

No. 9345

United States
Circuit Court of Appeals

For the Ninth Circuit.

ADAMS COUNTY, et al.,

Appellants,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,
Appellee.

NORTHERN PACIFIC RAILWAY COMPANY,
Appellant,

vs.

ADAMS COUNTY, et al.,

Appellees.

Transcript of Record

In Eight Volumes

VOLUME VI

(Exhibits)

Pages 2223 to 2694

Upon Appeals from the District Court of the United
States for the Eastern District of Washington,
Northern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NORTHERN PACIFIC RAILWAY COMPANY
1936 ASSESSMENT

PLAINTIFF'S EXHIBIT C-1

VALUATIONS AND TAXES ON BASIS OF PRIMARY
VALUE OF \$88,500,000

VALUATIONS AND TAXES ON BASIS OF
PRIMARY VALUE OF \$32,078,647

COUNTY	PRIMARY VALUE	RATIO	EQUALIZED VALUE	TAX	PRIMARY VALUE	EQUALIZED VALUE	CORRECT TAX	EXCESS TAX	TAX PAID	EXCESS TAX PAID	UNPAID TAX
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Adams	\$ 4,679,040	44	\$ 2,058,778	\$ 27,765.89	\$ 1,696,014	\$ 746,246	\$ 10,064.32	\$ 17,701.57	\$ 13,882.95	\$ 3,818.63	\$13,882.94
Benton	3,537,738	44	1,552,605	51,283.16	1,282,326	564,224	18,588.64	32,694.52	25,641.58	7,052.94	25,641.58
Clark	2,500,836	41	1,025,343	36,746.68	906,480	371,657	13,319.59	23,427.09	18,373.34	5,053.75	18,373.34
Columbia	219,759	44	98,694	2,159.68	79,656	35,049	782.82	1,376.86	2,159.68	1,376.86	-
Cowlitz	4,381,043	38	1,664,796	70,689.02	1,587,999	603,440	25,622.69	45,066.33	35,344.51	9,721.82	35,344.51
Franklin	4,690,558	47	2,204,562	58,757.38	1,700,189	799,089	21,297.82	37,459.56	29,378.69	8,080.87	29,378.69
Grant	1,870,168	47	878,979	24,714.74	677,881	318,604	8,958.37	15,756.37	12,357.37	3,399.00	12,357.37
Greys Harbor	2,460,677	45	1,107,304	56,106.37	891,923	401,365	20,336.91	35,769.46	28,053.19	7,716.28	28,053.18
King	11,991,409	47	5,635,962	216,658.58	4,346,533	2,042,870	78,532.37	130,126.21	108,329.29	29,796.92	108,329.29
Kittitas	6,205,651	43	2,668,430	77,992.02	2,249,366	967,227	28,269.81	49,722.21	38,996.01	10,726.20	38,996.01
Lewis	4,413,093	48	2,118,285	63,298.60	1,599,616	767,816	22,943.88	40,354.72	31,649.30	8,705.42	31,649.30
Lincoln	3,289,913	45	1,480,461	31,791.36	1,192,497	536,624	11,523.43	20,267.93	15,895.68	4,372.25	15,895.68
Mason	347,125	44	152,735	4,650.49	125,823	55,362	1,685.67	2,964.82	4,650.49	2,964.82	-
Pacific	808,575	44	355,773	15,231.63	295,085	128,957	5,521.02	9,710.61	7,615.81	2,094.79	7,615.82
Pierce	8,476,567	47	3,983,986	181,879.26	3,072,506	1,444,078	65,925.88	115,953.38	90,939.63	25,013.75	90,939.63
Skagit	1,109,006	43	476,873	15,670.42	401,982	172,852	5,680.07	9,990.35	7,835.21	2,155.14	7,835.21
Snohomish	2,550,803	44	1,122,353	40,831.61	924,591	406,820	14,800.26	26,031.35	20,415.81	5,615.55	20,415.80
Spokane	6,173,866	47	2,901,717	103,775.57	2,237,845	1,051,787	37,614.87	66,158.70	51,886.79	14,271.92	51,886.78
Thurston	4,604,157	39	1,795,621	69,691.70	1,668,872	650,860	25,261.19	44,430.51	34,845.85	9,584.66	34,845.85
Walla Walla	3,092,439	44	1,360,673	30,300.09	1,120,918	493,204	10,982.89	19,317.20	15,150.05	4,167.16	15,150.04
Whitcom	1,638,221	42	688,053	28,478.30	593,807	249,399	10,322.55	18,155.75	14,239.15	3,916.60	14,239.15
Whitman	2,619,513	42	1,100,195	23,669.98	949,496	398,788	8,579.67	15,090.31	11,834.99	3,255.32	11,834.99
Yakima	6,839,843	41	2,804,335	102,455.96	2,479,242	1,016,489	37,137.27	63,318.69	51,227.98	14,090.71	51,227.98
	\$88,500,000		39,238,513	\$1,334,596.49	\$32,078,647	14,222,807	\$483,751.99	\$850,844.50	\$670,703.35	\$186,951.36	\$663,893.14

(PLFF'S, EXHIBIT 1, SHEET 1)





Plaintiff's Exhibit one, Sheet 2

NORTHERN PACIFIC RAILWAY COMPANY

Market Value of Stock and Bonds Outstanding as of December 31, 1934

1935 Assessment

	Average Market Value					
	PAR VALUE OUTSTANDING Dec. 31, 1934	YEAR 1934	TWO YEARS ENDED Dec. 31, 1934	THREE YEARS ENDED Dec. 31, 1934	FOUR YEARS ENDED Dec. 31, 1934	FIVE YEARS ENDED Dec. 31, 1934
	Northern Pacific Railway Company, capital stock	\$ 248 000 000	\$ 60 140 000	\$ 55 335 000	\$ 49 290 000	\$ 60 527 500	$ 85 250 000
Bonds (as per detailed statement in annual report to Washington Tax Commission) Exclusive of Series "B" and "C" bonds issued in connection with Burlington stock	<u>195 545 600</u>	<u>169 780 279</u>	<u>156 808 792</u>	<u>151 011 835</u>	<u>153 872 904</u>	<u>157 031 605</u>
Total stock and bonds (Exclusive of Series "B" and "C" bonds)	\$ 443 545 600	229 920 279	212 143 792	200 301 835	214 400 404	242 281 605

1936 Assessment

	PAR VALUE OUTSTANDING Dec. 31, 1935	YEAR 1935	TWO YEARS ENDED Dec. 31, 1935	THREE YEARS ENDED Dec. 31, 1935	FOUR YEARS ENDED Dec. 31, 1935	FIVE YEARS ENDED Dec. 31, 1935	
	Northern Pacific Railway Company, capital stock	\$ 248 000 000	\$ 44 950 000	\$ 52 545 000	\$ 51 770 000	\$ 48 127 500	\$ 57 350 000
	Bonds (as per detailed statement in annual report to Washington Tax Commission) Exclusive of Series "B" and "C" bonds issued in connection with Burlington stock	<u>195 126 600</u>	<u>180 356 793</u>	<u>174 859 036</u>	<u>164 524 410</u>	<u>157 951 097</u>	<u>158 891 249</u>
Total stock and bonds (Exclusive of Series "B" and "C" bonds)	* 443 126 600	225 306 793	227 404 036	216 294 410	206 078 597	216 241 249	

PLAINTIFF'S EXHIBIT ONE,

Sheet 3

Northern Pacific Railway Company

DEDUCTIONS FOR NON-OPERATING PROPERTY AS CLAIMED BY
PLAINTIFF AS APPLICABLE TO SYSTEM VALUE BASED ON
STOCK AND BOND MARKET VALUE

