It seems to me that has nothing to do with the legal question, which is always in this case, if the Mayor wants to insist upon it, for discussion, as to whether or not this Board is bound by its findings that they might take over this property, so that it has got to always insist that those rentals are paid. That is well known to your Honor. But that is another question. That has nothing to do with what I am trying to do now As to what Mr. Herrmann says, I want to say we are offering Mr. Brackenridge's testimony, not because we think that before this Board there is any necessity to controvert Mr. Burke. Under the ruling, the Board has virtually said—if I understand the ruling—that you will only admit the Burke testimony for the purpose of correcting any mistakes that have been made, or bringing it down to date, or any other thing of that kind. You won't admit it as a brand new raising of the valuation. You will admit it for what it may be worth.

Commissioner March: We didn't go into that to quite the extent you say. I said, we will admit it for what it is worth. It may be material to show what additions have been made since the Board's decision. You said that was perfectly proper, and you wanted to know whether the Board would be bound by that, and I said no.

Mr. Record: There have been two suggestions as to what the Board thought, one stated by you and one stated by Judge Slocum, so I don't know

exactly what the position of the Board is, and that is my reason—

Commissioner March: The position is, as indicated by me today, and also the other day, because we took the matter up in conference. We will admit it for what it is worth.

Mr. Record: All right. That puts me in an awkward predicament, my guess as to what the state of mind of the Commission is, that they are going to only admit that to throw light upon their former and res adjudicata judgment, as I call it. Supposing the other side is dissatisfied with the finding of this Board, and we go up to the Supreme Court. Then there is not a scintilla of evidence in this record, except the res adjudicata finding of this Board, plus Mr. Burke's testimony, which runs up to six million dollars, and of course, we cannot go and finish the trial of this case with a record like that. Therefore, when you say you will admit it for what it is worth, we are bound to put our valuation in for what it is worth, so the record is there. That is my position. I do not see how there is any escape from that. You let in their valuation; you have got to let in ours for whatever it is worth.

Commissioner March: I understand Mr. Katzenbach has consented to your valuation.

Mr. Record: Then I don't know what we are debating about.

Mr. Katzenbach: I consented to your valuation, Mr. Record.

Mr. Record: All right.

Mr. Herrmann: How about the Betts? I want the Betts in if that is going in.

Mr. Record: All right. I consent to the Betts appraisal going in.

Commissioner March: Do you consent, Mr. Katzenbach?

Mr. Katzenbach: When you come to the Betts' valuation, you see, the Betts' valuation was made in 1910, and it was put in in the ticket litigation, but it was put in as a foundation stone upon which there was a superstructure reached, and of course, the near valuation of Betts, without the evidence showing the superstructure, that is all of the additions that were made to the property after the Betts report was made, ought, of course, to go in evidence. In other words, without the explanation of the Betts report, it would be an unsafe guide at least.

Commissioner March: What do you say ought to go in?

Mr. Katzenbach: Well, you really get so you almost have the entire record in. This is only part of the record, this book here (indicating); one just adds to the other.

Commissioner March: What do you say ought to go in, in addition to the Betts' report, Mr. Katzenbach?

Mr. Katzenbach: Of course, all of the tables showing the expenditures made upon this property subsequent to the date of the Betts' report.

Commissioner March: The tables? Whose tables?

Mr. Katzenbach: They are tables of the company.

Mr. Record: I think that would be fair. They did submit testimony that $500,000, or $800,000, had been spent after Mr. Betts made his report. Isn't that what your testimony was?

Mr. Katzenbach: Yes.

Mr. Herrmann: Isn't that in the ticket case?

Mr. Katzenbach: That was all in the ticket case.

Commissioner March: I want to know where it is.

Mr. Katzenbach: It is complicated; I will admit that; there has been so much litigation.

Mr. Herrmann: Suppose I read from the report. This was a case, practically the same issue; it is known as the Six-For-A-Quarter Ticket Case, in which the company asked for an increase by the abandonment of six tickets—

Mr. Katzenbach: It wasn't that way. It was where the company had stated it was going to withdraw the sale of these tickets, and the City of Trenton came in and was the actor in the proceeding.

Mr. Record: That is not so.

Mr. Katzenbach: Yes, it is.

Commissioner March: I guess the case will speak for itself.

Mr. Record: The Board summoned us here, and we appeared.

Mr. Herrmann: "The books of the Trenton Street Railway Company, and its subsidiaries, produced, are incomplete, and do not disclose the actual cost of the property. The books do disclose some information as to the amounts of stock and bonds which were issued by the subsidiary companies. The amount of stocks and bonds so issued, however, bear no necessary relation to reasonable cost or value.

"There is in evidence a valuation made by the Board's engineer in the spring of 1911, in connection with the lease of the properties to a new operating company. There is also a valuation made in a very general way by Mr. Rankin Johnson, based upon an investigation which he made in 1910.

"In addition, there is a valuation made for the purpose of this case by engineers representing the city, Messrs. Rand and Brackenridge, and a fourth valuation made up practically as of the present time by Mr. Rankin Johnson, for the company. There is also in testimony data concerning the expenditures upon this property since 1910. The proper classification of these expenditures as between construction and maintenance accounts is subject to some doubt and consequent criticism. An examination of the charges to these accounts has been made by the Board's examiners, assisted by one of its engineers, Mr. Ingham, who is familiar with street railway construction. The Brackenridge estimate made for the city discloses certain errors and omissions due to the use of low unit prices and to insufficient estimates of quantity. When corrected in these respects, it will be found that the Brackenridge estimate of value does not differ greatly from the value of the property as determined by us.

"The Johnson valuation is subject to some criticism, also, as it is more or less based upon his estimate of 1910, with additions for the work done since that time.

"In view of all the testimony with regard to valuation of this property, we are of opinion that the best estimate can be made up by taking the Betts' report made in Feburary, 1911, deducting from the inventory in that report the items which have since disappeared, adjusting the values where the testimony in this case shows substantial error, and adding thereto the amounts found by the Board's examiners to be properly chargeable to road and equipment during the period from February, 1911, to the present time."

Then follows a number of additions; additions made since 1910, summary of valuation, upon which is figured accrued depreciation, intangibles and overhead charges, leading the Board to this:

"In view of all the evidence, we conclude that the value of the property, for the purpose of fixing rates, does not exceed $3,212,000, as follows;" then follows a table.

That having been done, and there having been no application for any modification of that valuation, the estimate of Mr. Burke has been produced, which, of course, contains additions since this valuation.

Mr. Record: It does not pretend to; he don't separate them.

Mr. Herrmann: It is down to date, however.

Mr. Record: It is not introduced for the purpose of showing the additional stuff, and it is not distinguished in there.

Mr. Herrmann) But you can readily see, if the Board, when it takes this matter under consideration, has in mind its former finding, and takes the Brackenridge report for what it is worth, and the Burke report, how important it is, in view of the language expressed in this report,

to take the Betts report, so it seems to me it is essential.

Commissioner March: I don't think there is any objection to the Betts report itself, only the additions that Mr. Katzenbach refers to, th tables in this report.

Mr. Katzenbach: Yes, which the opinion refers to.

Mr. Record: I make this suggestion: They put in a report showing that they had spent, since the Johnson valuation, and the Betts valuation, $820,000 odd. My recollection is that the action of the Board, or Betts, or somebody, was that you only allowed $500,000 of that.

Mr. Herrmann: That was in the former case.

Mr. Record: Yes; there was that discrepancy. You claimed $300,000 more than they allowed you for capital account.

Mr. Katzenbach: It was not questioned that it was not spent; it was admitted it was spent, but they did not allow it as capital.

Mr. Record: I think that is accurate. They put in $820,000, and they wanted to have that increase the valuation of the property. The Board said they would allow for capital account, if my recollection serves me, $500,000, and that the other money went to supplement the repair account, which had been neglected; therefore, the Board would not allow it to go on the valuation. Somewhere that appears, and it seems to me, if that part is added to your $800,000 tables, that we have then got the case closed. There is that statement in your report; the Commission

did not allow that $800,000 as a capital charge; it allowed $500,000 of it as a capital charge.

Mr. Katzenbach: It allowed some of it, and also did not allow the balance as expense.

Commissioner March: Let me see, the Betts' report is in?

Mr. Record: Yes; and I consent to their schedules going in, of $800,000.

Commissioner March: We have the tables, or schedules?

Mr. Record: The fact appears, whatever it is, from your records, that you did not allow that $800,000 as a capital charge; you allowed $500,000 and odd, whatever it was.

Commissioner March: Whatever the fact may be. Is that satisfactory, Mr. Katzenbach?

Mr. Katzenbach: Yes. We are satisfied that the report of Mr. Betts go in, with those modifications, but, of course, we do not consider the Board is precluded at this time from allowing the full $821,000.

Mr. Herrmann: I understand Mr. Record consents to that, the eight hundred and some odd thousand dollars?

Mr. Record: No. I consent he shall put in the figures showing this $800,000, on condition that whatever your finding was as to how much of that should go to capital account, should go in, too.

Mr. Herrmann: Was that determined in the former case?

Mr. Katzenbach: That does not preclude the Board from reconsidering.

Mr. Record: That is all right. I only want to get the record in.

Commissioner March: It is a matter for the Board to consider.

Mr. Record: Yes; I want to get the record right.

Commissioner March: The stipulation will be along the lines suggested.

Mr. Katzenbach: Of course, with the $821,000 schedule, the company was obliged to report to the Board from time to time as to the expenditures that they made, and they reported the $821,000 from time to time to the Board.

Commissioner March: I guess we understand it now. You may proceed, Mr. Record.

VALUATION BY BOARD OF PUBLIC UTILITY COMMISSIONERS IN THE STRIP TICKET CASE, DEC. 13, 1915

Present value, September 30th, 1915	$2,685,500
Overhead charges	324,000
Organization expenses	62,500
Contractor's profit	140,000
Total	$3,212,000

The complete summary of value by classes of property is as follows:

Land	$70,000
Buildings	217,500
Track and roadway and paving	1,285,000
Bridges	50,000
Overhead construction	312,000
Rolling stock	475,500
Office furniture and supplies and office cash	3,000
Materials and supplies and fuel	24,000
Power house machinery	248,500
	$2,685,500
Overhead charges	324,000
Organization expenses	62,500
Contractor's profit	140,000
	$3,212,000

Brackenridge Estimate

Summary Sheet of Estimates Giving Cost to Reproduce New, Depreciation and Present Value, of the Property Operated by the Trenton Traction Co., as of November 9, 1915.
Contractor's Profits Have Been Included in all Items.

