

From: [Assenza, Adam](#)
To: [Sherry Brown](#)
Subject: RE: Texas Materials Group filing - Docket No. FD36815
Date: Thursday, March 13, 2025 4:20:00 PM
Attachments: [image001.png](#)
[282ICC1.pdf](#)

Hello Ms. Brown,

The initial consultation letter sent to elected officials, agencies, and tribes, including its attachments, is posted on the Surface Transportation Board's web site (www.stb.gov) with the identifier EO-3998. You can locate it (and any other public correspondence associated with this environmental review) by clicking the red "Search STB Records" button to the left, selecting Search For "Environmental Comments", and searching for docket FD 36815. Texas Materials, the applicant, submitted updated maps on March 11 (EI-33721) and we be sending updated maps to those initially contacted organizations soon. Once we do, those will also be located in the same section of the web site described above, where you can view or download them.

The referenced proceeding, Finance Docket (FD) 16604 began in 1950 and was decided in 1951. Our web site does not show many cases of that age, but I was able to locate some of the documentation for that proceeding, attached. For additional information about that older proceeding, you may wish to contact staff from our Rail Customer and Public Assistance program (rcpa@stb.gov).

Lastly, the environmental review process lasts between one and two years, and there will be a public comment period after issuance of a draft environmental document. Prior to that, OEA consults with numerous agencies, officials, and tribes throughout the process, some of which may solicit public comment through their own venues to forward concerns to us for our consideration.

If you have any additional questions or concerns, please don't hesitate to reach out.

Adam Assenza

Environmental Protection Specialist

Office of Environmental Analysis

Surface Transportation Board

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From: Sherry Brown <sherrybrown78611@gmail.com>
Sent: Thursday, March 13, 2025 2:04 PM
To: Assenza, Adam <Adam.Assenza@stb.gov>
Subject: Texas Materials Group filing - Docket No. FD36815

You don't often get email from sherrybrown78611@gmail.com. [Learn why this is important](#)

Dear Mr. Assenza:

I am writing to you in hopes that you can assist me with additional information regarding Texas Materials Group's filing with STB to seek authority to construct and operate a new rail line in Burnet and Lampasas Counties (Texas). We have seen only very rough map descriptions of the proposed rail line, but are not able to determine the actual location by specific properties in the rough depiction.

Our family's ranch appears to be located in the path of the proposed rail line, but we will not be able to make appropriate comments to STB without a better map of the locations. Our family's ranch incorporates several waterways and wildlife habitats that would be impacted by such a construction and we feel it is imperative for us (and other affected landowners) to have an opportunity to evaluate the rail line location and make timely filings with STB.

Your letter to our county government dated March 4, 2025 refers to an "Attachment 1" that may more clearly identify the location; however, "Attachment 1" has not been made available to us. The letter also refers to "abandoned right-of-way" with a footnote "Finance Docket No. 16604, *Texas & New Orleans Railway Abandonment*, 282 I.C.C 1 (1951). The footnoted document may also contain pertinent identifying details.

I can be contacted at this email (sherrybrown78611@gmail.com), by phone at 512-755-3739, or by mail at 4625 County Road 200, Burnet, Texas 78611.

Any assistance that you can provide will be greatly appreciated and it appears that time is of the essence for all landowners to be informed .

Thank you in advance for your assistance.

Sherry Brown

Project Description

Texas Materials proposes to construct a total of 26.9 miles of new common carrier rail line that would connect to the Austin Western Railroad (AWRR) near the City of Burnet, and to the BNSF Railway (BNSF) near the City of Lampasas. Texas Materials would reconstruct approximately 12.5 miles of line on the right-of-way of a former rail line and construct 14.4 miles of new rail line as shown in **Attachment 1**.

¹ Finance Docket No. 16604, *Texas & New Orleans Railway Abandonment*, 282 I.C.C. 1 (1951)





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Bluebook 21st ed.

Interstate Commerce Commission Reports, 282 I.C.C. 1 (1951-1953).

ALWD 7th ed.

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APA 7th ed.

(1951-1953). Interstate Commerce Commission Reports. Interstate Commerce Commission Reports: Reports and Decisions of the Interstate Commerce Commission of the United States, 282, 1-800.