	1935 Assessment	1936 Assessment
1. Northwestern Improvement Company Capitalization at 6% of regular dividend as received from that company.....	\$16,533,333	
(Based on 5 years end. Dec. 31, 1934)		
Value considering net income and securities as owned by N. W. I. Co.....		\$15,000,000
2. Spokane, Portland & Seattle Ry. Co. and subsidiaries (Oregon Trunk Ry. Oregon Electric Ry. and United Railways Companies)		
Based on assessed value (Northern Pacific propn. 1/2) as determined by Washington and Oregon Tax Commissions		
1934 Assessment	18,313,717	
1935 Assessment		17,437,939
3. Unsold land grant property. Full value determined by using as a base the assessed value of such property.		
Value based on 1934 assessment.....	31,304,739	
Value based on 1935 assessment.....		29,692,743
4. Balance as outstanding on contracts for sale of land grant lands as shown by accounts		
December 31, 1934.....	2,638,010	
December 31, 1935.....		2,153,419
5. Non-operating lands, etc.		
(Exclusive of land grant lands)		
Full value as based on assessed value		
1935 Assessment		10,318,811
Capitalizing average income in Accts.		
510 Misc. rent income		
511 Misc. non-operating physical property		
519 Misc. income		
For average of 5 years ended		
December 31, 1934.....	9,500,434	[1716]

PLAINTIFF'S EXHIBIT ONE,

Sheet 4

	<u>1935</u> Assessment	<u>1936</u> Assessment
6. Lines in Manitoba.....		\$ 5,000,000
Average annual rental of \$300,000 for 3 years ended Dec. 31, 1935 Capitalized at 6% Line leased to Provincial Government of Manitoba. Capitalization of Acct. 509, income from lease of road (which includes line leased to Pro- vincial Government of Manitoba).....	\$ 5,837,550	
7. Northern Pacific Terminal Co. of Oregon. Northern Pacific proportion 40% of ap- praised value for tax purposes based on 1935 assessment. State of Oregon.....		3,076,619
8. Cash on hand as of December 31st		
1934	6,078,680	
1935		10,537,312
9. Miscellaneous treasury securities		
Accts. 513 Dividend income		
514 Income from funded securities		
515 Income from unfunded securities and accounts.		
Average for 5 years to December 31, 1934 capitalized at 6%.....	3,527,666	
U. S. Government securities.....		2,795,399
Total	\$93,734,129	\$96,012,242
		[1717]

PLAINTIFF'S EXHIBIT ONE,

Sheet 5

Northwestern Improvement Company

NET INCOME

Year ended December 31, 1931.....	\$1,603,157	
1932.....	979,413	
1933.....	566,937	
1934.....	802,096	
1935.....	598,020	
Total for five years, 1931-1935.....	\$4,549,623	
Average year	\$ 909,925	
Capitalized at 6%.....		\$15,165,417
		[1718]

PLAINTIFF'S EXHIBIT ONE,

Sheet 6

Northern Pacific Railway Company

DIVIDENDS AS RECEIVED FROM NORTHWESTERN IMPROVE-
MENT COMPANY 1929 TO 1936, INCLUSIVE

	Regular dividend	Special dividend	Total
Year ended December 31, 1929.....	\$ 992,000	\$ 3,500,000	\$ 4,492,000
do. 1930.....	992,000	—	992,000
do. 1931.....	992,000	5,000,000	5,992,000
do. 1932.....	992,000	5,600,000	6,592,000
do. 1933.....	992,000	4,000,000	4,992,000
do. 1934.....	992,000	2,500,000	3,492,000
do. 1935.....	992,000	2,800,000	3,792,000
do. 1936.....	992,000	—	992,000
Total 1929-1936, inclusive.....	\$7,936,000	23,400,000	31,336,000
			[1719]

PLAINTIFF'S EXHIBIT ONE,

Sheet 7

is headed "Dividend (regular) of 4% as received by Northern Pacific Railway from Northwestern Improvement Company" and shows the regular dividend so received to have been \$992,000.00 for each of the calendar years, 1930 to 1935 inclusive, and the average annual regular dividend for such period to have been \$992,000.00, followed by the statement: "Capitalizing above dividend on basis of 6% equals \$16,533,333." [1720]

PLAINTIFF'S EXHIBIT ONE,

Sheet 8

Northern Pacific Railway Company

CAPITALIZATION OF NON-OPERATING INCOME AND ADDITION OF NON-OPERATING ITEMS FROM WHICH NO DIRECT INCOME IS RECEIVED.

	Non- Operating Income	Less Burlington and Special Dividends and SP&S Interest	Total Excluding Burlington & Special Dividends & SP&S Interest
Non-operating Income:			
Year ended Dec. 31, 1930.....	\$17,984,869	\$15,294,517	\$ 2,690,352
1931.....	16,852,586	13,801,790	3,050,796
1932.....	10,603,628	8,162,956	2,440,672
1933.....	8,892,909	6,715,537	2,177,372
1934.....	7,537,548	5,490,537	2,047,011
1935.....	7,233,303	5,185,358	2,047,945
1936.....	5,597,110	3,320,716	2,276,394
	\$74,701,953	\$57,971,411	\$16,730,542
Average 5 yrs. end. Dec. 31, 1934.....			\$ 2,481,241
Average 3 yrs. end. Dec. 31, 1935.....			\$ 2,090,776
Capitalized at 6%			
Average for 5 yrs 1930-1934 inclusive.....			\$41,354,017
Average for 3 yrs 1933-1935 inclusive.....			\$34,846,267

(Plaintiff's Exhibit One, Sheet 8—Continued)

	<u>1935</u> Assessment	<u>1936</u> Assessment
Capitalized non-operating income exclusive of Burlington dividends, S. P. & S. interest and special dividends from Northwestern Improvement Company and Northern Pacific Express Company	\$41,354,017	\$34,846,267
Add additional Non-operating deductions not included above		
Land grant deductions.....	31,304,739	29,692,743
Contracts—sale of land grant lands.....	2,638,010	2,153,419
Spokane, Portland & Seattle Ry.....	18,313,717	17,437,939
Cash on hand, Dec. 31st.....	6,078,680	10,537,312
	<hr/>	<hr/>
Total.....	\$99,689,163	\$94,667,680
		[1721]

PLAINTIFF'S EXHIBIT ONE,
Sheet 9

DETAIL OF ACCOUNT 708. CASH

	December 31, 1934	February 28, 1935
<u>1935 Assessment</u>		
Cash on hand or in banks (except New York special acct.).....	\$ 4,869,215	\$ 4,976,461
New York special Cash account.....	940,354	1,063,848
Cash in transit.....	243,778	334,510
Miscellaneous items.....	25,333	29,927
Total.....	6,078,680	6,404,746
<u>1936 Assessment</u>		
Cash on hand (except New York special account).....	9,487,760	9,960,947
New York Special cash account.....	701,394	703,785
Cash in transit.....	318,625	401,224
Miscellaneous items.....	29,533	47,302
Total.....	10,537,312	11,113,258

(Plaintiff's Exhibit One, Sheet 9—Continued)

	<u>Year 1934</u>	<u>Year 1935</u>	<u>Year 1936</u>
Average cash based on individual months of year (as of last of month).....	7,588,423	8,104,069	
Average for 5 years end Dec. 31, 1934.....			\$8,706,064
Average for 3 years end Dec. 31, 1935.....		7,669,444	
Average as of March 1st			
5 years to March 1st, 1934.....			9,836,665
3 years to March 1st, 1935.....			7,624,971
<u>State of Washington</u>			
Average amount of balance in banks located in State of Washington.....		687,974	668,601

[1722]

PLAINTIFF'S EXHIBIT ONE,

Sheet 10

shows the "number of shares of Northern Pacific capital stock as traded on New York Stock Exchange" to have been as follows: for 1930, 390,050, for 1931, 685,420, for 1932, 1,548,360, for 1933, 1,567,272, for 1934, 961,300, for 1935, 1,650,000 and for 1936 2,052,500. [1723]

Plaintiff's Exhibit one, sheet 11:

NORTHERN PACIFIC RAILWAY COMPANY

Net Railway Operating Income
As Originally Stated to Interstate Commerce Commission

Years Ended December 31.

