

Illinois Central Cut-off Line Approved by I. C. C.

Protests Made by State of Illinois and Communities on Line Between Edgewood and Fulton

WASHINGTON, D. C.

THE INTERSTATE COMMERCE COMMISSION on August 14 made public its report and order on the application filed on January 26 by the Southern Illinois & Kentucky, the Chicago, St. Louis & New Orleans and the Illinois Central, authorizing the construction of a new line from Edgewood, Ill., to Paducah, Ky., with a branch from Akin, Ill., to a connection with the Benton Southern to be operated by the Illinois Central. The application was granted over the protests of certain communities in Illinois and Kentucky now served by the Illinois Central's Cairo line between Edgewood and Fulton, Ky., who objected that traffic would be diverted to the new line. Hearings had been held before the commission and arguments were presented in June. A description of the proposed cut-off line, which with the branch makes a total of 172.7 miles of new line, was published in the *Railway Age* of January 27, 1923, page 278. The following is from the commission's report:

"The Cairo line passes through Odin, Centralia, Tamaroa, DuQuoin, Carbondale, Makanda, Cobden, Anna, Dongola, Ullin, Villa Ridge, and Mounds, Ill. Traffic over this line has been and is steadily growing in volume and, therefore, it is desirable either that its capacity be enlarged or that a portion of the traffic be diverted to some other line. There has been a rapid increase in the Central company's coal traffic from the Southern Illinois field, most of which moves westwardly from the mines over the Eldorado line to DuQuoin or to Carbondale and thence northwardly to Edgewood and beyond. The Eldorado line has heavy limiting grades and the Central company estimates that it would cost \$1,982,000 to reduce them to 0.3 per cent and properly revise the line. A study convinced the Central company that it would be economical to build a single-track low grade line from Edgewood southerly to a connection with the Eldorado line. This line would be about 70 miles long. The Central company estimates that it could be constructed with 0.3 per cent limiting grades at a cost of approximately \$7,000,000. It would save some 25 miles on the haul of coal from Franklin county to the north, avoid hauling it westwardly over the heavy grades of the Eldorado line and remove most of the coal traffic from the Cairo line between Fulton and Carbondale or DuQuoin. It would consist of that portion of the Illinois company's proposed line between Edgewood and Akin, together with the proposed Akin branch.

"There has also been a heavy increase in traffic over the single-track line now operated by the Central company between Paducah and Fulton, due chiefly to the development of the west Kentucky coal fields. This line has limiting grades of 1.1 per cent and maximum curves of 7 degrees. Another track being needed to provide for this growing traffic, the Central company concluded that the most practical method of obtaining it, and at the same time reducing grades and curvature, is to build on a new location west of the existing line, where 0.3 per cent limiting grades and maximum curves of two degrees can be obtained at a cost of \$3,660,000, as estimated by it. This projected line is the one which the Kentucky company seeks authority to construct. It would reduce total curvature from 1214 to 180 degrees and aggregate rise and fall from 715 to 328 feet.

"The projection of these two lines led to the present plan, which embraces and would connect them, affording a continuous line from Edgewood to Fulton, hereinafter referred to as the cut-off. The Central company estimates that the additional expenditure involved—that is, the cost of building

from Akin to Metropolis—would be less than \$6,000,000, and that the cost of the entire cut-off, single-tracked and including the Akin branch, would be \$16,635,000. About 3 miles of the cut-off, including the Ohio river crossing, would be over the rails of the Paducah & Illinois Railroad Company and operated in its name. It is proposed to divert some through freight traffic from the Cairo line to the cut-off.

"The Central company lacks corporate capacity to construct the cut-off and for that reason recently brought about the incorporation of the Illinois company. The latter company, if independent, undoubtedly would have charter power to construct the Illinois portion of the cut-off, and the protestants do not assert that it would not. But they contend that the Central company is endeavoring to do indirectly through its agent, the Illinois company, that which, concededly, it could not do directly and that, therefore, the Illinois company must be held to be without corporate capacity to construct its proposed line.