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McGill Guide 9th ed.

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AGLC 4th ed.

'Interstate Commerce Commission Reports' (1951-1953) 282 Interstate Commerce Commission Reports: Reports and Decisions of the Interstate Commerce Commission of the United States 1

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OSCOLA 4th ed.

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INTERSTATE COMMERCE COMMISSION REPORTS

FINANCE DOCKET No. 16604

TEXAS & NEW ORLEANS RAILROAD COMPANY ABANDONMENT

Submitted December 26, 1950. Decided March 12, 1951

1. Certificate issued permitting abandonment by the Texas & New Orleans Railroad Company of a branch line of railroad in Burnet and Lampasas Counties, Tex. Conditions prescribed. Previous report decided May 12, 1950, affirmed.
2. Requests of protestants for further hearing, et cetera, based upon Executive Order No. 10155, dated August 25, 1950, denied.

Appearances as in previous report and *George K. Smith, James A. Shields, R. E. Dipprey*, and *H. W. Hoffman* for protestants.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION :

By report and certificate in this proceeding dated May 12, 1950, division 4 permitted abandonment by the Texas and New Orleans Railroad Company of the so-called Lampasas branch extending from a connection with the applicant's Austin-Llano line at Burnet to a connection with a line of the Gulf, Colorado & Santa Fe Railway Company, referred to as the Santa Fe, approximately 22.6 miles, in Burnet and Lampasas Counties, Tex. Thereafter, upon petition of the protestants, we revoked the certificate and reopened the proceeding for further hearing, and required that at such hearing additional statistics be submitted by the applicant showing the traffic handled on the line and the results of its operation for the years 1943 to 1946, inclusive, 1949, and for as many months as possible of the year 1950. A further hearing has been held at which the required data were furnished, and additional testimony was offered by the applicant and by the protestants. Upon conclusion of the hearing, the parties submitted the case

for our consideration, subject to the filing of briefs and replies thereto. Briefs and reply briefs have been filed.

At the beginning of the further hearing, counsel for the protestants requested that official notice be taken of Executive Order No. 10155, dated August 25, 1950, in which the President of the United States directed the Secretary of the Army to take and assume possession, control, and operation, along with other railroads, of the transportation system owned and operated by the applicant herein and to operate or arrange for the operation thereof in such manner as he deemed necessary to assure to the fullest possible extent continuous and non-interrupted transportation service. Counsel argued that the representative of the President was a necessary party to the proceeding, and requested that the hearing be postponed until such person was made a party thereto, or, in the alternative, that any abandonment be temporarily postponed until control of the railroad reverted to its owners. The request was opposed by the applicant on the ground that it was inconsistent with the purposes of the Executive order and not required by it. The applicant read into the record a letter written by the Director of our Bureau of Finance dated September 15, 1950, addressed to the Assistant Judge Advocate General of the Department of the Army, in which the latter's attention was called to the fact that the protestants in their petition for further hearing had raised the question of the value of the Lampasas branch for military purposes, and in which he was advised of the date of the further hearing and was requested to make known at that time any interest the military authorities might have in the case. No representative of the Department of the Army appeared at the further hearing. The examiner denied the protestants' request and directed that the hearing proceed.

Substantially the same question is presented by the protestants in their brief. Inasmuch as no member of the United States Government or of the Department of the Army appeared at the hearing to represent the applicant, the protestants request that (1) we again set a hearing at which the proper governmental representative can be present in order that all necessary parties may be represented, and (2) that the abandonment application be set aside so as to assure, pursuant to the Executive order, the continuous and noninterrupted transportation service of the governmental railways.

