



Saving the Railroad Industry to Death: The Interstate Commerce Commission, the Pennsylvania Railroad, and the Unfulfilled Promise of Rail-Truck Cooperation

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During the 1920s and 1930s, the Pennsylvania Railroad tried, unsuccessfully, to become a multi-modal transportation company with investments in truck lines, busses, and air travel. Historians, political scientists, and economists have often blamed this “failure” on the intransigence of either stubbornly traditional railroad managers or overly bureaucratic regulators. Neither assessment is correct, as illustrated by the PRR’s involvement with trucking between the two World Wars. The PRR used trucks for pickup and delivery operations (store-door service) and as part of intermodal container operations (what would today be called container-on-flat-car service). Both experiments were phenomenally successful at reducing operating costs and increasing revenue. The PRR’s weaker competitors, unable to match the PRR’s investment in these services, protested to the Interstate Commerce Commission. The ICC, while unable to regulate trucks effectively until the adoption of the 1935 Motor Carrier Act, saw the issue in terms of the chronic weak road–strong road problem. By progressively restricting the PRR’s ability to use trucks, the ICC was attempting to save the weaker railroads from ruin, holding that the health of the entire railroad industry was more important than the efficient operations of one carrier.

One of the hallmarks of the American transportation system is that there is no system. Even though economists spent the better part of the twentieth century discussing the efficiencies associated with intermodality, even with transportation deregulation and the demise of the Interstate Commerce Commission (ICC), the United States possesses railroad companies, trucking companies, and airline companies, yet no true transportation companies. In performing their postmortem on intermodality, historians have often assigned the blame for this situation to

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either the railroads or the regulatory apparatus.¹ These extreme views have created a false dichotomy that does a disservice to both the railroads and the ICC. Such divergent views still influence economic policy, pitting those who argue that a more effective regulatory state can remedy problems associated with insufficiently innovative private enterprise against those who hold that the regulatory apparatus is itself fundamentally flawed, with a tendency to hobble innovation in the private sector.

The Pennsylvania Railroad (PRR), more any other company in any industry, embodied the greatest potential to become a true intermodal carrier, blending rail services with trucks, busses, aircraft, and steamships. The story of the PRR's rail-truck operations shows that both the PRR and the ICC acted responsibly during the critical period that separated the Transportation Act of 1920 and the Motor Carrier Act of 1935. The missed opportunity for intermodality represented neither a failure of private enterprise, nor a failure of federal transportation policy. At least prior to 1935, the ICC stifled intermodality, not because it was opposed to it in principle, but because it was trying to protect the railroad industry from itself by attempting to maintain the cross-subsidization of rates that was crucial to profitability.² The intermodal "problem" was really a facet of the same underlying issue that plagued the entire railroad industry during the first half of the twentieth century: the weak road–strong road problem.³

¹ Stephen B. Goddard, "Rails Ignore the Storm Clouds," *Getting There: The Epic Struggle between Road and Rail in the American Century* (New York, 1994), 64. Albro Martin has been perhaps the most ardent critic of the ICC, as expressed in *Enterprise Denied: Origins of the Decline of American Railroads, 1897-1917* (New York, 1971).

² As Lawrence Rothenberg notes, "The rise of motor carriers was threatening [to the railroad industry] not merely because no industry enjoys competition but rather because the system of cross-subsidized railroad pricing *depended* upon minimal competition from other modes of transportation." Rothenberg, *Regulation, Organizations, and Politics: Motor Freight Policy at the Interstate Commerce Commission* (Ann Arbor, Mich., 1994), 44, emphasis in the original.

³ By the time of World War I, everyone associated with the railroad industry understood that the railroad network had been grossly overbuilt, particularly in the Northeast. In this context, however, not all railroads were equal. "Strong" carriers, such as the Pennsylvania Railroad and the New York Central, were well-capitalized, possessed modern and efficient locomotives and cars, and perhaps most important, had route structures that generated ample long-haul freight traffic. Their weaker counterparts, such as the Erie, the New York, Ontario & Western, and the anthracite railroads of eastern Pennsylvania, were poorly located (and unlike trucks and, later, aircraft, they could not simply relocate their route structure), undercapitalized, and plagued by outdated equipment, short hauls, and high terminal costs. In a purely competitive situation, the strong roads could certainly have driven their weaker rivals out of business. The ICC was unwilling to allow this, in part because of the loss of competitive service (and in some cases the loss of service, period) that would ensue; in part because of the

Put another way, public policy did not need to encourage or facilitate the creation of intermodal transportation firms. Had the ICC only been able to resolve the weak road–strong road problem, the issue of intermodality would have resolved itself.