ITEM	*Annual % Deprec.*	*Reproduction Cost.*	*Annual Depreciation*	*Accrued Depreciation.*	*Present Value*
Tracks outside city	3%	$324,616.39	$9,738.49	$109,440.76	$215,175.63
Tracks in city	4%	370,910.80	14,836.43	160,588.64	210,322.16
Overhead line and feeders	4%	307,100.30	12,284.01	82,549.90	224,550.40
Special work	10%	70,662.00	7,066.20	35,331.00	35,331.00
Paving	5%	358,845.02	17,942.25	141,358.17	217,486.85
Power Plant	4%	265,500.00	10,620.00	31,860.00	233,640.00
Car barns and contents	2%	155,900.00	3,118.00	23,385.00	132,515.00
Cars and other rolling stock	5%	400,000.00	20,000.00	140,000.00	260,000.00
Real estate, assessed value		110,025.00			110,025.00
Signal system		1,052.75			1,052.75
		$2,364,612.26	$95,605.01	$720,884.83	$1,643,727.43

Contingencies, including engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk..	15%	354,691.84	----------	108,132.73	246,559.11
		$2,719,304.10	$95,605.01	$829,017.56	$1,890,286.54

* Depreciation on overhead figured with copper wire out.

40 30 20 10

Estimate of cost to reproduce new the property operated by the Trenton & Mercer County Traction Corporation made by Dr. Betts, Chief Engineer of the Board of Public Utility Commissioners, as of February 1911, is the sum of $2,604,-470.00.

STIPULATION

NEW JERSEY COURT OF ERRORS AND APPEALS

THE INHABITANTS OF THE CITY OF TRENTON, AND EVERETT TOWNSEND, *Prosecutors*, vs. JOHN W. SLOCUM, ALFRED S. MARCH AND GEORGE F. WRIGHT, constituting the BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY AND THE TRENTON AND MERCER COUNTY TRACTION CORPORATION, *Defendants.*	ON CERTIORARI STIPULATION.

It is stipulated and agreed as follows:

1. That the testimony of Rankin Johnson, John W. Burke, W. M. Dickinson, Louis Focht, John C. Brackenridge and Peter Witt, taken before the Board of Public Utility Commissioners on

the application of the Trenton and Mercer County Traction Corporation for increased rates of fare, shall be printed in full.

2. That the exhibits offered on said application may be referred to on the argument of the above entitled cause without being printed, unless otherwise ordered by the Court.

3. That the summary of the estimate giving cost to reproduce new, depreciation and value of the property operated by the Trenton and Mercer County Traction Corporation, as of November 9, 1915, prepared by John C. Brackenridge, shall be printed, together with a summary of the valuation of such property prepared by Dr. Betts, Chief Engineer of the Board of Public Utility Commissioners, February, 1911, and the summary of the Board made December 13, 1915.

4. That none of the summaries mentioned in the Third Paragraph shall be used by the Court for determining a valuation of the property, but are only to be used in the determination of the question raised by the prosecutors as to whether the Board of Public Utility Commissioners had power to grant the increase without fixing a valuation; but should the Court decide that it has the power to fix a valuation of the property, and that it will exercise said power, that then the appraisal of John W. Burke, the testimony of John C. Brackenridge and E. C. M. Rand in the strip ticket case and the testimony and appraisal of Louis Focht in this case shall be printed. The testimony in the strip ticket case shall be printed unless the Court will accept the testimony as printed in the strip ticket case in evidence.

CHAS. E. BIRD,
GEORGE L. RECORD,
Counsel for Prosecutors.

FRANK S. KATZENBACH, JR.,
L. EDWARD HERRMANN,
Counsel for Defendants.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

THE INHABITANTS OF THE CITY OF TRENTON AND EVERITT TOWNSEND,
Prosecutors,
vs.
THE TRENTON & MERCER COUNTY TRACTION CORPORATION ET AL.,
Defendants.

On Appeal.
On Certiorari.

Brief for the Prosecutors.

CHARLES E. BIRD,
City Attorney of Trenton.
GEORGE L. RECORD,
Of Counsel with Prosecutors.

Mergers, Consolidations and Leases of Trenton Street Railway Companies.

TRENTON HORSE RAILROAD CO.,
Inc. Mch. 9, 1859.
CITY RAILWAY CO.,
Inc. Sep. 6, 1875.
HAMILTON TOWNSHIP ST. R. CO.,
Inc. Sep. 12, 1890.
SOUTH CLINTON AVE. AND BROAD ST. R. CO.,
Inc. Oct. 28, 1890.

Merged into
TRENTON PASSENGER R. CO.
By Consolidation
Sep. 21, 1891.

PENNINGTON AVE. PASSENGER R. CO.,
Inc. Sep. 24, 1897.
MULBERRY ST. R. CO.,
Inc. Sep. 24, 1897.
EWING PASSENGER R. CO.,
Inc. Mch. 28, 1898.

Merged into
TRENTON STREET R. CO.
By Consolidation
June 28, 1898.

MERCER COUNTY TRACTION CO.,
Inc. July 31, 1899.
TRENTON, HAMILTON AND EWING TRACTION CO.,
Inc. Aug. 11, 1905.

Leased to TRENTON AND MERCER CO. TRACTION CO.,
Inc. Oct. 5, 1910.

PRELIMINARY STATEMENT.

In the month of May, of this year, the Trenton and Mercer County Traction Corporation applied to the Public Utility Commission for permission to discontinue the existing rate of fare, which was five cents for a passenger paying a single fare, and six tickets for a quarter for all passengers offering to purchase strip tickets. Notice of this application was served upon the City of Trenton, and that city, by counsel, appeared at the hearing and denied the Company's right to the increase asked for. Elaborate testimony was taken to show the valuation of the company's profits and the expenditures required for operating the property. The Public Utility Commission, after this hearing, handed down a decision giving the company the right to discontinue the sale of tickets, and to charge a fare of six cents to each passenger. The prosecutors in this case obtained a writ of certiorari, which was, by agreement of counsel, argued before Mr. Justice Swayze, sitting as the Supreme Court. Justice Swayze rendered a decision, which appears in the state of the case, affirming the finding of the Public Utility Commission. The case now comes before this court on appeal from the decision of the Supreme Court.

The decision in this case compels a consideration of the law and the facts developed in the Public Service case, which was decided at the same time, because the Public Utility Commission's order must be tested by reference to the principles adopted by the Board in the Public Service cases, and the opinion of Mr. Justice Swayze in this case refers us to his opinion in the Public Service cases as governing the points which we raised in this case before him. The opinion in the Public Service case is printed as a part of the state of the case.

It is necessary, however, for the court to keep in mind the distinction between the two cases. In the Public Service case the corporation tried its case upon the theory of a so-called emergency application, and made no attempt to establish a valuation of its property. It proceeded upon the assumption that the existing rate was a fair rate in 1916, prior to the time when the increased cost of labor and materials began to be a factor, and that they were entitled to an increased fare sufficient to cover the increased cost of labor and materials since the year 1916. The Public Utility Commission tried and decided the case upon this theory, and flatly refused to require or consider any proof of valuation, either on the part of the company or on the part of the prosecutors.

But our case was tried upon an entirely different theory. The defendant corporation rested its application upon the claim that the existing rate did not afford a fair return upon the value of its property. The company had employed, at large expense, an experienced expert from New York, and submitted a very elaborate valuation of its property. The prosecutors also submitted elaborated valuations. The Board itself, in the year 1915, had made an elaborate investigation of the value of the company's property, and had, in a decision, held that it did not then exceed $3,212,000. In that case it was taken by the Supreme Court on certiorari and the decision of the Board sustained, and the decision of the Supreme Court was affirmed on appeal in this court. Therefore, the distinction between our case and the Public Service case is clear and vital. In the Public Service case there was no proof of valuation, except such as the prosecutors' experts worked out from a study of the companies' securities, and in our case the Board had before it conclusive evidence of the value of the company's property.

Keeping in mind this distinction, we proceed to consider the issues involved in this case.

POINT I.

The power conferred by the Public Utility Statute upon the Board of Public Utility Commissioners in the matter of rates is "to fix just and reasonable rates."

As the act conferring this power does not prescribe any rules which are to govern the Board in determining what are just and reasonable rates, the act is plainly unconstitutional unless the act assumes that the decisions of our courts have established rules for determining what are just and reasonable rates. Otherwise such a grant of power would be a delegation of power which could be exercised only by the Legislature, if it could be exercised at all.

The reason for this is that unless rules are laid down in the act or are recognized by the act as having been established by the courts, the act would virtually empower the Board to reach conclusions according to their personal opinion. and those conclusions could not be tested upon review in the courts.

Apparently in this case that is exactly what the Board conceives to be its powers, because in its report in this case it says:

> "The Public Utility Statute provides that after this Board shall have considered an application for increase in fares it shall be the duty of said Board to approve any such increase, change or alteration upon being *satisfied* that the same is just and reasonable."

The italics are the Board's, and this language is followed by other language elsewhere quoted to the effect that in normal times the criterion of the reasonableness of a rate is that it shall be based upon a fair return upon the value of the property of the company, but in abnormal times the Board can dispense with this accepted standard and set up its own judgment free from the guidance of any legal rule or standard.

We proceed to discuss what we consider to be the legal rules or standards assumed by the act to have been established by the decisions of our courts.

POINT II.

THE ONLY LEGAL BASIS ESTABLISHED BY THE COURTS FOR AN ORDER FIXING A RATE IS THE PRINCIPLE OF A FAIR RETURN UPON THE FAIR VALUE OF THE PROPERTY DEVOTED TO THE PUBLIC USE. THIS PRINCIPLE WAS NOT APPLIED IN THIS CASE.

The only power of the Board on the evidence in our case was to fix a just and reasonable rate based upon the principle of a fair return upon the fair value of the company's property devoted to the public use. We maintain that this is the only rule thus far laid down and agreed upon by the great weight of authority in this country, including the United States Supreme Court, as will appear from the cases cited at the end of this Point.

Most of the litigation upon this subject has been over the proper application of this rule, and has turned upon what elements are to be considered in fixing the fair value of the property, and what rate of return upon such value is reasonable under the circumstances of each case. The great mass of the litigation is over the question as to whether the so-called intangible elements of value can be included in fixing value, and if so, according to what rule these elements are to be measured. In the absence of proof of the original cost of the property by which the actual investment of capital in the property could be ascertained, the theory of ascertaining value by estimating the reproduction cost new of the property, and deducting a proper depreciation, has been in many cases adopted; but we maintain that as to the rule itself there can be no exception according to the weight of authority.