In our opinion the argument of the protestants cannot be sustained by the Executive order. Section 4 thereof provides in substance that the management of the carriers involved shall be permitted to continue their managerial functions to the maximum degree consistent with the order, and that except as the Secretary of the Army shall direct, shall continue operation of the transportation systems in the

names of their respective companies, and by means of any agencies, associations or other instrumentalities now utilized by the carriers. Section 7, in part provides, that, except as otherwise provided in the order or directed by the Secretary of the Army, the operation of the transportation systems shall be in conformity with the Interstate Commerce Act, as amended. Section 8, in part, requires the written consent of the Secretary of the Army before any receivership, reorganization, or similar proceeding affecting any of the carriers involved shall be instituted. No provision in the Executive order or directive of the Secretary of the Army has been brought to our attention removing the managerial discretion of the carriers with respect to initiating and prosecuting in their own names applications for permission to abandon lines of railroad, or requiring consent of the Secretary of the Army. Had such been the intention, a limitation of this character easily could have been included in section 8 along with the requirement with respect to receivership, reorganization, or similar proceedings. The request of the protestants accordingly is denied, and we will proceed to a determination of the case on its merits.

There is no dispute concerning the facts stated in the previous report, but a restatement thereof to some extent is necessary because of the additional data submitted at the further hearing, and to afford adequate factual continuity. The branch was constructed about 1902 by a predecessor of the applicant. Its termini, Burnet and Lampasas, have populations of 3,500 and 5,000, respectively. Lake Victor, the only town intermediate between those points, has a population of approximately 250 and is about 12 miles from Burnet which will continue to be served by the applicant's Austin-Llano line. It also is about the same distance from Lampasas which will continue to be served by the main line of the Gulf, Colorado & Santa Fe extending from a connection with its Galveston-Fort Worth line, at Temple, northwesterly through Lampasas, Brownwood, Sweetwater, and Lubbock to points in the West. The area tributary to the branch is sparsely settled and is devoted almost entirely to cattle and sheep raising, with some production of grain, oats, milo maize, and corn.

U. S. No. 281, a hard-surfaced highway, substantially parallels the branch at a maximum distance of 2 miles. A connecting gravel road extends to Lake Victor. The general area is intersected by other hard-surfaced highways. The Central Freight Lines, a common carrier by truck, and the National Trailways, a common carrier bus line, operate over the highway between Burnet and Lampasas. The latter operates two trips in each direction daily. In addition, numerous other commercial truckers operate thereon. A State highway

patrolman, who was called as a witness by the protestants, testified at the further hearing that a check made by him on that day showed that 22 trucks passed the point on U. S. Highway No. 281 at which he was conducting the check within a period of 1 hour 30 minutes, not counting pickup trucks or passenger cars. He asserted that the commercial traffic on that highway has become enormous and that while some additional traffic of this nature might be handled, in his opinion the volume already moving is about the maximum for safety.

A local freight train operates over the branch in each direction daily, except Sunday. This service is rendered by a crew operating on the Austin-Llano line with a side trip to Lampasas. The total assigned run of the crew, including the run on the branch, is 146 miles. Removal of the branch will reduce the assignment to approximately 100 miles, which constitutes the standard day's pay if the operation does not exceed 8 hours, and payment for the excess mileage will be eliminated.

No passenger traffic is handled on the branch. A substantial portion of the freight traffic is handled over the line in overhead or bridge movement, being interchanged with the Santa Fe at Lampasas. Practically all of the interline traffic, which is that which originates or terminates on the line and moves over other parts of the applicant's system, is handled to or from Lampasas. There are no industries or other regular shippers at Lake Victor. During the 7 years 1943 to 1949, inclusive, and in the first 7 months of 1950, there were handled over the branch, by years, in order, 288, 303, 270, 433, 320, 238, 248, and 170 carloads of interline traffic; and 780, 721, 362, 552, 336, 378, 248, and 106 carloads of overhead or bridge traffic; total of all traffic 1,068, 1,024, 632, 985, 656, 616, 496, and 276 carloads. No local carload traffic having both its origin and destination on the branch was handled during the period.¹ In only 3 years during the period was there any local less-than-carload traffic. Less-than-carload traffic totaled 3,297 tons, of which 13 tons were local, 2,924 tons were interline, and 359 tons were overhead. The largest movement of less-than-carload traffic was in 1948, when 1,379 tons were handled. The interline carload traffic handled consisted of a relatively large volume of wool, mohair, cement, stone, passenger automobiles, and numerous miscellaneous commodities in small volume. The overhead traffic was principally brick, feed, livestock, lumber, lubricating oil and other petroleum products, cedar posts, stone, tile, and wheat. No movement of wheat