In 1923, the Pennsylvania Railroad’s Association of Transportation Officers (ATO) began an investigation of two vexing problems, each of which threatened the Railroad’s financial health. For the next four years, the Standing Committee for Conducting Transportation sought ways to combat the growing threat of motor carrier competition and to improve inefficient less-than-carload lot (LCL) freight terminal operations. The members of the committee understood that these problems were interconnected—that much was obvious—but by 1925, they had reached an epiphany of sorts. The same trucks that threatened the Railroad’s LCL traffic also promised to save it. Neatly bundling all of the problems together with a single solution, the ATO recognized that trucks represented the only alternative to a situation in which “Little or no marked progress has been accomplished for a number of years in the handling of the transportation of less [than] carload freight in this country,” and came to the “conclusion that in the public interest it was essential to work out a scheme of transportation wherein the truck could be coordinated in a practical and economical way with rail service.”⁴

devastating economic effects that railroad bankruptcies and abandonments were certain to have on investors, financial markets, workers, on-line industries, and local communities; and in part because of still-fresh memories of the World War I capacity crisis that had led to the formation of the United States Railroad Administration. Government ownership of the railroads (also known as “bolshevization”) was obviously out of the question in the context of the first Red Scare. Almost everyone agreed that the best alternative seemed to be merger, but what seemed good in theory quickly stalled amid debates regarding who should merge with whom. Weak railroads equated merger with a loss of control. Strong railroads would happily cherry-pick the best bits of their weaker brethren, but saw no reason to saddle themselves with an entire weak railroad. Eminent economists (most notably, William Z. Ripley) prepared dozens, if not hundreds, of reorganization plans, and the Transportation Act of 1920 gave the ICC a mandate to consolidate the American railroad network into a number of viable systems, but few substantive changes occurred. In this context, all that the ICC could do was to maintain rates at a high enough level to allow the weak railroads to survive, while confiscating the “excess” earnings of the stronger railroads through the “recapture clause” embodied in the 1920 Act. For a more detailed account of these issues, see Richard Saunders, Jr., *Merging Lines: American Railroads, 1900-1970* (DeKalb, Ill., 2001), esp. 35-55.

⁴ Pennsylvania Railroad, Association of Transportation Officers, “Subjects which were assigned to, considered and reported on by the various Standing Committees for 1923”; PRR press release, 1 April 1925; both in the Pennsylvania Railroad Collection at the Hagley Museum and Library, Wilmington, Del. [hereafter, HML], box 803, folder 5; PRR response to ICC questionnaire, “In the

Beginning in 1917, the PRR not only employed trucks to transfer freight between urban freight terminals, but also had expanded its services to include pick up and delivery operations. Store-door service was another matter entirely, because it promised to generate additional business for the Pennsylvania Railroad—perhaps at the expense of independent truckers, perhaps at the expense of other railroads—but new business, nonetheless. The possibilities certainly excited PRR executives, who valued “the co-ordination of rail and highway transportation,” but thought that “its importance fades before the unlimited possibilities in the development of direct collection and delivery.”⁵

In January 1924, PRR Special Agent R. S. Hurd explained the basic outlines of the railroad’s proposed “door-to-door pick-up and delivery” scheme at the New York Railroad Club. Fortuitously, another presenter at that conference was F. C. Horner, a General Motors executive, who described the “store-door delivery” system developed in Britain, which combined trains and trucks in a truly integrated transportation system, cutting congestion at freight terminals in half.⁶ The PRR quickly adopted the store-door nomenclature. Mimicking the British system, shippers were discouraged from bringing parcels to congested freight terminals. Instead, trucks picked up packages at the shipper’s door and hauled them to the terminals, where railroad employees consolidated them into carload lots, forwarding them to their destination city, where trucks would transport the LCL packages to their final destination.⁷

Matter of Container Service” (ICC Docket No. 21723), 11 Jan. 1929, HML, box 374, folder 9 (quote); *Railway Age* 95 (25 Nov. 1933): 765-68.

⁵ R. C. Morse, general superintendent of transportation, PRR Northwestern Region, quoted in *Railway Age* 78 (6 June 1925): 1410.

⁶ *Railway Age* 76 (2 Feb. 1924): 319-23; 95 (25 Nov. 1933): 765-68.

⁷ The PRR possessed more Machiavellian motives as well. The company believed that it could easily force independent truckers out of business by using its enormous capital reserves to destroy motor carrier competition, either by buying out competing truckers or by adopting a policy of predatory pricing, reducing the rates charged by its own trucking subsidiaries so far below the cost of service that independents would be forced out of business. In 1925, after all, vice-president Elisa Lee had advised president William Atterbury that PRR ownership of motor carriers offered the opportunity “To prevent these [independent trucking] companies from spreading over further territories and to discourage additional ones” from being established. Such forthright comments would not have played well in front of the regulatory agencies that maintained both a commitment to fair competition and a deep suspicion of the alleged monopolistic tendencies of the railroad industry. While the Interstate Commerce Commission had relatively little oversight of trucks prior to the passage of the Motor Carrier Act of 1935, state regulatory agencies were another matter. In addition, it was the structure of state motor carrier regulation that gave the PRR’s trucking operations a definite advantage over its independent rivals. Even before the passage of the Motor Carrier Act of 1935, the ICC had the authority to regulate trucks owned outright by the PRR in its capacity as a common carrier. Contract carrier trucks and