That this is the accepted stand in extraordinary cases is expressly stated by the Board of Public Utility Commissioners in this case:

> "In normal times the criterion of reasonableness of any proposed schedule of rates is that it should be sufficient to secure a fair return on the fair value of the property devoted to the use of the public provided the amount of any particular rate does not exceed the value of the service rendered. But these are abnormal times, and the standards which may be reasonable in normal times may, if rigidly applied under war conditions now existing, result in a curtailment or entire suspension of the service of this utility just at the time when the National Government is exerting every effort to co-ordinate and strengthen all agencies employed in winning the war, not the least important of which are the street railway systems transporting citizens from home to place of employment."

In the report of the same Board in the Public Service case the Board says:

> "Ordinarily, in fixing just and reasonable rates, the accepted standard is a rate which will afford a fair return upon the value of the property used and useful in serving the public. The application of this standard requires ascertaining the value of the utility's property."

Mr. Justice Swayze in his opinion in the Public Service case maintains that this is not the rule. He says that the original cost of construction, the amount expended in permanent improvements, the amount and market value of bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, and the reasonable worth of the services rendered, are all matters for consideration and are to be given such weight as may be just and right

in each case. He also says that the rate of return must be sufficient to attract capital to the enterprise.

In this statement we respectfully submit the Justice falls into confusion. It is true that the courts have held that the elements he mentions are proper to take into consideration, but an examination of each case will show that the authorities hold that the consideration of these elements is merely for the purpose of throwing light upon what is the fair value of the company's property, which in all cases is the final criterion.

Mr. Justice Swayze quotes in support of his position the case of *Smyth* v. *Ames*, 169 *U. S., p.* 466. An examination of this case will show that it holds exactly to the contrary to the position taken by Mr. Justice Swayze. This case was one of the leading cases on the question of the determination of reasonable rates and was decided in 1898.

Mr. Justice Harlan, in delivering the opinion of the court, discusses first the question as to whether capitalization can be used as a criterion of value, and holds that it cannot be used as a criterion if it exceeds the value of the property, thus holding that the value of the property is the ultimate criterion. Further on in his decision in this case, at pp. 545, 546, Justice Harlan makes this position absolutely clear in the following language:

> "We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required

> to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

The language quoted at the end of this Point from other cases in our courts will show that this doctrine established in this case has been uniformly followed.

A consideration of the different elements which Mr. Justice Swayze mistakenly assumes can be used as criteria of reasonableness of rates, will show that it is not possible to consider any one of these elements as a criterion in itself.

Take, for instance, the question of stocks and bonds. There can be no possible reason for ascertaining and considering the amount of the capitalization of the company and its market value, upon the theory of Mr. Justice Swayze, unless the par value of such capitalization or its market value is to be the criterion of the fair value of the property. If the capitalization is not itself the criterion, it can only be relevant because it throws light on the real criterion, viz., the value of the property.

The consideration of the capitalization of the defendant company is a perfect example of this statement.

It is not clear that the stock issued by the early horse railroad company was water, but the presumption is strong that it was. But it is plain that all subsequent stock issues and part of the bond issues represent no money or service paid or rendered towards creating this property. Dr. Betts so finds, and the merger agreements prove it. We summarize the facts shown by the merger agreements:

All stock of Horse R. R. Co.'s at the time of first consolidation in 1891—		
Stock, ...		$156,000
Bonds, ...		190,000
Bonds issued by the Consolidated Co. (Tr. Pass. Ry. Co.), ...	$1,000,000	
Less amount paid to Wilson (see *Tr. Pass. Ry. Co. v. Wilson,* 11 *Dick. Ch. Rep.* 783), ...	260,000	
		740,000
Second Consolidation, 1898—(Tr. St. Ry. Co.) stock was all exchanged for securities of merged companies—		
Bonds, ...	$2,000,000	
Less used for refunding, ...	$1,000,000	
Less exchange for stock, ...	552,000	
	1,552,000	
		448,000
Bonds of Tr., Penn. and Hopewell Co., ..		350,000
Bonds of M. C. Tr. Co., ...		300,000
Bonds T., H. and E. Co., ...		350,000
Total realized from securities to 1910,		$2,534,000

This is the maximum actual cost of creating these properties as shown by the proofs in this case down to 1910.

If the money expended by the lessee company for capital account, approximately $550,000, is added, the total money actually invested in the company's property would be $3,084,000. This amount is value new, and a twenty-five per cent. reduction, a conservative estimate, would give $2,300,000 as the value of this company on a pre-war basis, as shown by a study of the securities of all the companies represented by the de-

fendants. This is a fine illustration of the purpose and advantage of considering the capitalization of the company.

If stocks and bonds are a criterion, is the par value of the capitalization the criterion, or is the market value the criterion? An examination of the cases hereinafter cited will show that stocks and bonds are only considered for the purpose of throwing light upon either the original cost of construction or the cost of the reproduction of the property of the company, or the value of the franchises. The same is true of the other elements referred to by Mr. Justice Swayze. Mr. Justice Harlan, in considering the question of stocks and bonds, in *Smyth* v. *Ames,* says:

> "If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the apparent value of the property and franchises used by the corporation, as represented by its stocks, bonds, and obligations, is not alone to be considered when determining the rates that may be reasonably charged."

In *Cotting* v. *Kansas City Stock Yards Co., 82 Fed.* 850, Judge Thayer says, at pages 854, 855:

> * * * "Again, when property has been capitalized by issuing stock, neither the market value nor the par value of the stock can be accepted in all cases as a proper criterion of value, because the stock may not represent the money actually invested, and, furthermore, because the property may have been capitalized mainly with reference to its income-producing capacity, on the assumption that it is ordinary private property, which the owner may use as he thinks

> proper, without being subject to legislative control."

In *Spring Valley Water Works* v. *San Francisco,* 192 *Fed.* 137, District Judge Farrington says, at pages 145, 146:

> * * * "9. The public has a right to demand that no more shall be exacted than the services rendered are reasonably worth. The public cannot be subjected to unreasonable rates in order simply that stockholders may earn dividends." * * *

The Supreme Court, in the Knoxville Water case, expressly declared that the outstanding securities could not be used as a basis of rate making where those securities were in excess of the value of the property, which, of course, assumes that the value of the property was the real criterion. In that case the point was directly raised. The decision in the New York Consolidated Gas case was handed down on the same day as the decision of the Knoxville Water case, and, therefore, it is a fair inference that the Consolidated Gas case was decided upon the same theory. It is true, however, a consideration of the capitalization of the company will often throw light upon the true value of the company's property. In this case, in a subsequent point, we will show from an analysis of the outstanding capitalization of the defendant company, and of its lessor company, that the total investment to produce the company's property could not have exceeded a different sum than mentioned. The equitable theory that the court aims to carry out is that the people who have actually invested money in the production of the company's plant in good faith should be allowed a fair return upon such investment. The investment is the measure of the sacrifices made by the investors.

The consideration of the present as compared with the original cost of construction has come up in the courts only in the effort to determine whether the owners of the property are entitled to the present value, or

should be held down to the original cost. It is quite obvious that if there is proof of the original cost of construction in any particular case, and the proof in that case is that the cost of reproduction would be greater or less at the present time, the Court would be compelled to take either the criterion of original cost or the criterion of the present cost. It could not take both, nor upon any theory of law that we can conceive of could it adopt an average of both.

The probable earning capacity under any particular rate suggested by Mr. Justice Swayze as a subject for consideration is governed by the same ruling. The Court considers the probable earning capacity under any particular rate for the sole purpose of determining whether the earnings would afford a fair return upon the company's property. If this were not so, then it would have to adopt the rate which was subject to such a consideration, as a criterion, which, as the courts say, would be "reasoning in a circle."

The reasonable worth of the service rendered is obviously only to be considered as the result of what is a fair return of a fair value of the company's property, otherwise we would have the absurd position that the reasonable worth of the services rendered were either in excess of or below a fair return upon the fair value of the company's property.

Mr. Justice Swayze also says that the rate determined upon must be one sufficiently high to attract capital in the enterprise. Of course it must, and that is the consideration which determines what is a fair rate of return. If we say that six or eight per cent. is a fair rate, we say it only because the proofs show capital will not be forthcoming unless such a rate is assured. But the rate of return has nothing to do with the valuation. It is obvious that a company which had issued bonds, for example, far in excess of the value of the company's property could not ask the Commission for a rate of ten or fifteen per cent. on the value of the property in order to pay interest upon such excessive capitalization,

so that the company might thereby make a market for future bond issues. If such a company should be granted relief under such circumstances, then we would have one rate for a company which had issued excessive capitalization and another rate for a company which had confined its capitalization to the actual money invested in the enterprise, which would be absurd and inequitable.

The conclusive answer to Mr. Justice Swayze's position is that on his theory there could be no review by any court of the finding of a Public Utility Commission. The Commission would simply say, we have considered the original cost of construction in this case, the cost to reproduce the property under present conditions, the going concern value, the value of its franchises, the probable return upon the rate we have fixed, and we fix a rate of six cents per passenger (if it's a trolley case) or ninety cents per thousand cubic feet (if it's a gas case). How could such a finding be reviewed by this Court? Is it not plain that in order to determine whether that finding of the Commission was just this Court would be compelled to adopt some criterion and consider all of the evidence in the case with reference to such a criterion? We submit that any other theory leads to a hopeless confusion.

Mr. Justice Swayze maintains that the existence of a five cent rate in ordinances all over the United States is sufficient evidence in itself that such a rate was a reasonable one, prior to the increase in the cost of wages and materials. If this was so then the whole purpose of the Public Utility statutes would be defeated. The whole purpose and object of this statute was to provide machinery for fixing rates. The court will take judicial notice of the fact that these statutes were adopted in this and other states because of a popular idea that the Public Utility Commission were receiving excessive returns for trolley, gas, electric light, water and power service. On Mr. Justice Swayze's theory when we applied for a reduction of the

gas rate in the Passaic Gas case, all the company needed to do was to show that the dollar rate was the one uniformly adopted in cities of similar population all over the United States, and that it had been acquiesced in for many years. If applications had been made in those years for the Commission to fix a three cent fare in a trolley case it could have been met on Mr. Justice Swayze's theory by the company showing that five cents was the uniform standard through the United States and had been acquiesced in for many years.

But even that statement is not true. It is not a fact that prior to the war five cents was the universal standard. In Canada, Cleveland, Detroit and San Francisco a lower rate than five cents had been established and found profitable.