"The protestants contend that the Central company is without corporate capacity to purchase or hold the capital stock of the Illinois company, or to purchase, lease or acquire running rights over, or operate, the proposed line either of that company or of the Kentucky company. And they further contend that the granting of the authority sought would amount to an unlawful invasion of the rights of the states of Illinois and Kentucky under the federal constitution to prescribe the powers of corporations created by them respectively; and that, therefore and because of the alleged lack of corporate capacity on the part of each of the applicants as above stated, the application should be denied and the proceeding dismissed.

"These contentions cannot prevail. In our consideration of applications under paragraph (18) of section 1 of the interstate commerce act we are concerned primarily with the requirements of public convenience and necessity. In proceedings under paragraph (2) of section 5 of the act, the questions to be considered by us are chiefly those which involve the public interest. If it clearly appeared in a proceeding of either character that a corporate applicant lacked capacity to do the thing for which it sought authority, we might withhold our authorization. But this is not such a case. We are of the opinion that each of the applicants herein has ample power to exercise the authority which it seeks.

"The protestants contend, also, that the application should be denied because the Central company cannot purchase or hold the capital stock of the Illinois company, or purchase, lease or acquire running rights over, or operate, its proposed line, without violating a provision of the Illinois constitution which prohibits any railroad corporation from consolidating its stock, property or franchises with any other railroad corporation owning a parallel or competing line, or without violating an act of the Illinois legislature, approved June 30, 1885, which contains a proviso that no railroad corporation shall be permitted to purchase any railroad which is a parallel or competing line with any line owned or operated by it. It is urged by the applicants that, for various reasons, these provisions are inapplicable to the situation here presented. We think they are inapplicable but it is not our thought that our power to grant the application is dependent thereon.

"It is contended further by the protestants that the application should be denied because the project is, in effect, one

for the substitution of a new line in place of a portion of the charter lines which the Central company is obliged to maintain and operate. This contention necessarily rests upon the assumption that a portion of the charter lines is to be abandoned—an assumption directly opposed to the uncontradicted evidence.

"The protestants also contend that the application should be denied because the diversion of traffic from the Cairo line to the cut-off would deprive the state of Illinois of revenue under the 7 per cent charter clause, and because what is proposed would violate a provision of the Illinois constitution to the effect that the Central company's obligation under that clause shall never be released, altered, or diminished by legislative or other authority. It is not our thought that the provision referred to bars our action to grant the application.

"It is represented that the business of the Central company has so greatly increased that there is a pressing, immediate necessity for improved and additional facilities to handle it efficiently and economically; that the Cairo line has heavier grades than the lines operated by the Central company north or south thereof, as well as objectionable curvature; that it would be more economical to increase the capacity and efficiency of the system by building the cut-off to carry a part of the through business than to make the grade reductions and other improvements which would otherwise be necessary on the Cairo line, and that it is not possible to create on the present route a line over which through business could be transported as economically as over the cut-off. These representations we think warranted.

"Compared with the Cairo line the cut-off would have the following advantages: Reduction of distance from 190.6 to 168.8 miles; reduction of limiting grade from 0.8 to 0.3 per cent; reduction of aggregate rise and fall from 2,049 to 1,349 feet; reduction of maximum curve from 5 to 2 degrees; and reduction of total curvature from 3,393 to 613 degrees.

"The applicants submit an estimate of the saving to be effected by the operation of the cut-off as compared with operation of the Cairo line. This estimate is based on the estimated volume of traffic in 1925 (when it is assumed the cut-off would be completed), and contemplates that 450 cars each way, making 5 through freight trains in each direction, would be diverted to the cut-off daily, and that in addition 300 cars of coal now hauled to Carbondale or DuQuoin would be moved daily to Akin and thence northward over the cut-off. On this basis the applicants estimate the annual saving in operating expenses on diverted business to be \$1,518,642. They estimate increases in the Central company's net railway operating income as follows: First year, \$976,996; second year, \$1,312,244; third year, \$1,509,535; fourth year, \$1,561,786; fifth year, \$1,515,616; and annually thereafter, \$1,399,718.