During the late 1920s, the PRR and the other railroads serving New York had adopted a “constructive delivery” system, contracting haulage services to independent truckers in the hope that lighterage costs could be substantially reduced, if not eliminated entirely. Because constructive delivery required that shippers pay a supplement, resulting in numerous complaints regarding dubious freight charges, in August 1929 the various railroads petitioned the ICC to cancel the service. With the ICC’s assent, PRR executive J. W. Roberts chaired a committee to develop an alternative system. In his position as perishable traffic manager, Roberts possessed a better understanding of the dangers posed by independent truckers than almost any other PRR employee. The perishable nature of fruits and vegetables made them ideal candidates for the speed and flexibility of truck haulage, and by the end of the 1920s, the railroads had lost most of their produce traffic to motor carriers.⁸

independent (non-railroad-owned) common carrier trucks were not subject to ICC oversight until 1935. Almost as soon as trucks became a viable means of transportation, the PRR began pressuring the Pennsylvania legislature to regulate common carriers (those that accepted any available load), according to a published rate schedule. The result was the 1912 Pennsylvania Service Company Law, the first attempt by any state to regulate trucking, that gave the Pennsylvania Public Service Commission authority over all public utilities, including trucking firms: but only common carriers, not contract carriers. The New York Public Service Commission likewise lacked the authority to regulate contract carriers until 1938, while Ohio’s 1923 Motor Carrier Act covered only common carriers. The Illinois Public Utility Commission, created in 1913, provided minimal regulation of the trucking industry and was particularly weak with regard to contract carriers. Throughout much of the PRR’s territory, its trucks could operate with relative impunity as contract carriers, delivering only the railroad’s traffic, free of most of the regulatory burdens that affected independent common carriers. Both Pennsylvania and New York prohibited trucking firms from operating simultaneously as contract and common carriers, unless they could demonstrate a compelling public interest. By the end of 1936, more than 4,000 common motor carriers operated in Pennsylvania. In 1937, the legislature created a replacement Public Utility Commission, with authority over both common and contract carriers. Ohio began regulating contract carriers in 1933, New York did the same in 1938, and Illinois began to regulate contract carriers rigorously following the passage of the Illinois Truck Act of 1939. Even as late as 1951, the Pennsylvania Public Utility Commission ruled (in *Re: Kenny Transfer Company*) that traffic losses by the railroads could not constitute the sole reason for denying certificates of convenience and necessity to motor carriers, and that even demoralizing truck competition would be permitted in instances where rail service was deemed inadequate. Donald V. Harper, *Economic Regulation of the Motor Trucking Industry by the States* (Urbana, Ill., 1959), 52-61, 156-59, 169; “Proposed Memorandum from E. L. [Elisha Lee] and J. L. E. [J. L. Eysmans, vice-president, traffic] to President Atterbury,” 18 Dec. 1925, HML, box 1144, folder 12.

⁸ Perishable shipments in the Pittsburgh area declined from 150 to 200 cars per week in 1920 to 25 to 50 cars per week a decade later (representing barely 12

As the committee headed by Roberts completed its recommendations, the onset of the Great Depression increased the PRR's involvement in store-door service, particularly in the New York area. During the spring of 1933, the PRR and its Long Island Railroad subsidiary announced plans to establish store-door service throughout most of the New York metropolitan area, and by autumn, the idea had expanded to include proposals for a system-wide store-door network. Under the new arrangement, the PRR would assume full responsibility for all shipments, from shipper to consignee, employing contract truckers to collect and deliver packages over distances up to 260 miles. In October, the Pennsylvania, the Erie, and the Grand Trunk Western filed a joint application with the ICC for store-door tariffs on an experimental basis, to become effective on December 1, 1933.⁹

Even though they had once supported the "constructive delivery" system, other northeastern railroads, the New York Central (NYC) in particular, were quick to take offense at the PRR's plans for store-door service. The various railroads serving New York had looked favorably on trucks as a means to increase efficiency at freight terminals in an era when the ICC's lethargic and stingy approval of rate increases forced the carriers to reduce costs wherever possible. The PRR was now changing the rules of the game, proposing to use store-door service to take business away from its rivals, overcoming its longstanding competitive disadvantage in the New York area, forcing other railroads to respond in kind, and thus threatening the competitive stability of the entire northeastern railroad network. Frederick E. Williamson, the president of the NYC, complained that, even though "store-door collection and delivery service, once put forth as a panacea for terminal troubles, now is being advanced as an answer to the motor truck problem, at the same time it is one of the most powerful weapons by which one carrier can penetrate another's territory"—specifically, his territory. Unwilling to accept such an aggres-

percent of the city's produce trade), even though the PRR had opened a modern new produce terminal there in 1928. The PRR and the Reading had delivered virtually all produce consumed in Philadelphia at the beginning of the 1920s, but the situation was far different a decade later. During the harvest months of August and September 1931, trucks hauled 57 percent of the produce that reached that city's markets, a figure that increased to 67 percent during the same period a year later. In 1933 the Brookings Institution noted that more than 80 percent of Philadelphia's produce traveled fewer than a 100 miles to reach its destination, placing it well within the range of the motor carriers, "and represents tonnage which has undoubtedly left the railroad for good." The same could be said for New York, indeed for every city in the Pennsylvania Railroad's territory. *Railway Age* 93 (23 July 1932), 123-25; William R. Childs, *Trucking and the Public Interest: The Emergence of Federal Regulation, 1914-1940* (Knoxville, Tenn., 1985), 20-23; National Transportation Committee, *The American Transportation Problem* (Washington, D.C., 1933), 603-4, quotation at 618-19.