Our own case is a conspicuous illustration of the inaccuracy of Justice Swayze's statement of the fact. For upwards of twenty years the Trenton Street Railway Company had transported the bulk of its passengers at the rate of four and one-sixth cents. If in a small town the company could, over such a long period, have prospered under a rate of four and one-sixth cents, it affords conclusive proof that the rate of five cents, in the large, congested, populous cities near New York served by the Public Service Corporation, was an excessive rate.

Furthermore, the fallacy of Mr. Justice Swayze's position that the existing rates throughout the country prior to the war are a sufficient criterion of the reasonableness of the existing rates at that time, is shown by the attempt to apply that rule in the Trenton case and in the Public Service case. In attempting to establish the reasonable rate prior to the war as a foundation upon which to determine the reasonableness of the proposed rate, which rate is to be taken as such foundation, the five cent rate prevailing in Newark or the four and one-sixth cent rate prevailing in Trenton, or the three cent rate prevailing in Cleveland?

The final and conclusive argument against Mr. Justice Swayze's theory is found in the fact that if it is once accepted, then any future investigation of a reasonable rate must start from the rate now established.

If in the Public Service case the rate of seven cents with one cent for a transfer now established by the Board by the simple principle of computing the additional expenses in the cost of wages and the cost of material since 1916, is a just and reasonable rate, then it follows that if in the future we undertake to reduce the rates charged by the Public Service we can only submit proof showing the decrease in the cost of operation of the company from the time of the fixing of the seven cent rate by this Board. In our Trenton case the same procedure would have to be followed.

Upon this theory then we could never in these cases be permitted to show that the company was receiving a rate far in excess of a fair return upon the fair value of the company's property.

We submit that not a single case in our courts can be cited in support of such a contention. If this position is sound then there is no reason whatsoever why we should ever investigate the value of the company's property in any case in this State.

This reasoning shows that it is absolutely essential that a definite criterion should be established by which to test the reasonableness of the finding of the Public Utility Commission in this case. We maintain that that criterion is a fair return upon the fair value of the company's property, and in support of that contention submit the following authorities:

In *Smyth* v. *Ames*, 169 *U. S.* 466, Mr. Justice Harlan, at page 554, before stating the rule which we have hereinabove quoted, says:

> "If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden

> of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the apparent value of the property and franchises used by the corporation, as represented by its stocks, bonds, and obligations, is not alone to be considered when determining the rates that may be reasonably charged. * * *"

In the case of *San Diego Land and Town Co.* v. *National City,* 174 *U. S.* 739, decided in 1899, Mr. Justice Harlan, writing the opinion of the Unitetd States Supreme Court, says at pages 757-758:

> "The contention of the appellant in the present case is that in ascertaining what are just rates the court should take into consideration the cost of its plant; the cost per annum of operating the plant, including interest paid on money borrowed and reasonably necessary to be used in constructing the same; the annual depreciation of the plant from natural causes resulting from its use; and a fair profit to the company over and above such charges for its services in supplying the water to consumers, either by way of interest on the money it has expended for the public use, or upon some other fair and equitable basis. Undoubtedly, all these matters ought to be taken into consideration, and such weight be given them, when rates are being fixed, as under all the circumstances will be just to the company and to the public. The basis of calculation suggested by the appellant is, however, defective in not requiring the real value of the property and the fair value in themselves of the services rendered to be taken into consideration. What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public. The prop-

> erty may have cost more than it ought to have cost, and its outstanding bonds for money borrowed and which went into the plant may be in excess of the real value of the property."

In *San Diego Land and Town Co.* v. *Jasper,* 189 *U. S.* 439, decided in 1903, Mr. Justice Holmes, writing the opinion of the court, at page 442, says:

> "The main object of attack is the valuation of the plant. It no longer is open to dispute that under the constitution 'what the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public.' "

In *Spring Valley Waterworks* v. *San Francisco,* 124 *Fed.* 574, decided in 1903, Circuit Court Judge Morrow says with reference to valuation of the complainant's water plant:

> "It may be considered as established that it is the reasonable value of the property at the time it is being used for the public service, but how this value is to be ascertained, and what elements are to be included in the estimate, are still subjects of controversy. * * *"

Willcox v. *Consolidated Gas Co.,* 212 *U. S.* 19, decided in 1909, turned entirely upon the valuation of the company's property, and in the decision of that case in the United States Supreme Court, Mr. Justice Peckham, at page 52, said:

> "And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates."

The decision of the United States Supreme Court in *Knoxville* v. *Knoxville Water Co.,* 212 *U. S., page* 1, was handed down on the same day as the decision in the Consolidated Gas case, and in that case almost the only elements of value considered were cost of reproduction and existing depreciation.

In the Knoxville case the court flatly lays down the rule that the fair value of the property is the criterion upon which the rate must be determined. Mr. Justice Moody in his opinion says (at page 9):

> "The first fact essential to the conclusion of the Court below is the valuation of the property devoted to the public uses, upon which a company is entitled to earn a return."

In *Pioneer Telephone Co.* v. *Westenhaver, 29 Oklahoma,* ———, decided in 1911, Judge Hayes, in writing the opinion of the Court, at page 355, says:

> "The basis of all calculations as to the reasonableness of the rates to be charged by public service corporations is the fair value of the property used by the corporation in rendering the service to the public. * * * The rate is fair when its application will yield a fair return upon the reasonable value of the property at the time it is being used for the public. It is unfair when it does not yield such return. * * * No inflexible method for the ascertainment of the value of the property used in the service has been fixed by legislative bodies dealing with rates, or by the courts in determining the validity of rates, and from the nature of the subject no inflexible method can be fixed. Sometimes the present value is arrived at by ascertaining the original cost of construction and all betterments, and deducting therefrom for depreciation; but this method does not always prove to be fair and just. If there was extravagance and unnecessary waste in the construction, or, as is often the case, fictitious stocks and bonds issued, the proceeds of which did not go into the original construction, such method would prove unfair to the public. On the other hand, where the market price of the physical units or of the labor entering into the construction of the plant has advanced since its construction, the original

> cost may be much lower than the present value; and for that reason be to the owner of the plant an unfair determination of its present value. The method most frequently used is to ascertain what it will cost to reproduce the plant or the cost of its replacement at the present time, and deduct therefrom for depreciation in the existing plant. Both methods may be used and considered in ascertaining the present value, and both are often resorted to as was done in this case."

In *Spring Valley Waterworks* v. *San Francisco,* 192 *Fed.* 137, decided in October, 1911, District Judge Farrington says, page 145:

> "What the company is entitled to demand in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public. * * *
>
> The public has a right to demand that no more shall be exacted than the services rendered are reasonably worth. The public cannot be subjected to unreasonable rates in order simply that stockholders may earn dividends. * * *
>
> Cost of reproduction is not a fair measure of value, unless a proper allowance is made for depreciation, because all constructive portions of the plant are subject to decay, and to be worn out or consumed by use. * * *
>
> Original cost is not always a fair criterion of present value, because the plant may have cost too much, or it may be of unnecessary dimensions. If it has increased in value since its acquisition, the company is entitled to the benefit of such increase, if such increased valuation does not require a return so large as to be unreasonable and unjust to the public. * * *
>
> The aggregate value of bonds and issued capital stock of the company at present market

prices is not a reliable index of the value of the plant, because such prices often rise and fall from the operation of causes which have little or nothing to do with the real intrinsic value of the property, and the bonded or other indebtedness of the company may exceed the actual value of its property.

The most important fact to be determined is the value of the property. The value to be ascertained is the value at the time of the inquiry. Only that property is to be considered which was then used and useful in supplying San Francisco with water. Among the proper matters to be considered are the original cost of construction; the amount expended in permanent improvements; the amount and market value of stock and bonds; the present, as compared with original cost of construction; the probable earning capacity of the property under the particular rates prescribed by the ordinance for each of the years in question; the sums required to meet operating expenses; what it will cost to obtain water, equal in quantity and quality to the present supply, from the next most available source; the depreciation suffered by that portion of the plant which is worn by use or action of the elements, or shorn of its value by newer, cheaper and more efficient appliances and machinery; the fact, that the plant has a franchise and is a going concern, with an established business and thousands of customers, whose buildings are connected with the distributing system, and appreciation in value since the various properties constituting the plant were acquired. To each of these factors just and proper weight must be given; *and, finally, the result must be the reasonable and fair value of the plant as between the company and the public.*"

In *Des Moines Gas Co.* v. *Des Moines, U. S.* 238, *page* 153, this Court says:

> "As pointed out in the Cedar Rapids Case, if return is to be regarded beyond that compensation which a public service corporation is entitled to earn upon the fair value of its property, the right to regulate is of no moment, and income to which the corporation is not entitled would become the basis of valuation in determining the rights of the public."

There are numerous other cases usually cited in these controversies, but they will be found to turn upon the question as to what elements shall be considered in fixing a fair value of the company's property, and all of the cases proceed upon the assumption, either express or implied, that the fair value of the company's property is the accepted criterion and standard upon which a fair rate is to be applied. The question of what is a fair rate has also been the subject of many court decisions, and need not be gone into here. The principle simply is that it should be high enough to attract capital. In the Consolidated Gas case a rate yielding less than five per cent. on the value of the property was held not confiscatory. Our Commission in other cases has used eight per cent. as a rate which would attract capital. That point is not at issue in this case, and it is determined always upon considerations entirely apart from those which affect the value.

If the Court holds this contention sound, then the decision of the Board in this case must be set aside, because, as will appear in a subsequent point, the Board expressly refused to consider the element of a fair return on a fair value of the company's property, and based its order upon other considerations, which we will proceed to discuss.

POINT III.

THE THEORY OF AN "EMERGENCY" ADOPTED BY THE BOARD OF PUBLIC UTILITY COMMISSIONERS IS ILLEGAL.

We call attention, in considering this point, to the fact that Mr. Justice Swayze's opinion in the Supreme Court entirely ignores this emergency theory, and sustains the finding of the Board upon other grounds which we will consider later. The Board itself, however, expressly bases its finding and order upon the theory of an "emergency" which justifies it in discarding the ordinary rule. We will consider under this point the emergency theory and take up under another point the reasons of the Supreme Court opinion.