¹ The previous report shows 31, 21, and 2 carloads of local traffic handled during the years 1947, 1948, and the first 8 months of 1949, respectively. The applicant stated at the further hearing that the carloads shown by it as local traffic should have been, and now are, included in the other traffic categories.

occurred after 1947. The bridge movement also included numerous miscellaneous commodities in small volume. At the request of the protestants the applicant submitted a statement showing the number of cars received and delivered by the applicant and the Santa Fe, respectively, in connection with the interchange of traffic at Lampasas for the 3 years 1947, 1948, 1949, and the first 7 months of 1950. This statement shows that in each of such years approximately 80 percent of the interchange traffic was delivered by the applicant to the Santa Fe.

The results of operating the branch for the 7 years 1943 to 1949, and the first 7 months of 1950, as shown by the applicant are as follows:

	System revenues	Branch operating expenses	Tax accruals	Cost beyond branch	System losses
Year 1943.....	\$67,965	\$51,564	\$4,396	\$25,854	\$13,849
Year 1944.....	80,458	41,114	4,417	32,903	¹ 2,024
Year 1945.....	59,939	36,587	4,345	25,567	6,510
Year 1946.....	89,760	42,075	5,074	38,292	¹ 4,319
Year 1947.....	64,948	49,119	5,861	26,856	16,888
Year 1948.....	58,025	53,429	4,507	23,292	23,203
Year 1949.....	54,681	42,745	4,691	22,881	15,636
Year 1950 (7 months).....	37,657	23,498	2,963	16,027	4,831

¹ Profits.

In calculating the foregoing operating results, all system revenues from branch traffic were included. The branch first was given direct credit for local mail revenues, ranging from \$1,600 to \$2,000 annually, and for demurrage, storage, and other miscellaneous income ranging from \$200 to \$600 annually. It also was accorded a direct credit on a mileage prorate basis of all system revenues from traffic originating or terminating on the line, or moving over the line as a bridge. Bridge traffic was treated in the same manner as originated or terminated traffic, even though the applicant is of the opinion that no traffic of this character will be lost to the system entirely because it will continue to be interchanged with the Santa Fe at other convenient interchange points. Its division of revenue will be reduced, however, as it receives the longest haul through Lampasas. Against the system revenues remaining, after deducting the direct assignment to the branch, the applicant applied a 50-percent ratio as representing the cost of moving the traffic involved on other system lines beyond the limits of the branch. This expense is indicated in the foregoing tabulation as "cost beyond branch." The division of revenues as between the amounts assigned to the branch direct, and those assigned to other system lines and used only as a means of determining the cost of handling traffic beyond the branch, are as follows:

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	Assigned branch direct			Assigned remainder system	
	Local	Interline	Bridge	Interline	Bridge
Year 1943.....	\$1,847	\$3,275	\$11,135	\$25,982	\$25,726
Year 1944.....	1,817	4,275	8,560	22,483	43,323
Year 1945.....	1,780	3,343	3,733	26,857	24,276
Year 1946.....	2,015	5,006	6,155	43,077	33,507
Year 1947.....	2,605	3,868	4,762	40,027	13,686
Year 1948.....	2,637	3,538	5,265	28,732	17,853
Year 1949.....	2,262	3,411	3,245	32,762	13,001
Year 1950 (7 months).....	1,571	2,539	1,494	27,200	4,853

The operating expenses charged against the branch are assignable to three major expense classifications, that is, maintenance of way and structures, maintenance of equipment, and transportation. Those expenses were shown by the applicant as follows:

	Maintenance of way and structures	Maintenance of equipment	Transportation
Year 1943.....	\$30,768	\$3,173	\$17,623
Year 1944.....	21,233	3,125	16,756
Year 1945.....	16,761	3,114	16,712
Year 1946.....	17,709	3,124	21,242
Year 1947.....	22,688	3,125	23,306
Year 1948.....	21,175	3,154	29,100
Year 1949.....	13,844	3,778	25,123
Year 1950 (7 months).....	7,292	1,817	14,389