⁹ *Railway Age* 94 (22 April 1933): 597-98; 95 (7 Oct. 1933): 507-8.

sive attack on his railroad's traffic, Williamson noted rather ominously that "such action on the part of the Pennsylvania must necessarily force the other carriers to protect themselves."¹⁰

Williamson was not alone in his criticism of expanded store-door service. One could hardly consider the NYC to be a weak road, but sixteen other, weaker, eastern carriers filed protests with the ICC. Stripped of all legal niceties, the protests essentially maintained that, though the PRR's burden of poor access to the New York metropolitan area was indeed unfortunate, it was hardly fair to other railroads to strip away their competitive advantage over the PRR in the nation's largest market. They needed this advantage if they were to remain solvent in the face of regional competition from the nation's largest railroad.

The ICC had its doubts as well. Even though the ICC had no direct authority over motor carriers, it did have the responsibility to maintain equitable railroad rates and, particularly after passage of the 1920 Transportation Act, to protect weaker railroads from predatory or otherwise discriminatory rates charged by their stronger competitors. Five years later, on January 30, 1925, Congress had adopted the Hoch-Smith Resolution, giving the ICC the authority to redistribute rates in order to ensure the overall health of the railroad industry, and that issue was foremost in the minds of the ICC examiners.

In a broader sense, the issue represented a conflict concerning the survival of the desperately troubled railroad industry. Conventional wisdom assigned the ICC the responsibility for setting rates and terms of service that would allow the survival of the nation's weak railroads. A newer vision recognized that the entire railway system would survive only if it could become more efficient, just as only allocating the carriage of goods to the most efficient modes of transportation could restore the Depression-addled economy to health.¹¹

¹⁰ Williamson instead called for "a rate which, in view of all the circumstances, will hold a particular class of traffic to the rails." Williamson to Joseph Eastman, quoted in *Railway Age* 95 (7 Oct. 1933): 495-97; *Railway Age* 95 (25 Nov. 1933): 765-68; 95 (18 Nov. 1933): 738-39.

¹¹ The same attitude prevailed among public policy makers in President Jimmy Carter's administration at the time of stagflation and economic malaise during the 1970s. To many, the increased efficiency associated with deregulation seemed the only alternative to a regulatory apparatus that threatened organized labor, corporate profits, and consumer prices alike. Paul Barrett, Mark Rose, and Bruce Seely make this point in their book *"The Best Transportation System in the World": Railroads, Trucks, Airlines and American Public Policy in the Twentieth Century* (forthcoming, Ohio State University Press). The authors address the same issue that underlies this paper, regarding the lack of coordinated transportation policies in the United States. I am particularly grateful to Mark Rose (who served as discussant for the Business History Conference panel at which this paper was originally presented, and who is co-editing my much larger history of the Pennsylvania Railroad for the University of

In October 1932, such luminaries as Calvin Coolidge, Alfred Smith, and Bernard Baruch had formed the National Transportation Committee, organized under the auspices of the Brookings Institution. Because new modes of transportation ensured that “Governmental fostering of competition is no longer necessary as a defense against monopoly,” the committee maintained that “Railroads should be permitted to own and operate competing services,” including water, bus, and truck lines in order to provide “the most efficient service at the lowest competitive cost.”¹²

No one better represented this new belief in economic efficiency and coordinated transportation than Joseph Eastman. President Woodrow Wilson had appointed Eastman to the ICC in 1919, and this protégé of Louis Brandeis had quickly established a reputation as a maverick, but respected, commissioner. His forum appeared in June 1933, when President Franklin Delano Roosevelt signed the Emergency Railroad Transportation Act and named Eastman Transportation Coordinator.¹³ Four months later, the PRR filed notice of its intent to offer system-wide store-door service. Unlike the ICC, Eastman perceived store-door service as a method of increasing the efficiency of the entire railroad network, rather than as a threat to the internal stability of that industry. He even chided the NYC for adopting an insufficiently broad conception of efficiency, inasmuch as that railroad already offered pick-up and delivery service through its Universal Carloading & Distributing Company subsidiary, but only for the exceedingly narrow purpose of lowering terminal costs.¹⁴

At first, the ICC acceded to Eastman’s vision of efficient and coordinated transportation, and on November 27, 1933, gave its assent to store-door rates, noting that they were “clearly an experiment.”¹⁵ The experiment worked. By February 1934, more than 20 percent of LCL

Pennsylvania Press) for engaging in a lively and ongoing discussion regarding the history of intermodality in the United States.

¹² National Transportation Committee, *The American Transportation Problem*, quotations at pp. xv-xxiii.

¹³ Richard D. Stone, *The Interstate Commerce Commission and the Railroad Industry: A History of Regulatory Policy* (New York, 1991), 38-39; Goddard, *Getting There*, 153-54.

¹⁴ Eastman must have shocked President Williamson with his comment that “I have never subscribed to the theory that a carrier by the construction of terminal facilities, lapse of time, or otherwise, establishes pre-emptive rights to the business of any industry or group of industries. If any such rights existed heretofore, they have been effectively destroyed by the invasion of the transportation field not only by motor vehicles but by carloading companies, including your own controlled company.” *Railway Age* 95 (7 Oct. 1933).