"The opposition of the communities along the Cairo line appears to arise from a belief that the Cairo line would become of secondary importance and the service thereon be impaired. The cut-off would handle some through freight business, the coal traffic and such local business as might originate thereon. The application states that the Central company does not intend to interfere with the business of communities on the Cairo line, which will continue to give ample service as a main line. Traffic between St. Louis and the South will continue to move as at present. Diversion of passenger traffic has not been considered. Through freight and coal traffic which would be diverted has been stated above and could not be materially increased without overtaxing the capacity of the cut-off. There is evidence that, if the traffic continues to grow in the future as rapidly as it has in the past, the Cairo line would be as busy immediately after opening the cut-off in 1925 as it was in 1920 and that it would be as busy by 1929 as it is now. As far as the rural districts in Illinois are concerned, the most important product requiring rapid and sure transportation is fruit. The fruit is moved, except in rare instances, by trains starting at

Mounds, not by through trains from the South. It is conceded that the Central company has given satisfactory service in the past; and in view of the importance of the traffic local to the Cairo line and the expected increase in through traffic, there is no reason to believe that the objecting communities would be permanently injured.

"Construction of the cut-off would be financed by the Central company which would advance the necessary funds to the Illinois and Kentucky companies. It is not now proposed to issue securities except that \$40,000 capital stock of the Illinois company is to be bought at par and held by the Central company. An application by the Illinois company for authority to issue this stock has been made to us."

Commissioner Eastman dissented.

Virginian Asks Rehearing on Proposed Extension

WASHINGTON, D. C.

THE VIRGINIAN RAILWAY has filed a petition with the Interstate Commerce Commission asking for a rehearing of the proceeding in which the commission denied its application for a certificate authorizing the construction of an extension, 1.19 miles in length, of its Guyan-dot river branch. No hearing was held on the original application and the railroad wishes to introduce evidence which it hopes will result in setting aside the denial, which was based on the ground that the opening of new coal mines would mean that the already inadequate coal car supply would be made more inadequate.

The commission's finding of fact as to the inadequacy of petitioner's car supply, the petition says, is believed erroneous in that it is based on grossly inflated mine ratings and on orders for cars which are believed to have been in excess of needs, does not take into account the handicap on petitioner's operations of the shop strike and its effects, and gives no weight to the fact that more than half of the mines on its allotment sheets are supplied with cars by other carriers. Also the company has ordered 1,500 additional coal cars and 15 additional locomotives.

"Nothing in the petitioner's record, in the files of the commission or elsewhere," the petition asserts, "justifies an assumption that it will neglect its duty to provide facilities for transporting the traffic offered it. The statements of the commission's report," it adds, "seem to justify attributing to the report the conclusions as a matter of law that Paragraph 18 of Section 1 of the Interstate Commerce Act authorizes the commission to make an economic survey of the production and marketing of a given commodity before permitting the introduction into interstate commerce of a new supply thereof, or at least authorizes it to withhold a certificate of public convenience and necessity under paragraph 18 if it concludes that the immediate effect thereof, and of the consequent establishment on a new line of a carrier of new producers of a given commodity, would be to decrease the car supply and production of producers of the same commodity already established upon existing lines."

This construction, the petition declares, is "impossible" and it is submitted that a case of public convenience and necessity for the construction of an extension is made by proof that the extension will be open to public use and will develop sufficient business to justify its construction, maintenance and operation. "That the new business so developed may be a commodity the market for which is over-supplied, that the new production of such commodity may displace in the market the product of existing shippers on the line of the same carrier or elsewhere, or lower market prices, has no bearing on this case. The business of the commission is the regulation of transportation, not trade or markets."