Maintenance of way and structures expenses are those which actually accrued on the branch itself, except that 3.84 miles of the track on the southern end thereof is maintained by a section crew which also maintains 13.1 miles of track on the Austin-Llano line. The charge for this small segment is on a mileage prorate of the entire expense of maintaining the section of which it is a part. Expenses for roadway machines and maintaining telegraph and telephone lines, ranging from \$300 to \$600 annually combined, are based on system averages except that in the year 1949 the charge against roadway machines alone amounted to \$747. This sum included the entire cost of a section car bought for the use of the section crew which serves the branch exclusively. The applicant states that maintenance on the branch has been curtailed for the last 2 or 3 years because of its hope that abandonment would be authorized. The amount of such curtailment, it asserts, is not reflected by a comparison of annual expenditures because during the last 8 years its labor costs have practically doubled. Had the maintenance not been deferred, the operating losses shown would have been greatly increased. As shown in the previous report, the applicant estimates that within the next 5 years an extraordinary expenditure of \$195,150, or an average annual cost of \$39,030, will be required to restore the line to normal

condition, and that during this time ordinary expenditures of \$22,060 annually also will be required.

In the previous report, the division found that the line was in need of some rehabilitation, but probably not to the extent estimated by the applicant. At the further hearing, the applicant's engineer affirmed his prior testimony with respect to the condition of the branch and the expenditures which will be necessary to place it in satisfactory condition. He further testified, on cross-examination, that at the request of the mayor of Lampasas he had, subsequent to the first hearing, made an inspection of the line in company with the engineer of the Texas Railroad Commission, and had accorded the latter an opportunity to inform himself with respect to the ties, rails, ballast, roadbed, bridges, culverts and all other features of the line. In view of the fact that no contradictory evidence was offered by the protestants or the Texas Railroad Commission, we must conclude that the facts discovered on the inspection substantially supported the applicant's estimates.

The only equipment expenses charged against the branch are those for steam locomotive repairs, and are based on the system cost per mile for the class of locomotives used applied to the service mileage of such locomotives on the branch. This method of computation is the one commonly used and accepted by us as reasonable. No charge is made against the branch for freight car repairs or car hire.

Transportation expenses are actual, or are based on reasonably appropriate system averages. Expenses for station employees decreased from \$6,913 in 1948 to \$4,621 in 1949 because the position of one employee was eliminated. Train and engine crew wages in 1949 totaled \$10,223. As previously stated, this amount is applicable to the excess mileage paid such crews for their service on the branch, and the testimony of the applicant is clear and convincing that the payment thereof will be eliminated. In view of the fact that the applicant during the hearing asserted that the employees performing service entirely on the branch would be used at other places on the applicant's system without replacing employees now serving at those points, the protestants argue that it should not be permitted to claim a saving in their wages by virtue of the abandonment. That contention is unsound. If the positions on the branch were continued and the applicant were compelled to hire new workers for the positions elsewhere on its lines, certainly two positions would exist where only one would exist should the line be abandoned and the employees thereon fill such other positions.

The protestants question the bases used in allocating certain of the apportioned expenses. The principal ones, using 1949 amounts, are as follows: Train fuel, \$5,492, computed on a train-mile basis for the actual consumption by engines operating over the Llano subdivision; and engine-house expenses \$1,558, and train supplies and expenses \$2,197, based on the average system cost per freight-train mile. In the opinion of the protestants the use of a ton-mile factor would have produced smaller charges and would have been more equitable. The applicant states that the factors used are those which in its opinion reflect actual cost as nearly as possible of ascertainment, and that any variations in cost on the branch, as compared with the averages used, probably would be of little significance. However, as to engine-house expenses, it was conceded by the applicant that probably not all of the amount charged would be saved. We are unable to conclude that the bases used are not reasonably appropriate. Even though in some instances the actual savings may be somewhat less than the full amount reflected by the computations, the differences would not serve to reduce materially the substantial losses shown. Also the applicant has failed to claim other expenses which have been held by us to be appropriate.

Taxes charged are those actually levied and paid on the property which is the subject of this proceeding.