¹⁵ The Chesapeake & Ohio, the New York, Chicago & St. Louis (Nickel Plate), and the Père Marquette followed the Pennsy’s lead, applying for similar tariffs the following day. *Railway Age* 95 (2 Dec. 1933): 800-804; Fred Carpi, “Collection and Delivery: A Short Sketch on a Growing Service and Its Salesmanship,” *The Mutual Magazine* (Dec. 1934), 20-21.

freight waybills specified store-door service.¹⁶ Within another month, the PRR was using trucks to collect and deliver more than 30 percent of its total LCL freight shipments, at a rate of 4,000 per day. More than 9,000 tons of this traffic represented new business, adding nearly \$120,000 to the railroad's coffers in that month alone. By the end of the year, 75,000 shippers were making use of the PRR's store-door service to move more than 2.6 million shipments. Overall, the railroad estimated that every dollar spent on truck haulage generated \$2 in additional revenue. Despite the Depression, 1934 witnessed the first increase in the railroad's LCL traffic since 1925.¹⁷

In early 1936, the PRR sought ICC permission to further expand its truck service (primarily in Ohio) by acquiring motor carriers that paralleled—and thus replaced, rather than augmented—established rail routes. Eastman favored precisely that kind of efficient coordination, but most of the ICC commissioners, the independent truckers, and many other railroads did not. More significantly, the political landscape had changed dramatically in the short time since the ICC had given its approval to the initial, experimental store-door rates in November 1933. President Roosevelt signed the Motor Carrier Act in August 1935, bringing interstate trucking under the regulatory purview of the ICC.¹⁸

The issue came to a head at a series of ICC hearings that began on June 16, 1936, overwhelming even the largest hearing room in the Commission's new headquarters. Using somewhat perverse logic, the commissioners concluded that the relatively small size of the proposed acquisitions rendered the threat to the public interest all that much more serious; the ICC interpreted the PRR's attempts to "gridiron the state of Ohio" with a small number of trucks covering a vast network of routes as evidence "that what the [Pennsylvania] Railroad desires chiefly to acquire are operating rights" that could later be expanded to envelop independent truckers throughout the state. Spurning Eastman's vision of an efficiently coordinated transportation system, the ICC was "not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with, rather than ancillary to their rail operations."¹⁹

¹⁶ Walter S. Franklin, "Store-Door Collection and Delivery," *The Mutual Magazine* (Feb. 1934), 21-22.

¹⁷ *Railway Age* 96 (26 May 1934): 785-87; 97 (27 Oct. 1934): 517-18; 97 (15 Dec. 1934): 810-11; 98 (27 April 1935): 653-54; Harper, *Economic Regulation of the Motor Trucking Industry*, 17.

¹⁸ Eastman returned to his original status as an ICC commissioner after the position of Coordinator of Transportation expired in June 1936. Childs, *Trucking and the Public Interest*, 136-41; Rothenberg, *Regulation, Organizations, and Politics*, 47-57; Stone, *The Interstate Commerce Commission and the Railroad Industry*, 39.

¹⁹ *Railway Age* 100 (27 June 1936): 1056-57; 101 (17 Oct. 1936): 565-67 (quotes).

The Commission held that the PRR and other railroads must demonstrate that their intended acquisition of a motor carrier would be in the public interest and would not restrain intermodal competition. In broad terms, this meant that the railroads could use trucks in an auxiliary or supplemental manner, but not to compete against rail service. This policy resulted in considerable confusion regarding exactly where, and under what conditions, the railroads could substitute trucks for trains.²⁰

Although the ICC denied the PRR's petition to purchase additional motor carriers, in a sense the railroad got off lightly. The PRR retained store-door service, as well as ownership of motor carriers that the Railroad had purchased before implementation of the Motor Carrier Act.²¹ In additional hearings between 1938 and 1941, however, the ICC effectively prevented the PRR and other railroads from offering anything beyond extremely localized multi-modal services.²² By 1945, the railroad operated

²⁰ The ICC eventually held that railroads could not offer truck service to or from any point not also served by the railroad, thus protecting the independent operators who funneled traffic to each railroad and preventing railroads from invading the territory of their competitors. Railroads could substitute trucks for trains on marginal branch lines, but could not offer services that competed with rail traffic along the main line. *Pennsylvania Truck Lines, Inc.—Control-Barker Motor Freight*, 1 MCC 101 (1936), 5 MCC 9 (1937), 5 MCC 49 (1937); Harper, *Economic Regulation of the Motor Truck Industry*, 161.

²¹ What remained unclear was the status of these PRR subsidiaries: whether they were contract carriers or common carriers, and whether they should be regulated as trucking firms or as adjuncts to the railroads. In the 1937-1938 *Scott Brothers* case, the Commission was almost evenly divided on these issues, yet ultimately concluded that Scott Brothers was a common carrier that should be regulated in tandem with the railroads, rather than as a trucking operation. In siding with the majority, Eastman seemed to be favoring a coordinated approach to regulation, yet his position had more to do with his concern for owner-operator truckers than for the railroads. As a common carrier, however, Scott Brothers was now required to obtain certificates of convenience and necessity for all routes that it wished to operate, and was further required to post its tariffs, making cross-subsidization of truck and rail rates far more difficult. In that regard, the Commission also held that the PRR could not include store-door pick-up and delivery as part of the rail tariff, and would henceforth be required to charge extra for those services. *Railway Age* 101 (12 Dec. 1935): 882; 102 (19 June 1937): 1030-31; 103 (31 July 1937): 147; Childs, *Trucking and the Public Interest*, 150-54.