There is nothing in the Public Utility statute which contemplates that the Board shall act in cases of so-called emergency upon any different legal or equitable principal than it follows in normal times. We understand that in some of the western states the Public Utility statutes do provide expressly for emergencies, but no such provision is in our statutes. Therefore, there is no such thing as an emergency under our statutes. The Company is entitled to a just and reasonable rate in normal times and in abnormal times. The cost of materials vary in different years; wages go up and wages go down. The legal test to be applied under all conditions is that the Board should ascertain the gross revenue, deduct from it operating expenses, including taxes, and a reasonable depreciation fund, and the remainder must constitute either (1) more than a fair return upon the fair value of the company's property, or (2) less than a fair return upon a fair value of the company's property, or (3) approximately a fair return upon such value, and the finding of the Board must follow the ascertainment of this result.

Whatever may be said in defense of the theory of emergency relief in the Public Service case does not apply to our case. This clearly appears from examining

the report of the Board in the Public Service case. The Board says in that case:

> * * * "Ordinarily, in fixing just and reasonable rates, the accepted standard is a rate which will afford a fair return upon the value of the property used and useful in serving the public. The application of this standard requires ascertaining the value of the utility's property.
>
> "To ascertain the value of the property of a utility requires exhaustive investigation and is inconsistent with the granting of emergency relief required by general conditions. All commissions and engineers will agree that as a practical matter it is more difficult, and requires more time and labor, to determine the values of the properties of steam railroads and electric railways than that of other public utilities. These utilities, by reason of their peculiar development, require most careful expert investigation of the financial history of each company in the process of ascertaining value. When, as in the present case, there are numerous subsidiary companies leased for long terms, at rentals forming a large part of the fixed charges of the petitioner, and these fixed charges and interest are attacked as extravagant, excessive and unwarranted, the investigation required under normal, general conditions becomes still more complicated and time-consuming. The Board must, however, define an emergency and matters it will consider in emergency applications.
>
> *An emergency for which a carrier is entitled to relief by a temporary emergency rate exists where, by reason of general conditions not affecting the applicant utility alone, the operating revenues are insufficient to operate and maintain its property and to pay rentals and interest on such of its securities, a defult in the payment of which would jeopardize the solvency of the company.*

It thus appears that in the Public Service case the Board rests its findings upon the necessity of a prompt decision in order to aid the company, and upon the assumption that to follow the rule which the Commission admits is the true rule in normal times and ascertain a fair value of the company's property, would involve an investigation so long and complicated as to prevent the granting of emergency relief. Whatever force this point has in the Public Service case it has absolutely none in our case. This position carries the necessary implication that if there had been sufficient time to ascertain the value of the company's property, the Board would have proceeded upon another theory, that of a valuation. If this is not so, then there was no reason why the Board should, at considerable length, set forth the difficulty and length of time which would be involved in ascertaining the value of the Public Service Railway property.

In our case there was no such difficulty existing. The Board had before it conclusive and detailed evidence of the value of the company's property, from which it could have promptly ascertained such value. This will appear from the following facts: In 1915 the defendant company notified the Board of Public Utility Commissioners that it was about to discontinue the sale of its strip tickets at the rate of six for a quarter, and was about to install in lieu thereof a straight five-cent fare. The Public Utility Commission restrained the company from such action and ordered an investigation into the reasonableness of the existing rate. In that investigation the company introduced elaborate evidence showing the value of the company's property. The summary of that evidence appears in the record in the abstract from the report and decision of the Public Utilits Commission. They also had a valuation of the company's property made by the operating company's president before he and his associates acquired control of the property in 1910, and his testimony of the amount of money that had been subsequently invested in the

property chargeable to capital account. They had the valuation made by experts hired by the city of Trenton. They had the testimony of the company's own expert, Dr. Betts, who made an investigation and valuation at the request of the Board. As a result of all this testimony the Board determined in that case that the value of the company's property did not exceed $3,212,000. This valuation and the rate based upon it was sustained by the Supreme Court and by this Court. By stipulation all of that testimony, together with the finding of the Board, was made a part of the record in this case, and was before the Board. In addition the case itself was tried before the Board upon the theory that a valuation was necessary, and in addition to the previous evidence of value, the defendant company introduced a detailed and elaborate valuation made at large expense by an expert hired especially for that purpose. There was also before the Board, or could have been ascertained in a few moments' investigation, the value of such improvements as had been made to the company's property since the Board's valuation in 1915, together with evidence of accrued depreciation since that time. The Board therefore had before it complete evidence upon which to apply the rule which the Board admits is the accepted standard in normal times, to wit, a fair return upon the fair value of the company's property.

Nevertheless the Board refused to consider this evidence, and proceeded to apply the principle that the company was entitled to a return which would enable it to keep out of bankruptcy.

The Board in its report, after reciting as hereinbefore quoted, that in normal times the criterion of the reasonableness of a proposed rate is that it shall be sufficient to afford a fair return upon the fair value of the company's property devoted to the use of the public, casts aside this standard because if it is applied in this case under war conditions, it might

> "result in a curtailment or entire suspension of the service of this utility just at the time when

> the National Government is exerting every effort to co-ordinate and strengthen all agencies employed in winning the war, not the least important of which are the street railway systems transporting citizens from home to place of employment."

The Board then goes on to support its position by reference to a recommendation of the National War Labor Board, urging the local authorities to increase rates so as to meet the added cost of operation. This recommendation of the War Labor Board contains this astonishing statement:

> "The just claim for an increase in fares does not rest upon any right to a dividend upon capital long invested in the enterprise. * * * Over capitalization, corrupt methods, exorbitant dividends in the past are not relevant to the question of policy in the present exigency."

This is a plain statement that this Board fixed this rate in order to help the United States carry on the war. It admits that all of the decisions of the courts as to what constitutes a reasonable rate have been disregarded, and that the Board has assumed the function of enforcing a contribution to carry on the war upon the people of the City of Trenton and vicinity.

In the Public Service case the Board refused to allow any return upon a sum of $50,000,000 of the company's capitalization upon the ground that "stockholders in such corporations must share in the privations and hardships resulting from financial changes due to the war, and cannot expect to wholly escape therefrom." This quotation in the Board's report was underlined to give it additional emphasis.

In the Trenton case the Board has assumed the duty of assessing part of the cost of the war upon the car riders of the town. In the Public Service case it assumed the duty of assessing a part of the cost of the war upon holders of certain kinds of securities. It held in that case that the holders of the securities of

corporations leased to the Public Service Corporation under a guaranteed rental must not contribute to the cost of the war but are entitled to their "pound of flesh" even though the life of the country was in peril, but the holders of $50,000,000 of stock not guaranteed, must forego their dividends in order to help save the country.

We respectfully submit that absurdity could not be carried to greater lengths. From the entire report it is plain that the Board proceeded upon the theory of a body possessed of an absolute authority and power, and took such action as appealed to them individually without the guidance of any legal principle whatever. This is not a government by law—it is a government of whim and caprice, or at the best of individual opinion. It is not surprising that Mr. Justice Swayze in his Supreme Court opinion made no effort to sustain this theory, but on the contrary justified his confirmation of the act of the Board by legal theories which never occurred to the Board, and which are considered elsewhere in this brief.

We respectfully submit that no greater absurdity can be imagined than this assumption of the power to tax for war purposes by a statutory board of limited authority.

But the supposed necessity for this act was not proved in any way. The National War Labor Board was not produced for cross-examination. No evidence was submitted to show that a just and reasonable rate based upon the valuation of the company's property shown by the evidence available in the case had been used as a criterion, that the company under those conditions would have been forced to suspend operations. Even if a return based upon such evidence had proved insufficient to pay the exorbitant rentals upon leased lines and interest upon the outstanding mortgages, and the holders of these underlying liens had forced the company into bankruptcy, the result would have been simply

that the company would have been operated pending reorganization by a receiver.

The court will take judicial notice that railroads, trolley companies and public utility companies of every kind have been in the hands of receivers in every part of the United States and for long periods of time. The Third Avenue Railroad in New York was in the hands of a receiver for many years. The Street Railway Company in Atlantic City during the period of this war has been operated by a receiver. The Central Railroad of New Jersey was for several years in the hands of a receiver. All that happens in such a case is that the receiver, freed for the time being from the necessity of paying dividends and rentals, can use all of the revenues of the company for operating expenses. For the time being therefore while the emergency lasted, a receiver would have very much more money to spend for transporting workmen to and from munition plants than the company would have even if it was allowed the rate fixed in this procedure.

But if it were otherwise, and the result of enforcing the legal rule would have diminished the company's returns so that it could not properly meet the needs of the war, it was the plain business of the United States Government to meet this situation nationally as it did in the case of the railroads.

As a matter of fact it appeared by the proof in the Public Service case that when the National Government desired the Public Service Corporation to create additional facilities for transporting workmen to and from Newark and the Government Shipbuilding plant at Port Newark, the Government itself advanced the money, some $800,000 in amount, for the construction of these facilities.

But let us examine the bankruptcy and emergency theory further.

It amounts in plain words to a statement that in cases of emergency as defined by the Board a company that is overcapitalized as to bonds, or which has taken over

and consolidated properties upon excessive guaranteed rentals beyond a fair return upon the fair value of the company's property. To state this proposition is to show its absurdity. Bankruptcy in normal times would follow the application of the criterion of a fair return upon a fair value if the company had issued an excessive amount of bonds or had obligated itself to pay excessive rentals. In ordinary times, therefore, the certainty or possibility of bankruptcy as a result of the Board's order, according to the Board's logic, would be immaterial and irrelevant. If bankruptcy followed because the Board would not allow a rate which would afford more than a fair return upon a fair value of the company's property, that is a misfortune which the company has brought upon itself by improvident corporate action. But in an emergency as defined by the Board, bankruptcy at all hazards must be avoided. What is the foundation for such a position? Two classes of people are concerned in the results of the finding of the Board, either in emergency times or in normal times, to wit, the patrons of the road, and the holders of the securities of the road. Is there any reason why the holders of the securities of the road should be guaranteed against bankrupty in emergency times any more than in normal times?

Is bankruptcy of the company any more disastrous to the patrons of the road in emergency times than in war times? Upon what basis can such a claim be rested?

A further consideration will show the absurdity of this bankruptcy criterion. If, as in the Public Service case, the returns during the emergency times are insufficient to pay interest upon bonds and to pay rentals, either or both of which may be excessive, the Board upon its emergency theory must afford relief. But if the applying company has raised all of the money for the construction of its plant by an issue of stocks, there being no danger of bankruptcy because the owners of stocks cannot foreclose when dividends are sus-

pended, such company would not be entitled to any relief, although it would be subjected to the necessity of paying the same increase in wages and in cost of materials. If this is not a denial of the equal protection of the law, it is hard to conceive of such a case.

POINT IV.

Finding of the Supreme Court that Order was Justified by Paragraph H of Section 17 of Public Utility Statute Considered.