	1930	1931	1932	1933	1934	1935
Railway operating revenues	\$ 80 642 412	\$ 62 312 087	\$ 47 084 177	\$ 47 578 676	\$ 51 407 775	\$ 53 845 654
Railway operating expenses	62 734 420	52 082 847	41 433 180	38 993 492	41 550 813	44 093 600
Net revenues from railway operations	17 907 992	10 229 240	5 650 997	8 585 184	9 856 962	9 752 054
Railway tax accruals	7 480 778	6 816 388	6 677 355	5 883 250	5 312 592	5 286 070
Uncollectible railway revenue	18 396	10 072	23 209	23 848	16 575	15 616
Railway operating income	10 408 818	3 402 780	Dr. 1 049 567	2 678 086	4 527 795	4 450 368
Equipment rents - net	1 421 760	022 217	573 561	729 898	842 055	767 601
Joint facility rents - net	2 462 635	2 476 423	2 466 395	2 567 989	2 545 359	2 508 373
Net railway operating income	14 293 213	6 801 420	1 990 389	5 975 973	7 915 209	7 726 342
			1935 ASSESSMENT		1936 ASSESSMENT	
	Year 1934 Adjusted	Average Year 1932-1934 Inclusive Adjusted	Average Year 1930-1934 Inclusive Adjusted	Year 1935 Adjusted	Average Year 1933-1935 Inclusive	Average Year 1931-1935 Inclusive Adjusted
Railway operating revenues	\$ 51 407 775	\$ 48 690 209	\$ 57 805 025	\$ 53 845 654	\$ 50 944 035	\$ 52 445 674
Railway operating expenses	41 090 388	40 505 686	47 266 865	44 554 025	41 545 968	43 630 787
Net revenues from railway operations	10 317 387	8 184 523	10 538 160	9 291 629	9 398 067	8 814 887
Railway tax accruals	5 312 592	5 957 732	6 294 779	5 286 070	5 493 971	5 909 488
Uncollectible railway revenue	16 575	21 211	18 420	15 616	18 680	17 864
Railway operating income	4 988 220	2 205 580	4 224 961	3 989 943	3 885 416	2 887 535
Equipment rents - net	842 055	715 171	897 898	767 601	779 851	767 066
Joint facility rents - net	2 545 359	2 526 580	2 487 357	2 508 373	2 540 574	2 501 612
Net railway operating income	8 375 634	5 447 331	7 610 216	7 265 917	7 205 841	6 156 213

#Note: Details of revenues and expenses are shown in annual reports as made to Washington Tax Commission.

PLAINTIFF'S EXHIBIT ONE,

Sheet 11-A

Northern Pacific Railway Company
NET RAILWAY OPERATING INCOME

	<u>1936</u>	<u>1935</u>	<u>Increase or Decrease in 1936</u>
7 months to July 31st.....	\$ 2,256,134	\$ 217,392	\$2,038,742
August to December, incl.....	8,532,053	7,508,949	1,023,104
	<hr/>	<hr/>	<hr/>
Total year	\$10,788,187	\$7,726,341	\$3,061,846
			<u>Increase or Decrease in 1935</u>
	<u>1935</u>	<u>1934</u>	<u>1935</u>
7 months to July 31st.....	\$ 217,392	\$2,774,998	D-\$2,557,606
August to December, incl.....	7,508,949	5,140,211	2,368,738
	<hr/>	<hr/>	<hr/>
Total year	\$ 7,726,341	\$7,915,209	D-\$ 188,868
7 months to July 31, 1936.....	\$ 2,256,134		
7 months to July 31, 1934.....	2,774,998		
	<hr/>		
Decrease in 1936.....	\$ 518,864		

[1725]

PLAINTIFF'S EXHIBIT ONE,

Sheet 12

Northern Pacific Railway Company

1936 Assessment

Net Railway Operating Income

A COMPARATIVE STATEMENT SHOWING
DECLINE SINCE 1929.

<u>Year</u>		<u>Amount</u>
1929—As reported	\$21,410,344.09	
Add. a/c Wash. Suit.....	233,318.62	
As adjusted		\$21,643,662.71
1930—As reported	14,293,213.26	
Add. a/c Wash. Suit.....	242,721.97	
As adjusted		14,535,935.23
1931—As reported	6,801,419.80	
Add. a/c Wash. Suit.....	371,731.64	
As adjusted		7,173,151.44
1932—As reported		1,990,389.21
1933—As reported		5,975,972.63
1934—As reported	7,915,208.82	
Add. a/c R. R. Act.....	460,424.66	
As adjusted		8,375,633.48
1935—As reported	7,726,341.61	
Ded. a/c R. R. Act.....	460,424.66	
As adjusted		7,265,916.95

Adjusted net railway operating income for 1935 is:

66.43% less than for 1929

50.00% less than for 1930

13.25% less than for 1934

PLAINTIFF'S EXHIBIT ONE,

Sheet 13

Northern Pacific Railway Company
CAPITALIZATION OF NET RAILWAY
OPERATING INCOME.

	<u>1935</u> Assessment	<u>1936</u> Assessment
Annual net railway operating income for		
5 years ended		
December 31, 1934.....	\$ 7,610,216	
3 years ended		
December 31, 1935.....		\$ 7,205,841
Capitalized at 6% equals		
5 years ended		
December 31, 1934.....	\$126,836,940	
3 years ended		
December 31, 1935.....		\$120,097,350

Note:

Annual net railway operating income has been adjusted to reflect adjustment of tax accruals and joint facility rents for years 1930 and 1931 as included in settlement of tax litigation for years 1925-1932, and also charges and credits in connection with Railroad Retirement Act of 1934 are included.

[1727]

PLAINTIFF'S EXHIBIT ONE,

Sheet 14

Northern Pacific Railway Company
 PERCENTAGE OF INTEREST PAYMENTS ON BONDS
 TO MARKET VALUE

	1935 Assessment	1936 Assessment
1. Bonds (exclusive of Equipment Trust Certificates) as outstanding Dec. 31, 1934 (Par Value) \$307,577,500	\$	
Dec. 31, 1935 " "		307,437,500
2. Average interest rate on above bonds	4.61%	4.61%
3. Market value of bonds, as above, Average of 5 years to December 31, 1934	\$260,130,478	
Average of 3 years to December 31, 1935		265,420,291
4. Annual interest on bonds.....	\$14,164,800	\$ 14,159,200
5. Percentage of interest to market value	5.45	5.33
		[1728]

PLAINTIFF'S EXHIBIT ONE,

Sheet 15

Northern Pacific Railway Company

ALLOCATION FACTORS

State of Washington

	System	State of Washington
1. Operating Revenues		
1930	\$ 80,642,412	\$ 22,296,847
1931	62,312,087	17,645,849
1932	47,084,176	12,845,326
1933	47,578,677	12,064,954
1934	51,407,775	13,368,674
1935	53,845,654	13,618,241

(Plaintiff's Exhibit One, Sheet 15—Continued)

1935 Assessment

Avg. 5 years 1930-1934.....	\$ 57,805,025	\$ 15,644,330
Percent	100.00	27.06
Avg. 3 years 1932-1934.....	\$ 48,690,209	\$ 12,759,651
Percent	100.00	26.21

1936 Assessment

Avg. 5 years 1931-1935.....	\$ 52,445,674	\$ 13,908,609
Percent	100.00	26.52
Avg. 3 years 1933-1935.....	\$ 50,944,035	\$ 13,017,289
Percent	100.00	25.55

2. Car and Locomotive Mileage

1930	474,834,194	107,890,964
1931	388,483,482	91,054,001
1932	308,091,273	71,025,624
1933	328,696,568	72,139,203
1934	386,218,190	82,412,031
1935	401,260,037	85,687,014