A vice president of the Santa Fe testified that an agreement has been reached between his company and the applicant for purchase by the former, in the event the branch is abandoned, of the land and trackage of the latter on the Lampasas side of Sulphur Creek. This would include all tracks now serving any business or industry in the city, and if the plan is consummated, such firms would be served by the Santa Fe instead of the applicant. The transaction also is to be contingent upon the city of Lampasas agreeing to give the Santa Fe franchises for the tracks in the city streets and assurance that there are no streets projected across the property owned by the applicant which are not at present apparent. The tracks which the Santa Fe would acquire would be used by that carrier exclusively as switching, team, or industry tracks. At the further hearing, some question was raised as to whether our approval would be required for the transfer of the property in the event its abandonment by the applicant is permitted. In *Grand Trunk W. R. Co. Abandonment* 275 I. C. C. 812 (not printed in full), division 4 said:

On exceptions, counsel for the corporation which owns and operates the pickle processing plant at Bad Axe submits that the granting of the application should be conditioned upon prior approval by us of acquisition and operation by the Chesapeake & Ohio of the tracks which it proposes to acquire from the applicant for the purpose of affording continued rail-transportation service to various

industries in Bad Axe. The Chesapeake & Ohio has filed no application with us for authority to acquire such tracks. In reply to the exceptions the applicant correctly points out that the tracks in question are spur or industrial tracks within the meaning of section 1 (22) of the Interstate Commerce Act, as amended, being wholly located in one State, and therefore we have no jurisdiction thereover.

We reach the same conclusion with respect to the proposed transfer of the tracks in Lampasas under the circumstances stated.

The Santa Fe will be required to make some expenditures upon the tracks which it offers to purchase in order to place them in condition to support its locomotives. The protestants profess to be unable to understand why it would be profitable for the Santa Fe to spend money on the Lampasas tracks when the applicant finds service on them unprofitable. The circumstances are different. The applicant in order to retain the Lampasas traffic must maintain 23 miles of track and operate a train over it for that specific purpose, whereas the Santa Fe will be able to handle the traffic by trains which will be operated and over other tracks which will be maintained in any event. Its only additional direct expenditure will be in connection with the maintenance and operation of the applicant's Lampasas facilities.

The previous report summarizes in some detail the testimony of the principal shippers at Lampasas with respect to the type of business in which they are engaged, their use of the branch, and the extent to which they depend upon it for their transportation requirements. Such shippers include dealers in wool and mohair, automobiles, lumber, and wholesale groceries, as well as those engaged in certain other activities. Some of these firms have warehouses with sidetrack facilities served by the applicant, while others truck their shipments to the applicant's line and could truck them to the present facilities of the Santa Fe with additional hauls of not exceeding four or five blocks. The Santa Fe's purchase of the applicant's Lampasas facilities would obviate any change in the present hauling requirements.

At the further hearing testimony was offered by four shippers or prospective shippers, three of whom either had testified or had been represented at the original hearing. Of that group a dealer in wool, mohair, and pecans stated that he is planning to reopen a processing plant at Lampasas and handle through it approximately 1,500 tons of wool annually, most of which he anticipates would move over the branch. The plant is about the same distance from the present tracks of the Santa Fe as from tracks of the applicant. Shipments are made by rail to Boston, Mass., and Philadelphia, Pa. The only advantage of shipping over the applicant's line, as compared with the Santa Fe, is that superior service is afforded by the former's agent in the matter

of car supply, quotation of rates, et cetera. This witness stated that the applicant's agent had been trying to get all the traffic for his company that he possibly could. Another dealer in the same commodities who ships to the same destinations is located about three blocks from the applicant's tracks, but to reach the present loading facilities of the Santa Fe his trucks would be delayed by encountering the cross-square traffic and result in an extra cost in his opinion of from \$8 to \$10 a carload. After the Santa Fe purchase, his only disadvantage, based on past experience, would be the loss of the superior service afforded by the applicant's local agent. An elevator was constructed on the branch in 1948 with a storage capacity for 16 carloads of grain which represented an investment of from \$50,000 to \$60,000. Its owner stated that it would not have been built to the existing dimensions if rail service had not been contemplated, but he was unable to say how much use had been made of the branch in the past. Direct service still would be afforded after the purchase by the Santa Fe of the applicant's facilities.