The opinion in the Supreme Court undertakes to justify finding of the Board of Public Utility Commissioners by an interpretation of Paragraph H of Section 17 of the Public Utility act apparently on the ground that under such section no evidence is needed provided applying utility company and the Public Utility Commission shall agree. The language of the Supreme Court's opinion upon this part of the case can only be explained upon the theory that the Court did not read the record either in this case or in either of the Public Utility Company cases. For example, the Court says that the prosecutor is in no position to complain. He did not venture to introduce any evidence or to contradict the evidence offered on the part of the railway.

This is not true as a matter of fact even in the Public Utility cases and as we have before plainly shown by the record in this case to be a misconception of the whole situation. In this case not only did the defendant company introduce elaborate evidence on the question of value, but the prosecutor contested every bit of this evidence by elaborate evidence of its own. We did not content ourselves with the assumption that the Board could not fix a rate unless it first fixed a valuation. We claimed and still claim that that is a sound position, but we did not rely upon it, but on the contrary introduced elaborate evidence upon every phase of the case.

In the Public Service cases it is possible that Mr. Justice Swayze became confused over the fact that there were two cases. In the case of the first application the company asked for a seven-cent fare and two-cent transfer, and put in evidence increased expenses since 1916. It did not attempt to establish a valuation then or a valuation now. We put in evidence of experts to show that the company even under the increased expenses was still earning a fair return upon the fair value of the company's property. As the Board flatly refused to allow time for a proper valuation of the company and announced in advance that it would not consider a valuation in determining its finding the municipalities in that case did not introduce evidence of valuation directly, but its experts undertook to show by an analysis of the company's capitalization and other facts that were in evidence that the valuation of the company's property did not exceed some sixty millions of dollars. In other words, the cities put in as much evidence as the Board would permit upon the subject of valuation. In this case the Board refused the application for a seven-cent fare and a two-cent transfer, but held that the company was entitled to $860,000 increased revenue annually, and that a charge of one cent for a transfer would produce this amount, and authorized the company to make such charge. After this case was decided a new application was made by the company upon the specific ground that since the recent decision of the Board the National War Labor Board had increased the wages of the employees of the company to an amount of $1,800,000 per annum. In this second case the evidence submitted by the company was confined solely to showing the fact of this increase and its amount. The cities offered no evidence after the counsel had moved to dismiss the case upon the grounds that no evidence of valuation had been shown either in this case or in the preceding case. When that motion was denied upon the assumption that the recent decision was legal there was nothing for the prosecutor to say.

But, of course, if the cities' position was sound in the first case and evidence of the valuation was essential in that case, then the decision in that case was erroneous, and consequently the decision in the second case would also be erroneous.

But we respectfully submit that Mr. Justice Swayze has entirely misapprehended the purpose of these two sections of the act. He expressly admits that if our case can be brought under paragraph (c), section 16, there would be much force in our contention, and he therefore rests his decision upon an interpretation of paragraph (h) of section 17, which provides for the increase of rates by the public utility itself, and authorizes the Board to hear and determine whether the increase is just and reasonable, and makes it the duty of the Board to approve the increase upon being satisfied that the increase is just and reasonable. Mr. Justice Swayze says:

> "The difference in the two methods is fundamental. One is the method of litigation, long, expensive, unsatisfactory, necessarily too slow to afford prompt relief, and sure to do injustice by delay to one side or the other. The other we may call the method of agreement, or bargaining, if we choose; prompt and comparatively satisfactory, and resulting, if not always in abstract justice, yet in a determination which, in the hands of fair-minded men, is likely to be acquiesced in."

This is a plain misconception of the purpose of these two paragraphs. The first is, as the Justice says, the method of litigation, and the second, as the Justice also says, a method of bargaining and of speedy action. But the fallacy of the position is that the proceeding under paragraph (h), of section 17, is never to be concluded if objection is made by some party other than the applying company. That section only provides in cases where the company desires to increase its rates and nobody appears on behalf of the public making an objection

thereto. A large part of the time of the Public Utility Commission is taken up with such cases.

We had such a case in Trenton when the so-called Johnson trolley line, running from Trenton to Princeton, appeared before the Board and asked for an increase in rates. The Board notified the City of Trenton and upon an investigation of the facts we became satisfied that this company was so peculiarly situated that it could never hope to earn a fair return upon the value of its plant, no matter what rate was fixed. If the rate was fixed theoretically high enough to afford such a return, the people would patronize the other trolley or the railroad. The City of Trenton, therefore, made no objection and did not join issue with the applying company and then that company was left solely to satisfy the Board of Public Utility Commissioners of the justice of its application.

But even in such a case it will be seen that the Board was not satisfied until it ascertained what was the value of the company's property.

What Mr. Justice Swayze omits in his assumption is the fact that very many proceedings which result in litigation are started under paragraph (h), of section 17, and when the proper public parties have been notified and put in answers raising an issue of fact, and denying the justice of the company's application, the Board proceeds to a formal hearing, and from that time on the method of litigation provided for in section 16 takes the place of the method of bargaining provided by section 17.

Two cases illustrating this point have gone through these courts. One is the well-known Passaic Gas case, and the other the strip-ticket case of the Trenton and Mercer County Traction Company.

In the Passaic Gas case the cities of Passaic and Paterson made application under section 16, which the Justice calls the method of litigation, and the Board initiated its own investigation and consolidated the two

cases. The result was litigation and a final determination of the Court of Errors and Appeals.

In the Trenton strip ticket case the proceeding was initiated by the company notifying the Public Utility Commission that it proposed to discontinue the rate of six tickets for a quarter, and substitute a straight five-cent fare. This was under section 17, and was what Mr. Justice Swayze calls "the method of bargaining," and was to be prompt and expeditious. But the City of Trenton promptly intervened and requested the Commissioners to enjoin the proposed increase, which was done, and thereupon the issue was joined between the company on the one hand and the city on the other, and the subsequent proceedings were the proceedings of litigation instead of the proceedings of bargaining.

There can be no quick, prompt or bargaining proceedings under section 17, if any person authorized under the statute to object to the company's new rates demands an opportunity to be heard, which was the case in the Public Service case and also in our Trenton case. The minute the demand to be heard is made to the Board the subsequent proceedings are proceedings of litigation and not proceedings of bargaining.

Assuming that the application of the first Public Service case resulted in a legal decision, then the second application for an additional increase in the rate to cover the allowance by the National War Labor Board would have been, as Justice Swayze says, tried under section 17, the method of agreement, because the first application had established facts which became res adjudicata.

But no such condition existed in our Trenton case in the way it was handled by the Board. Although the Board had before it complete evidence of the value of the company's property, and could have ascertained from such evidence whether under the increased operating expenses the company had left, after paying such expenses, a sum sufficient to afford a fair return upon the value of the company's property, it deliberately re-

fused to act upon that principle and adopted instead the criterion that the needs of the company should be measured not by the principle of a fair return, but by the principle of affording it sufficient money to pay interest and dividends upon excessive securities in order to escape bankruptcy.

The logic of Mr. Justice Swayze's interpretation of these provisions completely destroys the force of this statute from the standpoint of the public. It would permit any public utility corporation to get together with the Commission in a corner and refuse interested parties the right to be heard and fix a rate by bargaining and agreement between the applying corporation and the Commission. In such a case the Commission would not be required to consider the value of the company's property nor would it be required to consider anything else, because the proceeding would not be governed by any legal rule. The method of bargaining is nothing but a horse trade, which does not proceed upon legal principles. We submit that this consideration is fatal to the whole line of reasoning in the opinion of Mr. Justice Swayze.

Therefore, we submit that all of the elaborate reasoning of Mr. Justice Swayze as to the meaning of these two sections of the Utility Act does not apply in this case.

POINT V.

The Order of the Board is Illegal in that it Fixes a Rate which Compels the People of the City of Trenton to Carry Losses Incurred by the Defendant Company in Operating Suburban Lines.

This is a point involved on this case which is not in the Public Service case. In this case the company operates suburban lines out of Trenton and also operates the lines in Trenton. We claim that our relations

are with the underlying companies which received franchises from the City of Trenton, and that we are in no wise bound by agreements which have been made by the stockholders of the company to which the City of Trenton has given franchises with other companies.

It appears by the evidence in this case (testimony of Peter Witt, pp. of the record) that the defendant company, which is the holding and operating company, lost in the year 1917 the sum of $86,000 by its operation of suburban lines. This loss was an actual loss in that the gross receipts were not sufficient to pay the actual expenses of the operation of the lines, not counting interest upon securities. We maintain that this loss cannot be charged against the prosecutors, and that in fixing the sum of $201,000 as the amount which the company is entitled to receive by an increased fare, these losses of the suburban lines are included. This is a plain discrimination against the people of the City of Trenton, which is expressly forbidden by section 18 of the Public Utility Act.

It should be borne in mind that the proofs show in this case that the defendant corporation is the holding company of three other corporations which have been separately recognized by the grant of franchises from the City of Trenton. No agreement of these three companies to consolidate can in any wise affect the rights of the prosecutors. We are entitled to assert our rights as against each of these companies in the terms of the agreement between each company and the city. This would seem to be established by the principle laid down in the decisions of the courts, to the effect that where a company has bonded its property in excess of its fair value, or has leased other properties upon a guaranteed rental, relying upon the existing rates to pay such bond interest and such rentals, that company cannot, as against the municipality, set up the obligation to pay such interest and such rentals as a justification for the maintenance of the existing rate, but that the rate must be determined based upon the value of the

company's property, even though it results in breaking up the relations which these corporations have established by agreements among themselves.

This doctrine is established in *Spring Valley Waterworks* v. *San Francisco*, 192 *Fed.* 137; *Cotting* v. *Kansas City Stock Yards*, 82 *Fed.* 850; *Smyth* v. *Ames*, 169 *U. S.* 466; *Cumberland Telephone and Telegraph Co.* v. *City of Louisville*, 187 *Fed.* 637.

Two or three illustrations will serve to show the force of this argument. At one time in its history the Trenton Street Railway system was owned by an operating company which was a Pennsylvania corporation, and was run in connection with street railways in the State of Pennsylvania. During the continuance of that arrangement can it be held that the Pennsylvania operating company could have sustanied an increase in fares in Trenton if the proofs showed that the Trenton business paid more than a fair return upon the company's property in Trenton, simply by showing that its operation, considered as a whole, including Trenton business and Pennsylvania business, showed a loss?