²² Congress passed the Transportation Act of 1940 in the midst of these hearings, yet the law (which created a Transportation Investigation and Research Board, charged with developing an efficient multi-modal national transportation system) seems to have had little impact on railroad ownership of trucking firms. The 1940 Act did stipulate that the ICC would consider the impact of rate adjustments solely on carriers within that industry, without regard to their potential impact on competing modes of transportation. In *Ex Parte 29, Substituted Freight Service* (223 ICC 683), the Commission ruled that the Motor Carrier Act prohibited railroads from using contract carriers in line-haul operations. The Kansas City

nearly 9,000 miles of “station-to-station” truck routes, serving nearly 2,000 PRR stations, but those operations fell well short of the potential established by store-door service more than a decade earlier.²³

The ICC’s reluctance to facilitate the PRR’s innovations at the expense of weaker railroads had an even more deleterious affect on the railroad’s effort to develop intermodal services. Unlike multi-modal store-door service, in which railroad employees transferred packages between trucks and boxcars, intermodal service used containers directly transferable to trains and trucks, and, in at least one experimental service, to ships as well.²⁴ The containers ranged in size from small units that a single worker could push around a freight house, to larger “segmented box cars,” to still

Southern Case held that railroads could only use trucks for freight that had been, or was to be, transported by rail. Eventually concluding that this stipulation was too restrictive, the ICC articulated the “key point restriction,” which allowed railroads to move freight from one local point to another, and to and from local points and major terminals (key points), but prohibited highway movements between key points. The key point provision effectively limited the PRR’s long-haul trucking operations to its Zone Concentration Plan, transferring LCL freight between trains and trucks at approximately 75 locations. Some trucks radiated outward from cities such as Pittsburgh, Pennsylvania, and Wilmington, Delaware, to collect and distribute packages in outlying areas, while others carried freight between closely spaced city pairs (including Cincinnati—Dayton, Ohio, and Ft. Wayne—Richmond, Indiana) where the PRR did not maintain a direct rail route. Over long distances, however, ICC policy ensured that an ever-declining quantity of LCL freight continued to move over the rails. Increasingly locked out of the truck market, the Pennsy established dedicated LCL trains between the East Coast and Pittsburgh (the somewhat unimaginatively named *L.C.L. No. 1* and *L.C.L. No. 2*) and the better-known *Speed Witch* trains linking Boston and Baltimore. *Kansas City Southern Transport Co., Inc., Common Carrier Application*, 10 MCC 221 (1938), 28 MCC 5 (1941); Harper, *Economic Regulation of the Motor Truck Industry*, 161-62; Stone, *The Interstate Commerce Commission and the Railroad Industry*, 41-42; *Railway Age* 101 (24 Oct. 1936): 597-601.

²³ Under this plan, the railroad would set out boxcars full of LCL freight, which would then be transferred to trucks and delivered locally, obviating the necessity of setting out a few small shipments at a great many small town depots. George H. Burgess and Miles C. Kennedy, *Centennial History of the Pennsylvania Railroad Company, 1846-1946* (Philadelphia, 1949), 600-602.

²⁴ During 1931, the PRR explored the potential of true intermodality when it launched an experimental service entirely within the commonwealth of Maryland, thus avoiding ICC oversight. From Baltimore, the PRR shipped containers (“demountable truck bodies”) by truck to the harbor, then by ship across Chesapeake Bay, then by rail to Salisbury, and again by truck to their destination. *Railway Age* 91 (17 Oct. 1931): 608; 91 (7 Nov. 1931): 720; 93 (2 July 1932): 7.

larger “demountable truck bodies” that could be quickly transferred from the rails to the highways.²⁵

The same concern over the inefficiencies of freight terminal operation and the growing threat of truck competition that had encouraged the PRR to launch store-door service also led both the PRR and the NYC to investigate the possibilities of containerization. After the NYC extended its container operations to New England in 1927, the PRR responded by lodging complaints with the ICC and establishing its own container subsidiary, the Keystone Container Car Company.²⁶ Organized in October 1928, with an initial complement of 500 containers and 75 specially equipped container cars, the PRR initiated service points at New York, Baltimore, Pittsburgh, Cleveland, and Buffalo, followed by Philadelphia and South Kearney, New Jersey.²⁷

The success of containerization matched that of store-door service. In 1929, the railroad concluded that a unit of containerized freight generated only about half the revenue of an equivalent boxcar LCL movement, but cut expenses by nearly 85 percent. Containers also spent more time generating revenue, often averaging more than 80 miles per day, quadruple the rate of boxcars. By the end of 1930, more than a thousand containers graced PRR rails and the highways of the Northeast, and by 1939, the railroad transported nearly 160,000 container loads each year.²⁸

Despite this promising start, intermodal operation did not live up to its potential, largely because it fell victim to the same ICC zeal for protecting the weak railroads that had helped to cripple store-door service. The Commission was neither hidebound by bureaucracy nor philosophically

²⁵ Richard Burg, “Container Service on the Pennsylvania R.R.,” *The Keystone* 18 (Spring 1985): 7-50.