1935 Assessment

Avg. 5 years 1930-1934.....	377,264,741	84,904,365
Percent	100.00	22.50
Avg. 3 years 1932-1934.....	341,002,010	75,192,286
Percent	100.00	22.05

1936 Assessment

Avg. 5 years 1931-1935.....	362,549,910	80,463,574
Percent	100.00	22.19
Avg. 3 years 1933-1935.....	372,058,265	80,079,416
Percent	100.00	21.52

[1729]

PLAINTIFF'S EXHIBIT ONE,

Sheet 16

being a continuation of Plaintiff's Exhibit One,
Sheet 15, is as follows:

	<u>System</u>	<u>State of Washington</u>
3. Revenue Traffic Units		
1930	5,677,940,730	1,326,548,680
1931	4,275,272,733	1,095,141,572
1932	3,243,526,345	796,457,567
1933	3,733,514,868	877,039,901
1934	4,140,388,390	995,104,234
1935	4,596,143,787	1,061,296,254
1935 Assessment		
Average 5 years 1930-1934.....	4,214,128,613	1,018,058,391
Percent	100.00	24.16
Average 3 years 1932-1934.....	3,705,809,668	889,533,901
Percent	100.00	24.00
1936 Assessment		
Average 5 years 1931-1935.....	3,997,769,224	965,007,906
Percent	100.00	24.14
Average 3 years 1933-1935.....	4,156,682,348	977,813,463
Percent	100.00	23.52
4. Track Mileage Owned and Operated		
1935 Assmt. Dec. 31, 1934.....	9,854.27	2,933.99
Percent	100.00	29.77
1936 Assmt. Dec. 31, 1935.....	9,845.04	2,927.53
Percent	100.00	29.74

(Plaintiff's Exhibit One, Sheet 16—Continued)

5. Physical Property

Cost of Reproduction, less depr.
as of December 31st

1935 Assmt. (Dec. 31, 1934).....	\$ 406,671,775	\$ 135,164,742
Percent	100.00	33.24
1936 Assmt. (Dec. 31, 1935).....	\$ 395,685,894	131,073,812
Percent	100.00	33.13
Average of Above Five Factors		
1935 Assmt.—5 year basis.....	100.00	27.348
3 year basis.....	100.00	27.06
1936 Assmt.—5 year basis.....	100.00	27.15
3 year basis.....	100.00	26.69

[1730]

PLAINTIFF'S EXHIBIT ONE,

Sheet 17

Northern Pacific Railway Company

COMPARISON OF AMOUNT BY WHICH VALUE AS DETERMINED BY USING ONE-HALF OF VALUE AS DETERMINED BY STOCK AND BOND METHOD AND ONE-HALF AS DETERMINED BY CAPITALIZED INCOME WAS INCREASED BY ADDITIONAL AMOUNT AS ADDED FOR COST OF REPRODUCTION LESS DEPRECIATION.

State of Washington

Valuation as found for operating property.

1925 assessment—valuation as determined by Judge Webster before considering cost of reproduction.

Market value of stock and bonds (50%).....	\$ 44,844,487
Capitalization of net railway operating income— (50%)	50,018,770
	<hr/>
Total stock-bond and capitalized income basis.....	\$ 94,863,257
Total value as determined.....	104,078,987
	<hr/>
Excess over stock and bond and capitalization of net basis	\$ 9,215,730
Percentage by which stock and bond and capital- ized income was increased.....	9.715
Percentage by which 100% of capitalized income value was increased.....	4.040
	[1731]

PLAINTIFF'S EXHIBIT ONE,

Sheet 17-A

THIS STATEMENT SHOWS THE AMOUNT BY WHICH THE ASSESSED VALUE EXCEEDS THE COMPOSITE OF THE SECURITIES AND NET RAILWAY OPERATING INCOME CAPITALIZED VALUES (5 YEARS AVERAGES) ALLOCATED TO WASHINGTON BY USE OF $\frac{2}{3}$ OF THE RELATIVE TRACK MILEAGE AND $\frac{1}{3}$ RELATIVE COST, BEING THE ALLOCATION FACTORS AS USED IN THE 1925-1926 CASE.

Deductions in 1935 for non-operating properties is as found by Tax Commission for 1933.....\$53,152,225

For 1936 deductions of \$38,100,000 as stated by Tax Commission was used.

State of Washington

Value as found for operating property by Tax Commission.

1935 Assessment:

Value based on composite of stock and bond and capitalized net railway operating income.

Market value of stock and bonds (50%)..... 29,248,859

Capitalization of net railway operating income
6% basis (50%)..... 19,061,233

Composite stock and bond and capitalized net railway operating income value..... 48,310,092

Value as assessed..... 90,000,000

Amount of excess of value as assessed over composite value by stock and bond and capitalized net railway operating income..... 41,689,908

Percentage by which total assessed value exceeded composite value of stock and bonds and capitalized net railway operating income..... 86.30

Percentage by which total assessed value exceeded capitalized net railway operating income value 136.08

[1732]

PLAINTIFF'S EXHIBIT ONE,

Sheet 18,

being a continuation of Plaintiff's Exhibit One,
Sheet 17-A, is as follows:

1936 Assessment

Value based on composite of stock and bond and
capitalized net railway operating income

Market value of stock and bonds (50%).....\$27,496,102

Capitalization of net railway operating income
6% basis (50%)..... 15,645,600

Composite stock and bond and capitalized net rail-
way operating income value..... 43,141,702

Value as assessed..... 88,500,000

Amount of excess of value as assessed over compo-
site value by stock and bonds and capitalized
net railway operating income..... 45,358,298

Percentage by which total assessed value exceeded
stock and bond value and capitalized net rail-
way operating income value..... 105.14

Percentage by which total assessed value exceeded
capitalized net railway operating income value 182.83

[1733]

PLAINTIFF'S EXHIBIT ONE,

Sheet 19

Northern Pacific Railway Company

COMPARISON OF NET RAILWAY OPERATING INCOME FOR
STATE OF WASHINGTON AND BALANCE OF SYSTEM.

	Washington	Other States	Total System
Year ended Dec. 31, 1934			
Operating revenues	\$13,368,674	\$38,039,101	\$51,407,775
Operating expenses	11,547,131	29,543,258	41,090,389
Net revenue from ry. oper.....	1,821,543	8,495,843	10,317,386
Railway tax accruals.....	1,853,750	3,458,842	5,312,592
Uncoll. railway revenue.....	4.303	12.272	16,575
Railway operating income.....(	36,510)	5,024,729	4,988,219
Equipment rents—net.....	188,932	653,123	842,055
Joint facility rents—net.....	1,302,225	1,243,134	2,545,359
Net railway operating inc.....	1,454,647	6,920,986	8,375,633
Year ended December 31, 1935			
Operating revenues	\$13,618,241	\$40,227,413	\$53,845,654
Operating expenses	12,587,161	31,966,864	44,554,025
Net revenue from ry. oper.....	1,031,080	8,260,549	9,291,629
Railway tax accruals.....	1,617,941	3,668,129	5,286,070
Uncoll. railway revenue.....	3,880	11,736	15,616
Railway operating income.....(	590,741)	4,580,684	3,989,943
Equipment rents—net	159,466	608,135	767,601
Joint facility rents—net.....	1,278,826	1,229,547	2,508,373
Net railway operating inc.....	847,551	6,418,366	7,265,917

Note: Income account as above adjusted to include charge to operating expenses in 1934 in connection with R. R. Retirement Act of 1934 and credit in 1935 account. Act declared invalid by Supreme Court.

(- - - -) indicates deficit.

PLAINTIFF'S EXHIBIT ONE,

Sheet 20

Northern Pacific Railway Company
 COMPARISON OF VARIOUS OPERATING STATISTICS
 STATES OF MINNESOTA AND WASHINGTON
 THREE YEARS ENDED DECEMBER 31, 1935.