Another local illustration is pertinent. The so-called Johnson line hereinbefore referred to in this brief, runs from Trenton to Princeton and is a competitive local line, independent of the defendant corporation, and which has never paid and can never pay a fair return upon its cost. Suppose that the existing rate of six tickets for a quarter when the war emergency is over and the cost of material and wages decline, would afford to the defendant company more than a fair return upon the value of its property. Suppose that the company, foreseeing that application might be made to the Utility Commission to reduce the six-cent fare, bought up the Johnson line to Princeton, which is the line that loses money, and merged it with the other lines operated by the company. Upon an application by the City of Trenton could the defendant company then demand that the test of a reasonable rate should be

one that would absorb the losses of the Johnson line? If not, why not?

If it is plain that the Johnson line could not be so included, why is it not equally plain that the line owned or controlled by the defendant company which runs to Princeton in competition with the Johnson line, and loses money every year, cannot be included upon this application in the determination of a reasonable rate to be charged to the people of the City of Trenton?

We submit that it is impossible to distinguish between these two illustrations.

The effect of the rate fixed by the Board therefore is to saddle upon the people of the City of Trenton the losses incurred by the company in operation of lines outside the city limits in territory not covered by the ordinance agreements between the company and the city.

This is a ploin discrimination. It may be true, as Mr. Justice Swayze says, that this is in the public interest. It would be equally true that it would be in the public interest for the City of Trenon to make an annual appropriation in the way of a subsidy to any suburban trolley line. Nobody would claim that becausee it was in the public interest, this Board had the right to compel the City of Trenton to grant such a subsidy or make such an appropriation. The question is not that of the public interest, it is a question of the relations between the city and these different corporations as established by contract ordinances. If these ordinances are to be repealed by action of the Board, then it must be in accordance with some legal principle. There is no legal principle which compels the people of the City of Trenton to pay for trolley service in Trenton more than a reasonable return upon the fair value of the property in that city devoted to the transportation of the people within the city.

POINT VI.

THE CITY OF TRENTON IS ENTITLED TO HOLD THE COMPANY TO ITS ORDINANCE CONTRACT TO CARRY PASSENGERS AT THE RATE OF SIX TICKETS FOR A QUARTER.

There are two considerations under this point to be passed upon by this court. The first is, that the said ordinance was a contract which was beyond the power of the Board of Public Utility Commissioners to abrogate. We will not argue this claim at length in this brief because it will be finally decided by the decision in this court in the so-called Collingswood Sewerage Company case, which is now pending. If the court decides that these ordinances are binding contracts, the decision of the court in our case would be for the prosecutors.

But if the court finally holds that these ordinances are not binding contracts, the fact still remains that they are contracts until they are changed by the Public Utility Commission, and that Commission had the right under the proofs in this case, and it was its duty to compel the company to surrender some of the rights which it received in consideration of the contract.

It is pertinent to this argument to consider the opinion of this court in the case of *Trenton and Mercer County Traction Corporation, Prosecutors,* v. *The Inhabitants of the City of Trenton and Public Utility Commission,* which affirmed the decision of the Board of Public Utility Commissioners in refusing to allow this defendant Traction Company to abandon its sale of six tickets for a quarter, and which opinion was subsequently affirmed by this court for the reasons given in the decision of the opinion handed down by the Supreme Court. We quote from the opinion of the Supreme Court:

> "We find it unnecessary to pass upon the question whether the original ordinances and their acceptance amounted to a contract by which

the companies were authorized to charge as much as 5 cents, or whether they amounted only to a limitation by which the companies were forbidden to charge more than 5 cents. It is likewise unnecessary in our view to consider whether a fare of 4 1/6 cents is reasonable in view of present conditions and the situation of the company. We find that in 1909 a new contract was made between the city and the company which requires the company to sell six tickets for 25 cents upon all cars operated in the City of Trenton. The facts are as follows: For many years tickets had been sold at that rate. In 1909 the street railway company proposed to stop the sale. Naturally great public interest was aroused, threats were made of attacks upon the franchises of the company, and the city authorities were preparing for such an attack and for amendments of the ordinances. An agreement was reached by negotiation, and on October 4, 1909, the Trenton Street Railway Company adopted a resolution waiving its right to notice of alterations in the ordinances, and directing its officers to execute an agreement already prepared (a copy of which was set forth), immediately after the passage of a new ordinance, a draft of which had been submitted by the city counsel to the railway company. This ordinance provided for the sale of tickets at the old rate by the company upon all cars operated in the City of Trenton. The ordinance was passed by the common council on October 19th and approved by the mayor on October 22d, 18 days after the resolution of the railway company.

There was a sufficient legal consideration for the agreement by the company. It is true the ordinance did not affirmatively concede any

> benefit to the company; on its face it was rather a detriment; but that is too narrow a view to take. The situation was that the company was liable to attack, and the ordinances might be altered or amended in such a way as to be very harmful, or at least productive of long and expensive litigation. What the company secured was the adoption of an ordinance which contained no such drastic changes; the benefit to the company was in what the ordinance omitted, not in what it contained. In saying this we are not to be understood as suggesting that the mere act of passing the ordinance in pursuance of the agreement would not be a sufficient consideration in a legal sense.
>
> We think there was a valid contract requiring the company to sell six tickets for a quarter, and, hence, the Public Utility Commissioners might well conclude that such a rate was just and reasonable under the circumstances of the case."

In the light of this opinion, which covers this identical case, and which arose between the identical parties to this litigation, and upon the same subject matter, we submit that under the circumstances the Board of Public Utility Commissioners ought to have exacted from the company conditions in favor of the city.

The agreement having been made, how can this Board justify the breaking of this agreement by the company, unless the company restores to the municipalities the rights which it received upon the express consideration of its promise to carry out the agreement forever?

These companies obtained what the courts have held to be a perpetual franchise or privilege in the streets of these municipalities. It is an elementary principle of law, and it is an accepted principle of morals, that a failure of consideration avoids the contract. If a man obtains a privilege from another upon the promise of a continuing consideration, he cannot hold the benefits of

that promise after he fails to perform his continuing obligation. In equity the courts say that the complaining suitor must come into court with clean hands. If he asks equity he must do equity. Is it possible to conceive of a case in our equity court where a man could ask to be relieved of the payment of a rental for a piece of property, and also request that he be allowed to continue in possession of the property, simply because he was hard up? The Court looks with a cold eye upon any such suitor and warns him that he should have thought of that situation before he entered into the contract. His remedy is not to seek the court of equity to reduce his rent because he is hard up, but to give up the property before he asks to have the rental canceled.

This company comes before this Commission upon exactly the same plea. It does not deny its agreement. It does not deny that for many years it has been claiming that this agreement was a solemn contract, which the courts could not interfere with. It does not deny that it has had the benefits of its own rate of fare for twenty years or more, out of which great profits have been made. It does not offer to surrender any of the rights the lessor companies have in the streets of these municipalities. It simply asks to be relieved of that part of the contract which for the time being is expensive for it to carry out, and it asks this favor only upon the ground that it is hard up and cannot raise the money to carry out its contract.

Under these circumstances it was the plain duty of the Board to say what a court of equity would say, that before it can be relieved of its end of the contract, which for the moment happens to be extra burdensome, it must relieve the city from its end of the contract, which was to give it a perpetual right in the streets.

The power remains in the Commission to grant whatever relief it chooses to grant upon such conditions as appeal to its discretion. In other words, if it cannot say to this company, "Your perpetual franchise is hereby abrogated or shall be abrogated at the end of a reason-

able time, say five years," it can say to the company, "Your application to be relieved from the performance of this part of this contract will be denied unless you are ready to consent that the municipality shall be relieved of its obligation under the contract, which was to allow you a perpetual right in its streets."

This point is of vital importance to the city in its future relations with the company.

The right of municipal ownership is always a reserved power of the State, which may be adopted as a measure of public policy at any time. If the municipality was authorized and desired to take over the company's plant, the company would claim that under the decisions of our courts it should be paid a sum greatly in excess either of the original cost of its plant or of its cost of reproduction, on the ground that its franchise rights, being perpetual, were extremely valuable. How can this Commission justify itself in relieving the company from its express obligation merely on the ground that it is a temporary hardship to the company to fulfill it, and at the same time leave the company in possession of its most valuable privilege under the contract, to wit, the possession of a perpetual franchise in the streets? We confess that we do not understand what just and rational answer can be made to this argument.

Our contention, therefore, that no action should be taken by this Commission, which relieves this company from its obligation to carry passengers in the City of Trenton for not exceeding six tickets for a quarter until the franchises and privileges obtained by the company upon this specific pledge are restored to the municipality.

Upon the basis of the reasoning in the foregoing points and the authorities therein cited, we respectfully submit that the decision of the Supreme Court affirming the order of the Board of Public Utility Commissioners should be set aside, and the case remanded to the Public Utility Commission, with the direction that the Board should ascertain from the proofs in the case what is the fair value of the company's property, and

what would be a fair return thereon, and to fix a rate in accordance with the application of that principle.

Respectfully submitted,

CHARLES E. BIRD,
City Attorney of Trenton,

GEORGE L. RECORD,
Of Counsel for Prosecutors.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

INHABITANTS OF THE CITY OF TRENTON AND EVERETT TOWNSEND,
Appellants,

vs.

THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY AND THE TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Defendants.

} On Appeal.

Brief for the Trenton and Mercer County Traction Corporation.

STATEMENT.

On May 10th, 1918, the Trenton and Mercer County Traction Corporation (hereinafter called the Company) filed its petition with the Board of Public Utility Commissioners of the State of New Jersey (hereinafter called the Board), asking for leave to withdraw the sale of six tickets for twenty-five cents, and permission to charge six cents in each fare zone for each passenger instead of the five cents theretofore charged.

The hearing on this petition commenced on June 3d, and continued until July 2d. On July 9th the Board heard the argument of counsel. On September 24th the Board filed its report and made an order which permitted the company to withdraw the sale of tickets and charge a six-cent fare, commencing October 15th, 1918.

A writ of certiorari to review this order of the Board was allowed by Mr. Justice Trenchard, and heard by Mr. Justice Swayze for the Supreme Court. The order was affirmed. An appeal was taken by the Prosecutors to this Court.

POINT I.

The power to fix and regulate the rates charged in the conduct of a business "affected with a public interest" is an undoubted power of government, continuing in its nature.

(1876) *Chicago, Burlington & Quincy Railroad Co.* v. *Iowa,* 94 *U. S.* 155.

(1886) *Stone and Others* v. *Farmers' Loan & Trust Co., Railroad Commission Cases,* 116 *U. S.* 307.