²⁶ The NYC may well have been exposed to the concept of LCL containers in Cincinnati more than a decade earlier. Benjamin Fitch was a salesman at the White Motor Company, which also employed Harold Hamilton (future founder of Electro-Motive) in the same capacity. In 1917, Fitch initiated LCL container service in that city. Containers destined for specific railroads were loaded at each of the city’s railroad freight houses, then hoisted onto trucks and taken to the destination freight house. The first to sign up for the service was the Big Four (the CCC&StL RR), a subsidiary of the New York Central. By 1921, limited intermodal service had begun, in cooperation with the Cincinnati, Lawrenceburg, & Aurora interurban railway. The PRR employed lightweight composite steel and aluminum Fitch containers beginning in 1931, yet the railroad generally elected to go with their own designs; see John H. White, Jr., *On The Right Track: Some Historic Cincinnati Railroads* (Cincinnati, Ohio, 2003), 36-51; *Railway Age* 84 (25 Feb. 1928): 499-502; 86 (16 Feb. 1929): 419-22.

²⁷ PRR response to ICC questionnaire, “In the Matter of Container Service,” HML, box 374, folder 9.

²⁸ A ton of containerized freight generated \$5.61 in revenue and incurred \$1.20 in expense, leaving a net of \$4.21 per ton. James Regis Downes to John F. Deasy, 26 March 1929, HML, box 374, folder 9; “In the Matter of Container Service”; “Merchandise or Less-than-Carload Freight,” testimony of John F. Deasy, 17.

opposed to innovative technologies; on the contrary, it referred to the container as “a splendid piece of equipment,” even as it imposed operating and tariff restrictions that undermined the container’s utility.²⁹ The problem was not the container itself, but rather the effect that the new technology would have on the existing rate structure and on competitive patterns within the railroad industry.

The controversy began in December 1928, when the Missouri Pacific announced plans to establish container service. Other western railroads protested, as did such perennially insolvent eastern lines as the New Haven, the Erie, and the Delaware, Lackawanna, & Western. The ICC scheduled a set of hearings for February 1929, hearings that dragged on into March, and then April, in Dallas, Kansas City, New York, and, finally, Washington. Because there were so many weak railroads in the Northeast, the ICC maintained, “in order that traffic may freely move, both the carriers and this commission may be expected to cast about for some traffic which might properly be expected to bear higher rates” and thus cross-subsidize less remunerative rates, particularly on marginal routes. Railroad efforts to shift LCL traffic to more efficient containers threatened the ICC’s “mandate that rates and revenue must be redistributed in order that an adequate system of transportation be maintained.”³⁰

Had all railroads been of equal strength, the ICC could have reduced LCL rates by a smaller amount than the efficiencies generated by containerization, thus providing everyone concerned with additional net earnings on LCL traffic. Because the weak railroads lacked the wherewithal to invest in container equipment, however, any decrease in LCL rates would effectively force them to offer boxcar-based LCL haulage at less than their cost of service, lest the stronger roads skim off all the LCL traffic in the more efficient containers that moved at lower rates.³¹

The Commission’s decision, rendered in August 1929, allowed container service to continue on eastern railroads, but included such severe limitations that neither the PRR nor any of its competitors was likely to exploit the new technology to its full advantage, nor to draw business away from trucks. The most burdensome restrictions involved containers that accommodated multiple types of cargo; in such cases, the ICC stipulated that the rate of the highest-value commodity in the

²⁹ *Railway Age* 87 (31 Aug. 1929): 558.

³⁰ Harry C. Ames, comments in ICC 21723 and 3198, quoted in *Railway Age* 87 (31 Aug. 1929): 557-58.

³¹ In this context, the ICC was particularly concerned that the L.C.L. Corporation and Keystone Container enabled the NYC and the PRR to disguise the actual expenses associated with container operation, allowing them to set artificially low rates designed to drive other railroads (and independent truckers) out of the LCL business. See *Railway Age* 85 (22 Dec. 1928): 1230; 86 (16 Feb. 1929): 421-22; 86 (13 April 1929): 833-37; James E. Gowan to John F. Deasy, et al., 11 Feb. 1929, HML, box 374, folder 9.

container would determine the rate for the entire container.³² In this context, the PRR could offer rates low enough to attract additional business only by rigorously segregating different types of cargo into different containers, thus negating much of the flexibility inherent in containerization. The container rates were also unusual in that they were based on weight, rather than on the value of the commodity. Because rates increased on a sliding scale as the weight of the container increased, shippers had an incentive to disaggregate boxcar-sized lots by placing light, high-value commodities in several containers—thus causing the PRR to cannibalize its own boxcar traffic. The ICC also banned container service west of St. Louis and Chicago and south of the Ohio and Potomac rivers, ensuring that the PRR would not be able to employ containers in nationwide service.

The ICC again reduced the competitiveness of container service by issuing a new set of rates that took effect on July 30, 1931, imposing a 4,000-pound minimum weight per container shipment, ensuring that most of the smaller containers were uneconomical for all but the heaviest bulk commodities, such as sand and bricks. Container traffic dropped so precipitously, particularly on the NYC, that the ICC soon acknowledged its error, rescinded the 1931 rate revisions, and adopted a somewhat more liberal policy toward container service.³³ The Commission approved the PRR's request, filed in October 1931, for the transportation of demountable truck bodies between New York, Philadelphia, Baltimore, and Richmond, Virginia, effective November 5, 1931.³⁴ These were "all-commodity" rates, however, which, as the name suggests, meant that the railroad could not mix different types of merchandise in any one container. Without that flexibility, the new service proved unpopular.³⁵

These progressively more restrictive rates did not affect the independent freight forwarders, who accordingly soon dominated container operations. Forwarders, also referred to as consolidators,

³² The tariffs ensured "that in no event shall the container rate be lower than the contemporaneous carload rate on any commodity loaded in the container, the inclusion of such commodities in mixed container shipments to control the rates on the entire mixture." See Harry C. Ames, comments in ICC 21723 and 3198, quoted in *Railway Age* 87 (31 Aug. 1929): 553.