	Washington	Minnesota	Percent Washington to Minnesota
I. C. C. cost of reproduction new, less depreciation, to December 31, 1935.....	\$131,073,812	\$ 74,267,055	176.49
Track miles (adjusted) as of December 31, 1935.....	2,927.53	1,883.77	155.41
Operating revenues			
Average three years ended December 31, 1935.....	\$ 13,017,290	\$ 13,171,662	98.83
Operating revenues per thousand dollars of physical property.....	\$ 99.31	\$ 177.36	55.99
Locomotive and car mileage (transportation service)	80,079,416	79,420,854	100.83
Per thousand dollars of physical property	610.95	1,069.39	57.13
Revenue traffic units.....	977,813,463	940,872,503	103.93
Per hundred dollars of physical property	746.00	1,266.88	58.88

[1735]

PLAINTIFF'S EXHIBIT ONE,

Sheet 21

Northern Pacific Railway Company
 COMPARISON OF JOINT FACILITY RENTS—NET,
 YEARS 1926-1935

<u>System</u>	<u>Net railway operating income</u>	<u>Joint facility rents net—Cr.</u>	<u>Percentage of joint facility rents of total net railway optg. income</u>
Year ended December 31, 1926.....	\$24,666,531	\$1,941,290	7.87%
1927.....	23,126,803	2,094,524	9.06
1928.....	25,454,369	2,309,357	9.07
1929.....	21,643,663	2,347,566	10.85
1930.....	14,535,935	2,437,105	16.77
1931.....	7,173,151	2,419,941	33.74
1932.....	1,990,389	2,466,395	123.92
1933.....	5,975,973	2,567,989	42.97
1934.....	7,915,209	2,545,359	32.16
1935.....	7,726,342	2,508,374	32.47

<u>State of Washington</u>	<u>Net revenue from operation</u>	<u>Joint facility rents net—Cr.</u>	<u>Percentage of joint facility rents net—to net operating revenue</u>
Year ended December 31, 1926.....	\$ 7,374,671	\$1,127,776	15.29%
1927.....	5,920,566	1,217,788	20.57
1928.....	6,380,523	1,219,035	19.11
1929.....	6,173,669	1,246,753	20.19
1930.....	4,122,818	1,277,576	30.99
1931.....	2,261,955	1,270,536	56.17
1932.....	508,507	1,378,302	271.05
1933.....	919,912	1,355,064	147.30
1934.....	1,693,591	1,302,225	76.89
1935.....	1,158,756	1,278,826	110.36

Note: Net railway operating income and joint facility rents—net, years 1926-1931, have been revised to reflect adjustment of Washington taxes as a result of tax litigation.

[1736]

PLAINTIFF'S EXHIBIT ONE,

Sheet 22

Northern Pacific Railway Company

COMPARISON OF NET OPERATING REVENUE—STATE OF WASHINGTON ABSORBED BY TAXES ON OPERATING PROPERTY

	State of Washington net operating revenue	State of Washington Taxes on operating property	Percentage of taxes to net operating revenue
Year ended December 31, 1926.....	\$7,374,671	\$2,419,617	32.81
1927.....	5,920,566	2,568,057	43.38
1928.....	6,380,523	2,629,096	41.21
1929.....	6,173,669	2,703,676	43.79
1930.....	4,122,818	2,643,383	64.12
1931.....	2,261,955	2,421,244	107.04
1932.....	508,507	2,465,209	484.79
1933.....	919,912	#2,002,231	217.65
1934.....	1,693,591	#1,822,584	107.62
1935.....	1,158,756	#1,558,566	134.50

Special taxes as follows are included
in the years indicated:

1933.....	\$ 35,640
1934.....	71,322
1935.....	157,017

#This represents Excise Tax and former Occupation Tax, filing fee Department of Public Service, sales and fuel oil taxes.

Taxes for years 1926-1932 are on basis as adjusted as result of Washington Tax litigation.

[1737]

Plaintiff's Exhibit One, Sheet 23:

NORTHERN PACIFIC RAILWAY COMPANY

GROSS INCOME

Years 1926 - 1935

Year ended December 31	Total gross		Net railway		Nonoperating	
	income	%	operating	%	income	%
1926	\$ 36 307 276	100	\$ 24 213 700	66.69	\$ 12 093 576	33.31
1927	34 027 901	100	22 592 837	66.40	11 435 064	33.60
1928	36 409 090	100	25 088 571	68.91	11 320 519	31.09
1929	36 895 013	100	21 410 344	58.03	15 484 669	41.97
1930	32 278 082	100	14 293 215	44.28	17 984 869	55.72
1931	23 654 006	100	6 801 420	28.75	16 852 586	71.25
1932	12 594 017	100	1 990 389	15.80	10 603 628	84.20
1933	14 868 882	100	5 975 973	40.19	8 892 909	59.81
1934	15 452 757	100	7 915 209	51.22	7 537 548	48.78
1935	14 959 644	100	7 726 342	51.65	7 233 302	48.35
Average 1931-1935	16 305 861	100	6 081 867	37.30	10 223 994	62.70



PLAINTIFF'S EXHIBIT ONE,

Sheet 24

Northern Pacific Railway Company

STATE OF WASHINGTON—1935 ASSESSMENT
TAXES ON OPERATING PROPERTY

(A) Average market value of stock and bonds, 5 years to December 31, 1934 (exclusive of Series "B" and "C" bonds) and other non-operating deductions.....	\$148,547,476
(B) Capitalization of net railway operating income (average for 5 years to December 31, 1934) as adjusted, on basis of 6%.....	126,836,940
(C) Cost of reproduction new, less depreciation, (system) on basis as used by Northern Pacific.....	406,671,775
40% of market value of stock and bonds as assigned to operating property	59,418,990
40% of capitalized net railway operating income.....	50,734,776
20% of cost of reproduction new, less depreciation.....	81,334,355
<hr/>	
Total system value as determined by above method.....	\$191,488,121
(D) Less value of large eastern and western terminals on ratio of cost of reproduction less depreciation of such terminals to similar system cost of reproduction less depreciation (14.78% of item (C)).....	28,301,944
(E) Value of system, exclusive of above large eastern and western terminals	163,186,177
(F) Allocation of above value (item E)) to State of Washington on basis of gross operating revenue (including joint facility rent income), revenue traffic units and locomotive and car mileage (24.94%).....	40,698,633
(G) State of Washington proportion of value of large eastern and western terminals (46.10% of "D").....	13,047,196
(H) Value of operating property in State of Washington, (Items "F" and "G").....	53,745,829
	[1739]

PLAINTIFF'S EXHIBIT ONE,

Sheet 25

Northern Pacific Railway Company

STATE OF WASHINGTON—1936 ASSESSMENT
TAXES ON OPERATING PROPERTY

(A) Average market value of stock and bonds, 3 years to December 31, 1935, (exclusive of Series "B" and "C" bonds) and other non-operating deductions.....	\$120,282,168
(B) Capitalization of net railway operating income (average for 3 years to December 31, 1935) as originally stated on basis of 6%.....	120,097,350
(C) Cost of reproduction new, less depreciation, (system) on basis as used by Northern Pacific.....	395,685,894
40% of market value of stock and bonds as assigned to operating property	48,112,867
40% of capitalized net railway operating income.....	48,038,940
20% of cost of reproduction new, less depreciation.....	79,137,179
	<hr/>
Total system value as determined by above method.....	\$175,288,986
(D) Less value of large eastern and western terminals on ratio of cost of reproduction less depreciation of such terminals to similar system cost of reproduction less depreciation (14.78% of item (C)).....	25,907,712
(E) Value of system, exclusive of above large eastern and western terminals	149,381,274
(F) Allocation of above value (item (E)) to State of Washington on basis of gross operating revenue, (including joint facility rent income), revenue traffic units and locomotive and car mileage (24.69%).....	36,882,237
(G) State of Washington proportion of value of large eastern and western terminals, 46.10% of "D".....	11,943,455
(H) Value of operating property in State of Washington (Items "F" and "G").....	48,825,692
	[1740]