There appeared at the further hearing, as a prospective shipper of traffic over the branch in overhead movement, the president of the Texas Pink Granite Corporation. He had no knowledge of the first hearing. That concern is now in the process of preliminary preparations for reopening a quarry at Granite Mountain, located about midway between Fairland and Marble Falls. Fairland is a station on the applicant's line between Burnet and Llano. A branch line extends southward from Fairland to Marble Falls, 6 miles, and the granite quarry will be served by spur tracks connecting with that branch. Restoration of the plant is being actively pursued, and the investment in equipment and real estate within the next 2 years will range from \$300,000 to \$500,000. Negotiations were in progress for approximately 2 years, but the purchase of the property was not fully consummated until the latter part of May 1950. Knowledge of the proposed abandonment of the branch was acquired by the purchaser about 2 months prior to that time. Certain commitments with respect to the property had been made as early as August 1949. The principal products of the quarry will be structural granite, and crushed granite used for road-making purposes and poultry grits. The branch forms the short route from Marble Falls to certain points in northern and northwest Texas. The quarry president thinks that the increase in railroad mileage to that area which would result from the branch abandonment would adversely affect his sales, because of the probable rate increases that would follow, and the additional time that would be required in transit. Orders for structural granite thus far received have been from the Houston area, and would not require the

use of the branch. No orders have been received from northern or northwest Texas because no sales effort has been made in that area, but the owners of the quarry hope to develop business in that territory. The shipper stated that the effect of the abandonment on the sale of his commodities would be mostly confined to the low-grade products like poultry grits. However, he admitted that no poultry grits are produced in Texas at present; that the nearest known competitor is in Georgia, although he has heard of some in Kansas; and that he would have an advantage over any competitor in the matter of both transportation cost and the time of delivery. The applicant shows that rail distances would not be increased by virtue of the abandonment from Marble Falls to Houston and other south Texas points, and neither would they be increased to east Texas points; that there would be insignificant increases in distance to north Texas and a more substantial increase to northwest Texas points. Although quarries have been in operation in the vicinity of Llano for many years, no movement of granite over the branch has occurred.

The Lampasas Chamber of Commerce for the first time employed a full-time manager in May 1950. He has been conducting an intensive campaign to attract industry to the area. Lampasas is being considered along with many other locations as a possible site for the proposed National Air Academy. Because of the military installations which already exist at the Killeen Air Base and Fort Hood, 25 and 27 miles distant, respectively, a great demand exists for homes in the Lampasas area. Approximately 150 units are under construction at present and other plans are being processed.

The protestants contend that for the past 4 years the area has been afflicted by a severe drought, which has seriously affected livestock production and general business conditions; that normal rainfall occurred in the early spring of 1950 which resulted in an immediate increase in traffic; and that in April the drought conditions returned, bringing again depressed economic conditions. The record does not support the contention that there was a substantial increase in traffic in the early months of 1950. On the other hand, during the first 7 months of the year, the average number of cars handled was 39 per month as compared with 41 in 1949.

It is argued by the protestants that the applicant's main reason for abandoning the branch is to profit from the increases in rates that will result. The branch constitutes the short line rate-making route on intrastate traffic between such points as Austin and San Antonio on the one hand, and Lampasas, on the other, and between Burnet and various points south thereof, on the one hand, and points in northwest Texas, on the other. For example, from Lampasas to Austin,

the rate, stated in cents per 100 pounds, would be increased 6 cents on pecans, 4 cents on beef cattle, and 14 cents on wool and mohair, and from Burnet to San Angelo the increases on the respective commodities would be 8, 11, and 31 cents. None of the foregoing traffic is shown to have moved between the points named or between other points similarly situated, and the applicant is of the opinion that little, if any, traffic is moving to or from the points at which increased rates would result. With the exception of the prospective granite shipments, no testimony was offered to show that the movement of any specific traffic of any specific shipper now using the branch, or which may use it in the future, would be competitively affected by the increase in rates that might result. It has been held that increases in rates will be given consideration along with other facts and circumstances affecting the question of public convenience and necessity. *Chicago, M., St. P. & P. R. Co. Trustees Abandonment* 217 I. C. C. 361, 365. However, it also has been held on numerous occasions that the question of rates is not of controlling interest in abandonment proceedings and that the maintenance of unprofitable lines will not be required for the sole purpose of insuring lower rates. *Yazoo & M. V. R. Co. Abandonment* 236 I. C. C. 201, 209, *Texas & N. O. R. Co. Abandonment* 252 I. C. C. 37, 41, and *Atlantic Coast Line R. Co. Abandonment* 275 I. C. C. 803. The conclusion is warranted that the question of rates is of little significance in this proceeding.