³³ The NYC handled 2,078 containers in New York state during July 1931. By September, after the new rates had taken effect, the number of containers had fallen to 223. See "Corrected Report of the Interstate Commerce Commission, No. 21723, In the Matter of Container Service, decided July 11, 1932," HML, box 374, folder 10.

³⁴ The Baltimore & Ohio, the Jersey Central, the Delaware, Lackawanna, & Western, and the Richmond, Fredericksburg, & Potomac joined the PRR in the rate application. See *Railway Age* 91 (17 Oct. 1931): 608; 91 (7 Nov. 1931): 720; 93 (2 July 1932): 7.

³⁵ "Corrected Report of the Interstate Commerce Commission, No. 21723"; *Wall Street Journal*, 27 May 1932; *The American Transportation Problem*, 677.

solicited small shipments and bundled them into container or boxcar-sized lots, earning a profit based on the differential between container shipping rates and the higher LCL package rates. They could in turn pass part of this savings on to LCL shippers (in the form of a 4-10 percent rate reduction) as an inducement to gain their business, something that the regulated railroads could not do.

Consolidators also added their marketing and clerical expertise to the equipment and facilities provided by railroads, greatly reducing the paperwork associated with a typical LCL shipment. The problem for the PRR was that forwarders appropriated most of the net revenues created by the added efficiency of containerization. This situation ensured that the PRR would bear all of the capital expenses associated with container service, including the containers, container cars, freight stations, and transfer facilities, but allow the forwarders to take what one PRR executive accurately referred to as “the cream of the traffic.”³⁶

Because the ICC held forwarders to be “shippers, rather than carriers,” the PRR could not own freight forwarders or market container service directly to shippers.³⁷ Because forwarders were exempt from ICC oversight, they could freely solicit business and offer an extremely flexible rate structure, with steep discounts for long hauls. Forwarders possessed no innate loyalty to the PRR, or to the railroad industry in general, so they readily transferred their business to other carriers or to trucks. By the summer of 1933, Universal Car Loading, the largest forwarder operating on the PRR, shifted its operations to the NYC, as did the National Freight Company. By the late 1930s, forwarders had diverted virtually all LCL traffic between New York and Chicago (the two largest cities on the PRR) to other railroads or to motor carriers. By then, most of the Railroad’s Keystone containers had been removed from service, converted to tool sheds or simply allowed to rust away in storage yards. What little service remained ceased when the ICC required that shippers (including forwarders), and not the railroads, own all containers used in rail service.³⁸

³⁶ PRR response to ICC questionnaire, “In the Matter of Container Service” (ICC Docket No. 21723), 11 Jan. 1929, testimony of J. F. Deasy, 17, HML, box 374, folder 9.

³⁷ Had the PRR owned a freight forwarder, it would have offered two rates for the same commodity: the consolidated forwarder rate and the traditional LCL package rate. This would, in the ICC’s view, amount to illegal rate discrimination.

³⁸ In 1950, the PRR took a giant step backward in intermodal service. Even though the railroad still owned more than 3,000 of the prewar Keystone containers, the company concluded that it would be more economical to “eliminate the use of these containers and absorb the business thus handled in box cars regularly loaded in LCL service.” The railroad’s new Keystone Merchandise service reduced LCL rates and offered six-day-a-week service, as well as pick up and delivery options employing radio-dispatched trucks, yet it relied on the traditional technology of the boxcar. See Testimony of Walter S.

By then, however, it was clear that the ICC's traditional antipathy to unfair competition had won out over Eastman's belief in coordinated and efficient transportation. This Pyrrhic victory had little to do with bureaucratization, ossification, or even outright ineptitude on the part of the agency or its commissioners. For more than a decade following the Transportation Act of 1920, the ICC had been unable to orchestrate any form of coordination or consolidation that might safeguard the weak railroads of the Northeast.

By the time the PRR announced its intention to offer store-door and container service, the Commission could think of no other option—indeed, the Commission had no other option—than to restrict any effort at intermodality that might threaten the health of the weak roads. In designing rate restrictions that would prevent unfair competition and protect the weaker railroads from the PRR, the ICC ensured that forwarders would benefit from the railroad's investment in containerization, siphoning off high-value traffic without relieving the railroad of the burden of providing LCL service to every on-line community. The perverse outcome was that the increased efficiency of containers made the PRR a less competitive company, as those forwarders skimmed off “the cream of the traffic.”

Franklin, “Merchandise or Less-than Carload Freight;” H. T. Cover to James M. Symes, 13 Nov. 1950 (quote); both in HML, Box 334, folder 7; “Performance of Container Car Service June 20th, 1928 to January 3rd, incl., 1931,” HML, box 374, folder 11; “Memorandum of Conference with Mr. Bradley of the Acme Fast Freight, Inc., in their New York Office, June 6, 1933;” J. B. L. to H. W. B., 3 July 1933; both in HML, box 380, folder 5; Burg, “Container Service on the Pennsylvania R.R.”