PLAINTIFF'S EXHIBIT ONE,

Sheet 26

Northern Pacific Railway Company

WASHINGTON ASSESSMENT 1935 AND 1936

Percentage of System Cost of Reproduction, Less Depreciation,
Represented by Large Eastern and Western Terminals

1—Cost of reproduction, less depreciation, as of December 31, 1934, for System (as reported to Washington Tax Commission)\$406,671,775

2—Cost of reproduction, less depreciation, as of December 31, 1934, of large eastern and western terminals:

Superior, Wisconsin	\$ 4,614,164
Duluth, Minnesota	11,042,193
St. Paul, "	10,855,252
Minneapolis, "	5,883,180
Seattle, Washington	14,920,543
Auburn, "	1,092,730
Tacoma (incl. So. Tacoma) Wash.....	11,697,964

Total of above terminals..... 60,106,026

3—Ratio of above terminal cost of reproduction, less depreciation, to corresponding System figure as shown under item 1 14.78%

Larger eastern and western terminals by states:

	Amount	% of Total
Wisconsin	\$ 4,614,164	7.68
Minnesota	27,780,625	46.22
Washington	27,711,237	46.10
	\$60,106,026	100.00
		[1741]

PLAINTIFF'S EXHIBIT ONE,

Sheet 28

Northern Pacific Railway Company

COMPARISON OF ELEMENTS USED BY JUDGE WEBSTER IN DETERMINATION OF 1925 AND 1926 ASSESSMENT STATE OF WASHINGTON TAXES ON OPERATING PROPERTY WITH 1936 ASSESSMENT.

	Primary value as assessed by Washington Tax Commission	Primary value as found by Federal Court	Federal Court valuation Ratio of 1925
Year 1925	\$126,460,000	\$104,078,987	100.00%
“ 1926	131,200,000	106,017,715	101.86
Average of years 1925 and 1926	128,830,000	105,048,351	100.93
Year 1936	# 88,500,000		85.03
Ratio of value as found by Federal Court to that found by Washington Tax Commission			
Year 1925	82.30%		
“ 1926	80.81		
#Subject to review by Washington Board of Equalization.			
Market value of stock and bonds (excluding Series “B” and “C” bonds)			
Average for three years ended December 31, 1924		330,469,358	100.00%
Average for three years ended December 31, 1925		322,413,822	97.56
Average for three years ended December 31, 1935		216,294,410	65.45
Net railway operating income capitalized at 6%			
Average for three years ended December 31, 1924		313,400,823	100.00%
Average for three years ended December 31, 1925		328,827,517	104.92
Average for three years ended December 31, 1935		120,097,350	38.32

[1742]

PLAINTIFF'S EXHIBIT ONE,

Sheet 29

Northern Pacific Railway Company

DETERMINATION OF VALUE OF OPERATING PROPERTY IN STATE OF WASHINGTON FOR 1936 ASSESSMENT, BY USE OF METHOD AS STATED BY JUDGE WEBSTER IN ARRIVING AT SIMILAR VALUES FOR YEARS 1925 AND 1926 USING DEDUCTIONS FOR NON-OPERATING PROPERTY AS CLAIMED BY NORTHERN PACIFIC RAILWAY COMPANY

	<u>Total</u>	<u>Proportionate Amount</u>
Stock and bond market value (exclusive of Series "B" and "C" bonds)		
40% of stock and bond market value as determined for three years 1933-1935 inclusive, applic- able to operating property of System	\$120,282,168	\$ 48,112,867
Capitalized income		
40% of average net railway oper- ating income (System) for three years ended December 31, 1935 (capitalized at 6%).....	120,097,350	48,038,940
Physical property		
20% of system reproduction cost, less depreciation as of December 31, 1935	395,685,894	79,137,179
Total.....		<u>\$175,288,986</u>

(Plaintiff's Exhibit One, Sheet 29—Continued)

Allocation to State of Washington

$\frac{2}{3}$ of percentage of all tracks operated in Washington to total for system, December 31, 1935	
$\frac{2}{3}$ of 29.74.....	19.83
$\frac{1}{3}$ of percentage of cost of reproduction in Washington to System	
$\frac{1}{3}$ of 33.126.....	11.04
	<hr/>
Total percentage for allocation to Washington.....	30.87
Value of operating property as assigned to Washington	
30.87% of \$175,288,986 equals.....	\$54,111,710
	[1743]

PLAINTIFF'S EXHIBIT ONE,

Sheet 30

AMOUNT BY WHICH CARRIER FAILED TO EARN FIXED CHARGES FROM NET RAILWAY OPERATING INCOME AND BURLINGTON DIVIDENDS.

Years 1931 to 1935 inclusive	Net Railway Operating Income	Gross Income Including Burlington Dividends and Net Railway Operating Income	Fixed Charges	Amount by which carrier failed to earn fixed charges
Year ended December 31, 1931.....	\$6,801,420	\$15,103,210	\$14,493,339	\$* 609,871
1932.....	1,990,839	4,480,926	14,321,276	9,840,350
1933.....	5,975,973	8,466,510	14,306,412	5,839,902
1934.....	7,915,209	10,405,746	14,300,982	3,895,236
1935.....	7,726,342	9,386,700	14,290,934	4,904,234

*Excess over fixed charges

[1744]

PLAINTIFF'S EXHIBIT ONE,

Sheet 31

COMPARISON OF VALUES FOR 1933 AND 1934 ASSESSMENTS.
STATE OF WASHINGTON AS PRESENTED BEFORE BOARD
OF EQUALIZATION AND VALUE AS ASSESSED.

<u>System Value</u>	<u>1933 Assessment</u>	<u>1934 Assessment</u>
Market value of stock and bonds excluding series "B" and "C" for average of four years to December 31, 1933.....		\$244,734,407
(Less non-operating deductions).....		102,000,000
		<u>142,734,407</u>
Average of stock and bonds market value 3 years to Dec. 31, 1932.....	\$179,587,864	
Capitalization of net railway operating income at 6% for average of four years to Dec. 31, 1933		123,647,700
at 7% for average of three years to Dec. 31, 1932	112,854,643	
Composite of stock and bond and capitalized net railway operating income for four years ended December 31, 1933.....		<u>133,191,054</u>
Three years to Dec. 31, 1932.....	146,221,253	
Allocation to Washington		
27.18% of \$133,191,054.....		#36,201,328
Operating revenue, car miles, revenue traffic units, track miles owned and cost of re-production.		
26.21% of \$146,221,253.....	##38,324,590	
Value as assessed.....	<u>100,450,000</u>	<u>92,804,500</u>
Excess of assessed value.....	62,125,410	56,603,172

#Based on four years ended December 31, 1933. Data for three years to December 31, 1933 was also shown in our exhibit which produced \$25,944,455 for Washington as compared with \$36,201,328 for four year period.

##Data for years 1931 and 1932 was also shown in our exhibit which produced \$26,293,984 as compared with \$38,324,590 for three year period.

[1745]

PLAINTIFF'S EXHIBIT 2

is a copy of "Exhibit A" attached to the Complaint, and is omitted to avoid duplication. [See page 38 of this printed record.] [1746]

PLAINTIFF'S EXHIBIT 3,

Page 1

To the State Tax Commission,
Olympia, Washington.

Under date of June 30, 1936, the Northern Pacific Railway Company was advised that your Commission had found the full 100% value of the company's operating real and personal property within the State of Washington to be \$88,500,000 for taxation for the year 1936.