Certain of the employees on the branch will be displaced in their present positions or otherwise adversely affected. Those displaced, however, probably will be used to fill positions for which they are qualified to perform elsewhere on the applicant's system. Employee organizations request the imposition of the same protective conditions as were prescribed in *Chicago, B. & Q. R. Co. Abandonment*, 257 I. C. C. 700. Our approval of the application will be subject to those conditions.

The contentions of the parties as to either fact or law not specifically discussed herein have been given consideration and found to be without material significance or not justified.

Based upon the facts recited and the conclusions reached with respect thereto, we are of the opinion that the following major findings are warranted:

1. That operation of the branch for the past 4 years has resulted in substantial out-of-pocket losses and that such losses probably will be greater, rather than less, in the future.
2. That large expenditures for rehabilitation and increased expenditures for normal maintenance must be made if operation of the line is continued.

3. That there is no reasonable prospect that revenues from operation will be sufficient to warrant the additional expenditures that will be required.

4. That traffic on the line has been decreasing for several years largely because of diversion to highway facilities and there is no reasonable prospect of a change in that trend in the future.

5. That the amount of bridge traffic which may be supplied by the prospective shipper of granite at Marble Falls is too speculative to warrant the conclusion that operation of the branch should be continued in anticipation of adequate additional revenues being received from that source.

6. That none of the present shippers will be left without railroad service upon purchase by the Santa Fe of the applicant's facilities at Lampasas.

7. That no substantial public need for continued operation of the branch has been shown, while on the contrary it is shown that the continued maintenance and operation thereof will impose an unnecessary and undue burden upon the applicant and upon interstate commerce.

Accordingly, we affirm the decision of division 4, and find, subject to (1) the conditions above referred to for the protection of carrier employees and (2) the condition that the applicant sell the branch or any part thereof, to any person or persons offering within 40 days from the date of our certificate to purchase the same for continued operation at a price not less than the net salvage value thereof; that the present and future public convenience and necessity permit abandonment by the Texas and New Orleans Railroad Company of the branch line of railroad in Burnet and Lampasas Counties, Tex., described herein. On the understanding that before recording in its books the related journal entries to show the retirement of the branch from service, the Texas and New Orleans Railroad Company shall first submit, in duplicate, the entries for our consideration and approval, an appropriate certificate will be issued, effective from and after 40 days from its date, in which suitable provision will be made for the cancellation of tariffs.

SPLAWN, Chairman, dissenting:

In my opinion the methods used by the applicant in allocating revenues and expenses to the Lampasas branch line do not fairly reflect the revenue value of the branch line to the system. Assignment of revenues and expenses by a mileage prorate usually results in a showing of deficits on branch or feeder lines of light traffic. *Southern Ry. Co. Abandonment*, 105 I. C. C. 228, 229. This is particularly true

where, as here, applicant's divisions of revenues from interline or bridge traffic will be reduced by amounts proportionately greater than would be reflected by the ratio of the branch line mileage to the system mileage.

It is also my view that adequate consideration has not been given to the importance of the branch line in making through routes which are shorter and more direct than would otherwise be available. In *Chicago, M., St. P. & P. R. Co. Trustees Abandonment*, 217 I. C. C. 361, which dealt with a branch line over which service had been discontinued for some years, the effect of abandonment upon rates was given consideration, and the application was denied in part on that ground, among others. The branch line here involved is actively in use.

I am authorized to state that COMMISSIONER AITCHISON joins in this expression.

COMMISSIONER JOHNSON did not participate in the disposition of this proceeding.