It is a legislative function and can be delegated by an act of the legislature to be exercised. In New Jersey it was so delegated to the Board of Public Utility Commissioners by the act of 1911 (P. L. 1911, chapter 195).

POINT II.

The scope of the Public Utility Act is very broad. "It is evidently meant to give full control of all public utilities to the board thereby created, so far as it could be done by legislation. The board is given general supervision and regulation of and control over public utilities and over their property, property rights, equipment, facilities and franchises, so far as necessary to carry out the provisions of the act. The Commission is given power, among other things, to fix just and

reasonazle rates, to fix just and reasonable standards, classifications, regulations, practices, measurements, or service, and to require railroads and street railways to establish and maintain just and reasonable connections with other lines. These powers are quite enough to justify the present order, whether it is regarded as a regulation of practices or fares."

Atlantic Coast Electric Railway Co. v. *Board of Public Utility Commissioners,* 104 *Atlantic Reporter* 218.

POINT III.

Section 38 of the Public Utility Act as amended by P. L. 1918, p. 304, gives the Supreme Court jurisdiction to review an order of the Board and set the same aside or return the same to the Board for modification, where there is no evidence before the Board to support reasonably the order, or where the order made was without the jurisdiction of the Board.

The power of the Court is therefore only that given by the act, and a Court cannot set up its own standard of justice and reasonableness in opposition to the State agency created, except in those cases where the rate is so low as to work a confiscation of property or deprivation of the equal protection of the laws.

Wilcox v. *Consolidated Gas Co., 212 U. S.* 19.

POINT IV.

The Board had power to approve the increase.

By Subdivision C of Sec. 16, the Board is given power

> "After hearing, upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage and other special rates which shall be imposed, observed and fol-

lowed thereafter by any public utility as herein defined, whenever the Board shall determine any existing individual rate, joint rate, toll, charge or schedule thereof or commutation, mileage, or other special rate to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential."

By Subdivision h. of Section 17, the Board is given power

> "When any public utility as herein defined shall increase any existing individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates, or change or alter any existing classification, the Board shall have power either upon written complaint or upon its own initiative, to hear and determine whether the said increase, change or alteration is just and reasonable. The burden of proof to show that the said increase, change or alteration is just and reasonable shall be upon the public utility making the same. The Board shall have power pending such hearing and determination to order the suspension of the said increase, change or alteration until the said Board shall have approved said increase, change or alteration, not exceeding three months. It shall be the duty of the said Board to approve any such increase, change or alteration upon being satisfied that the same is just and reasonable."

POINT V.

The undisputed testimony offered before the Board showed the deficit from operation for the year 1917 to have been $77,417.05. The deficit for the year 1918 was estimated to be $297,160.12 at the old rate of fare. This was increased during the hearing by $35,000 by

the increase by this amount of wages to employees during the month of June.

This deficit was due to

(a) Increased wages which war conditions had made necessary in order to keep the road in operation. In 1914 wages were $293,157.96. In 1918, $457,244.33, or an increase of $164,086.37.

(b) Increased cost of fuel. In 1914 fuel cost $51,-447.83. In 1918, $88,221.57; an increase of $36,-773.84.

(c) Increased taxes. In 1914 taxes were $50,971.54. In 1917, $187,992.61; an increase of $37,021.07.

(d) Of all materials necessary for operation and maintenance, which had increased approximately 100 per cent.

Without an increase in fare the company would be unable to meet the interest on its funded debt, and the increase granted is insufficient if the whole amount estimated is received to pay its fixed charges. The situation was such that either an increase had to be granted or the property placed in the hands of a receiver.

In view of the provisions of the act that it is the duty of the Board to approve an increase upon being satisfied that the same is just and reasonable, the Board, considering the testimony, would not have performed its duty had it not approved the increase.

POINT VI.

A just and reasonable rate is a question of business judgment.

Public Service Co. v. *Public Utility Board*, 84 *N. J. L.* 463.

This business judgment is for the Board to exercise. The Board has exercised it, and the Supreme Court had no power to set up its business judgment in place of the business judgment of the Board. If such were the case, the power of rate making would be a judicial and

not a legislative function. The prosecutors do not in their brief point out any failure of evidence to support the order of the Board. The order should, therefore, have been affirmed.

POINT VII.

The prosecutors contend that the Board had no power to increase the rate of fare above that fixed by the ordinances of the City of Trenton, which fixed the rate of fare at five cents and the agreement subsequently made to sell six tickets for 25 cents. This contention has been decided in this State by the Court of Errors and Appeals by the following cases:

Atlantic Coast Electric Railroad Company against *The Board of Public Utility Commissioners,* decided June 18th, 1918, 104 *Atl. Rep.* 218.

Collingswood Sewerage Company v. *Collingswood,* decided at this term of Court, affirming the decision of the Supreme Court, found in 102 *Atl. Rep.* 901.

POINT VIII.

The prosecutors also contend that the Board must find, in order for its order to be legal, a valuation of the property of the company and fix a rate of return.

The Public Utility Act provides two methods of fixing a just and reasonable rate. The first is that provided in Subdivision C of Section 16, which is a proceeding to be instituted by the act of the Board. Subdivision h of Section 17 hereinbefore quoted at length shows that the company itself has the right to increase a rate. Upon increasing the rate the matter of the increase can be inquired into by the Board, and the Board has power to suspend the increase pending a hearing. The Board, however, does not have to exercise this power, so that

in many instances a utility company can increase its rates by the mere filing of a new rate.

The custom has grown up of asking the permission of the Board to increase the rate, and it was under such a proceeding that the rate in the present case was passed upon by the Board.

There is nothing in the act which makes it compulsory for the company in increasing any rate to have a valuation of its property made. The Board itself does not, when it makes an investigation on its own initiative, have to have a valuation of the utility company's property made. In fact, subdivision b of Section 16 appears to settle the point raised by the prosecutors, for this section provides:

> "From time to time to appraise and value the property of any public utility as herein defined, whenever in the judgment of said board it shall be necessary so to do, for the purpose of carrying out any of the provisions of this act, and in making such valuation the Board may have access to and use any books, documents or records in the possession of any department or board of the State or any political subdivision thereof."

From this it appears that it is discretionary with the Board as to whether it shall appraise and value the property of any public utility. The Public Utility Act is modeled after the Federal act known as the Hepburn Act. The Interstate Commerce Commission, acting under this act, has not found it necessary in the cases which the railroads have had before it for increased rates to determine the value of the property of the railroads. The Commission examines the operating expenses, taxes, fixed charges and gross revenues of the railroads in order to determine what, in the opinion of the Commission is a fair and reasonable rate.

The making of a valuation of a Public Utility is a difficult task. It is difficult to determine the question of hidden costs, intangible values, depreciation. The valu-

ation is not always helpful even in making of a rate, and, while a valuation is relevant, it is in no sense indispensable. At the present time it is difficult to determine in a valuation what prices should be used. Rates are, anyway, experimental, and as much justice can be done by fixing a rate from a state of the revenues, operating expenses, fixed charges, taxes, etc., as by knowing the exact value of the property devoted to the public use.

It was just these perplexing questions that caused the Board to say in its report in the present case that while it had considered all the evidence and exhibits, which included an elaborate valuation of the company's property, yet, under the trying circumstances of the present, the Board would not determine either the total amount of property of the company or the rate of return applicable to said property, or other questions raised by the prosecutors, but that it would base its conclusions upon the exigencies of the times, and would afford the relief necessary to permit the company to continue its service. Nothing could be more sensible than this conclusion of the Board.

To have fixed, or attempted to fix, at this time a valuation would have opened many questions which would have conduced to much litigation. In the exercise of that business judgment which has heretofore been referred to, the Board has fixed the rate of six cents for the company. It was necessary to do this in order for the company to meet its obligations and to keep the road in operation for the benefit of the public.

The entire argument of the counsel for the prosecutors appears to be on the line that it is the duty of the Board to force utility companies into bankruptcy rather than to allow or approve an increase in rate when it is clearly apparent from the uncontested and undisputed statements of the company that such increase is absolutely necessary to keep the company solvent and functioning.

The Utility Reports are filled with cases which hold that increase in rates of street railway companies will be allowed without a physical valuation, especially in those cases where the expenses of the utility have greatly increased because of war conditions.

Utah Lighting and Traction Company, Public Utility Reports, 1918, *B, page* 497.

POINT IX.

The prosecutors also contend that the order is illegal because certain suburban lines of the company are operating at a loss. This question is so thoroughly considered by Mr. Justice Swayze in his opinion that it is unnecessary to say anything to supplement his opinion. The case of *St. Louis & San Francisco Railroad Company* v. *Gill,* 164 *U. S.* 665; *Puget Sound Traction L. & P. Co.* v. *Reynolds,* cited by Mr. Justice Swayze in his opinion, decide the contention of the prosecutors in this respect is unsound.

POINT X.

In the prosecutors' brief, considerable criticism is made of that portion of Mr. Justice Swayze's opinion, which holds that the presumption is that the old rates of fare are just and reasonable until new conditions arise. For street railway service a fare of five cents has been established as between the utility and the public. In many instances this has been established by the municipality, representing the public for the time being, and embodied in an ordinance granting the franchise. The municipality has, for its citizens, made the bargain that the Public Utility Board now makes.

It will be observed that in the Public Utility Act there is a presumption that the old rates, until new conditions arise, are just and reasonable, because in Subdivision H of Section 17, the language is "the burden of proof to

show that the said change or alteration is just and reasonable, shall be upon the public utility making the same." This makes the company assume only the burden of proving the increase is just and reasonable, and not the burden of showing the former rate to be just and reasonable. The New Jersey act is modeled after the English act of 1904, which provides that the burden is upon the company to justify the increase of rate; *Mansion House R. & C. T. cases.* In this resepect the Interstate Commerce Act is different from the New Jersey statute and the English act, for the Interstate Commerce Act states that the burden of showing that the "increased rate or proposed rate" is just and reasonable shall be upon the common carrier. (Amendment of June 18th, 1910.)

As Mr. Justice Swayze points out in his opinion, the method pursued in the present case is that of collective bargaining. Rates are experimental, and the conditions of the Board, made in its report, are that the company shall file detailed statements monthly of its receipts. In this way the working of the new rate will be ascertained, and the Board has, under the statute, the power at any time, on its own initiative, as has been pointed out, to correct any injustice which the new rate has or may do to the riding public.

For the above reasons, it is respectfully submitted that the opinion of the Supreme Court should be affirmed.

FRANK S. KATZENBACH, JR.,
Counsel for Defendant.

Process Inspected