In order that it may be advised of the facts which the State Tax Commission supposed to be established bearing upon the true cash market value of its operating property for the year 1936 and effectively avail itself of its right to a hearing before the Commission, this company now requests the Commission to advise it and make of record the following information and facts which bear upon, determine and control the true cash market value of its property for the year 1936, viz:

1. What sum was found to be the market value of the shares of stock of the Northern Pacific Railway Company and as of what date?

2. What sum was found to be the value of the funded debt of the Northern Pacific Railway Company and as of what date?
3. What sum was found to be the system net railway operating income of the Northern Pacific Railway Company and for what years?
4. What sum was found to be the net railway operating income in the State of Washington and for what years?
5. For what year or period of years was the value of the capital stock and funded debt averaged and used in determining the value of said property by the stock and bond method?
6. For what year or years was the net railway operating income capitalized, averaged and used in determining the value of said property by the capitalization of income method? [1747]
7. What sum was deducted from the value of stock and bonds for non-operating property of said company; what items were classified as non-operating property and what amount deducted for each of them?
8. Did the Commission use and consider the cost of reproduction of the property of this company either for the system or within the state and, if so, what was the figure which the Commission so found and used?
9. What sum was found by the Commission

to be the value of the whole system of said company?

10. What percentage of system value was allocated to the State of Washington in determining its assessed value?
11. What factors were used in allocating a proportion of system value to the State of Washington?
12. If there are any other facts reflected in and bearing upon the assessed value of \$88,500,000, the Commission is requested to advise this company thereof.

The Northern Pacific Railway Company protests that the valuation of \$88,500,000 fixed by the Commission is grossly excessive and in violation of its rights under the constitution and laws of the State of Washington, the 14th Amendment, and Article 1 of Section 8 of the Constitution of the United States.

NORTHERN PACIFIC
RAILWAY COMPANY,
By W. C. SMITH,
Assistant Tax Commissioner.

Dated the 21st day of
August, 1936. [1748]

PLAINTIFF'S EXHIBIT 4

MEMORANDUM

August 26, 1936.

At the opening of the hearing today before the State Tax Commission there were present Mr. Jenner, Mr. Hedges, Mr. Manschreck, Mr. McIntyre (all of the State Tax Commission) and Mr. daPonte, Mr. McCrary, Mr. Smith, Mr. Peterson and Mr. Macfarlane.

The hearing was largely informal and Mr. Jenner at once said that he did not have a written answer to our communication dated August 21, 1936, requesting answers to certain questions. However, he said, in answer to questions 1, 2, 3 and 4 that the figures they used were largely figures we had supplied or which were obtained from reports we had filed.

In answer to questions 5 and 6 he stated that the Commission used one, three and five year figures.

In answer to question 7 he stated that the sum deducted for nonoperating property was \$38,100,000. He also stated that the Burlington bonds had been eliminated from the stock and bond value. Upon immediate protest made by Mr. daPonte, Mr. Jenner said this amount of deductions "may be small under any theory".

In answer to question 8 he stated that the Commission had found 472 million plus for the system and 156 million plus for the state and that they had considered reproduction cost.

In answer to question 11 he stated that the factors used in allocating system value to Washington were reproduction cost, traffic units, joint facility rents, equipment rental and mileage owned and operated.

In answer to questions 9, 10 and 12 he said that many sets and bases of figures were used but no particular one had been controlling. He said the answer to these questions would not have much bearing because the figures used were based on their best judgment, different results having been obtained from different bases; that they had considered the prospects for the present and future and that they had used no mathematical figure or formulae.

ROBERT S. MACFARLANE.

[1749]

PLAINTIFF'S EXHIBIT 5

Northern Pacific Railway Company

1935 ASSESSMENT

A valuation of \$78,007,527 instead of \$90,000,000 would have been found for 1935 had the Tax Commission followed the method used in 1933 without variation. (Bill of Complaint, page 8).

System stock and bond value.....	\$189,129,380	
40% of \$189,129,380.....	75,651,752	
Washington's proportion at 37.46%.....		\$28,339,146
System capitalized value.....	\$123,254,012	
40% of \$123,254,012.....	49,301,605	
Washington's proportion at 37.46%.....		18,468,381
20% of cost of reproduction of.....	\$156,000,000	31,200,000
	Total	\$78,007,527

[1750]

PLAINTIFF'S EXHIBIT 6

Page 1 of 7 pages

Northern Pacific Railway Company

1935 Assessment

NONOPERATING DEDUCTIONS CLAIMED IN REPORT FOR THE
YEAR ENDED DECEMBER 31, 1934 ON ACCOUNT OF UNSOLD
LAND GRANT PROPERTY.

State	Acres	Assessed Value for 1934	Basis of Assessment	Market Value
Lands				
Wisconsin	1,600	\$ 4,330	100%	\$ 4,330
Minnesota	41,150	127,332	33 $\frac{1}{3}$ %	381,996
North Dakota	882	4,604	50%	9,208
Montana	3,963,150	14,734,120	100%	14,734,120
Wyoming	61,235	106,061	100%	106,061
Idaho	486,805	818,243	100%	818,243
Washington	1,129,906	3,478,997	Note "A"	7,906,208
Oregon	37,520	210,188	Note "B"	303,512
	5,772,248	\$19,483,875		\$24,263,678
Mineral Reservations				
Montana	1,124,167	\$ 330,992	100%	\$ 330,992
Washington	57,143	64,126	Note "A"	143,426
	1,181,310	\$ 395,118		\$ 474,418
Unmined Iron Ore				
Minnesota	26,327,203 tons	\$ 3,209,563	50%	\$ 6,419,126
Miscellaneous Property				
Montana		\$ 6,451	100%	\$ 6,451
Idaho		6,590	100%	6,590
Washington		62,130	Note "A"	134,476
		\$ 75,171		\$ 147,517
Grand Total		\$23,163,727		\$31,304,739

Note "A"—The statutory basis for assessment of property in Washington is 50% of full value but the State Board of Equalization having found the actual basis in each county to be less than 50% the ratios reported by the State Board have been used to compute the full or market values shown in this statement.

Note "B"—The statutory basis for assessment of property in Oregon is full cash value but the State Tax Commission having found the actual basis in each county to be less than full value, the ratios reported by the Tax Commission have been used to compute the full or market values shown in this statement. [1751]

PLAINTIFF'S EXHIBIT 6,

Pages 2 to 7 inclusive

purport to show in detail, by states and the several counties therein, the material summarized by states in Plaintiff's Exhibit 6, page one. [1752]

PLAINTIFF'S EXHIBIT 7

June 19, 1933.

W. C. Smith, Assistant Tax Commissioner,
Northern Pacific Railway Company,
Seattle, Washington.

Dear Sir:

In reply to your letter of the 17th inst. relative to the amount of \$53,152,225 allowed as a deduction for non-operating property, you are advised that the items listed below were used in arriving at this amount.

Land Grant Land.....	\$ 7,500,000
Other Real Estate.....	6,000,000
Other Miscellaneous Property.....	1,662,225
N. W. Imp. Co.....	14,275,000
S. P. & S.....	18,372,000
Manitoba Railway	5,000,000
N. P. Express.....	343,000
	<hr/>
Total.....	\$53,152,225

This amount is some \$13,000,000 in excess of the capitalization of non-operating income for the year 1932 and approximately \$14,000,000 in excess of that used in the exhibit submitted by Mr. daPonte on the 11th of May, 1933.

Yours very truly,

TAX COMMISSION OF THE
STATE OF WASHINGTON,

(Signed) By GEO. L. HARRIGAN,

Secretary. [1753]

PLAINTIFF'S EXHIBIT 8,

Page 1 of 7 pages

Northern Pacific Railway Company
1936 AssessmentNONOPERATING DEDUCTIONS CLAIMED IN REPORT FOR THE
YEAR ENDED DECEMBER 31, 1935 ON ACCOUNT OF UNSOLD
LAND GRANT PROPERTY

State	Acres	Assessed Value for 1935	Basis of Assessment	Market Value
Lands				
Wisconsin	1,642	\$ 4,130	100%	\$ 4,130
Minnesota	37,054	120,496	33 $\frac{1}{3}$ %	361,488
North Dakota	882	4,458	50%	8,916
Montana	3,953,894	13,325,023	100%	13,325,023
Wyoming	61,235	77,362	100%	77,362
Idaho	484,241	776,624	100%	776,624
Washington	1,111,400	3,424,526	Note "A"	7,670,456
Oregon	88,659	206,562	Note "B"	294,164
	5,739,007	\$17,939,181		\$22,518,163
Mineral Reservations				
Montana	1,121,237	\$ 316,264	100%	\$ 316,264
Washington	56,752	64,071	Note "A"	138,549
	1,177,989	\$ 380,335		\$ 454,813
Unmined Iron Ore				
Minnesota	26,315,315 tons	\$ 3,208,646	50%	\$ 6,417,292
Miscellaneous Property				
Montana		\$ 5,902	100%	\$ 5,902
Idaho		6,590	100%	6,590
Washington		140,874	Note "A"	289,983
		\$ 153,366		\$ 302,475
Grand Total		\$21,681,528		\$29,692,743

Note "A"—The statutory basis for assessment of property in Washington is 50% of full value but the State Board of Equalization having found the actual basis in each county to be less than 50%, the ratios reported by the State Board have been used to compute the full or market values shown in this statement.

Note "B"—The statutory basis for assessment of property in Oregon is full cash value but the State Tax Commission having found the actual basis in each county to be less than full value the ratios reported by the Tax Commission have been used to compute the full or market values shown in this statement. [1754]

PLAINTIFF'S EXHIBIT 8,

Pages 2 to 7 inclusive,

purport to show in detail by states and the several counties therein, the material summarized by states in Plaintiff's Exhibit 8, page one. [1755]

PLAINTIFF'S EXHIBIT 9,

Page 1 of 5 pages

Northern Pacific Railway Company

1935 Assessment

NONOPERATING DEDUCTIONS CLAIMED IN REPORT FOR THE
YEAR ENDED DECEMBER 31, 1934, ON ACCOUNT OF MIS-
CELLANEOUS NONOPERATING PHYSICAL PROPERTY.

State	Assessed Value for 1934	Basis of Assessment	Market Value
Wisconsin	\$ 470,760	100%	\$ 470,760
Minnesota	1,164,577	33 $\frac{1}{3}$ % & 40%	2,956,140
North Dakota	49,547	50%	99,094
Montana	256,409	100%	256,409
Idaho	35,370	100%	35,370
Washington	2,471,916	Note "A"	5,439,896
Oregon	10,700	Note "B"	15,286
	<hr/>		<hr/>
	\$4,459,279		\$9,272,955

Note "A"—The statutory basis for assessment of property in Washington is 50% of full value but the State Board of Equalization having found the actual basis in each county to be less than 50%, the ratios reported by the State Board have been used to compute the full or market values shown in this statement.

Note "B"—The statutory basis for assessment of property in Oregon is full cash value but the State Tax Commission having found the actual basis in each county to be less than full value, the ratios reported by the Tax Commission have been used to compute the full or market values shown in this statement. [1756]

PLAINTIFF'S EXHIBIT 9,

Pages 2 to 5 inclusive,

purport to show in detail by states and the several counties therein, the material summarized by states in Plaintiff's Exhibit 9, page one. [1757]

PLAINTIFF'S EXHIBIT 10

Northern Pacific Railway Company

1935 Assessment.

NONOPERATING DEDUCTIONS CLAIMED ON ACCOUNT OF MISCELLANEOUS PHYSICAL PROPERTY NOT USED IN OPERATION OF THE RAILROAD.

By an exhibit filed with the Washington State Board of Equalization on September 5, 1935, there was claimed a deduction of.....\$ 9,500,434

This amount was based on a capitalization of nonoperating income—5 year average—at 6%.

Schedule of miscellaneous nonoperating physical property filed with the annual report for the year ended December 31, 1934, included locally assessed nonoperating property with a value of.....\$ 9,272,955

Said schedule did not include:

Leased sites in North Dakota classified as nonoperating property and assessed for 1934 on a value of.....\$ 955,610

N. P. Ry. Co's. one-half interest in property in Winnipeg classified as nonoperating property and assessed for 1934 at a value of approximately.....\$ 450,000

Total Value Based on Assessed Values.....\$10,678,565

[1758]

PLAINTIFF'S EXHIBIT 11,

Page 1 of 5 pages

Northern Pacific Railway Company

1936 Assessment

NONOPERATING DEDUCTIONS CLAIMED IN REPORT
FOR THE YEAR ENDED DECEMBER 31, 1935 ON
ACCOUNT OF MISCELLANEOUS NONOPERATING
PHYSICAL PROPERTY.

State	Assessed Value for 1935	Basis of Assessment	Market Value
Wisconsin	\$ 460,760	100%	\$ 460,760
Minnesota	1,171,554	33 $\frac{1}{3}$ % & 40%	2,973,591
North Dakota	582,606	50%	1,165,212
Montana	251,822	100%	251,822
Idaho	32,560	100%	32,560
Washington	2,504,187	Note "A"	5,421,416
Oregon	9,550	Note "B"	13,450
	\$5,013,039		\$10,318,811

Note "A"—The statutory basis for assessment of property in Washington is 50% of full value but the State Board of Equalization having found the actual basis in each county to be less than 50% the ratios reported by the State Board have been used to compute the full or market values shown in this statement.

Note "B"—The statutory basis for assessment of property in Oregon is full cash value but the State Tax Commission having found the actual basis in each county to be less than full value, the ratios reported by the Tax Commission have been used to compute the full or market values shown in this statement. [1759]

PLAINTIFF'S EXHIBIT 11,

Pages 2 to 5 inclusive,

purport to show in detail by states and the several counties therein, the material summarized by states in Plaintiff's Exhibit 11, page one. [1760]

PLAINTIFF'S EXHIBIT 12

Northern Pacific Railway Company

1936 Assessment

NONOPERATING DEDUCTION CLAIMED ON ACCOUNT
OF MISCELLANEOUS PHYSICAL PROPERTY NOT
USED IN OPERATION OF THE RAILROAD.

By an exhibit filed with the Washington State Tax Commission on August 26, 1936, there was claimed a deduction of.....\$10,318,811

This deduction was based on assessed values for 1935 as shown by schedule incorporated in the annual report to the Tax Commission.

Income from property in this class has been:

Year	Misc. Rent Inc. #510	Misc. Phys. Prop. #511	Total
1931	\$526,324.53	\$179,645.29	\$705,969.82
1932	474,742.36	177,169.82	651,912.18
1933	448,475.27	140,388.84	588,864.11
1934	418,665.88	147,747.68	566,413.56
1935	416,772.35	169,823.85	586,596.20

Average annual income capitalized at 6%:

Five years, 1931-1935.....	\$619,951.17	\$10,332,520
Three years, 1933-1935.....	580,624.62	9,677,077
One year, 1935.....	586,596.20	9,776,603

[1761]

PLAINTIFF'S EXHIBIT 13

Northern Pacific Railway Company

1935 Assessment

NONOPERATING DEDUCTION CLAIMED ON
ACCOUNT OF SPOKANE, PORTLAND AND
SEATTLE RAILWAY COMPANY STOCK AND
BONDS BASED ON ASSESSED VALUES FOR

1934\$18,313,717

State	Property	Assessed Value
Washington	S. P. & S.....	\$21,859,250
"	Oregon Trunk	500,000
	Total.....	\$22,359,250
Oregon	S. P. & S.....	\$ 7,306,227
"	Oregon Trunk	3,115,660
"	Oregon Electric	2,502,955
"	United Railways	1,343,343
	Total.....	\$14,268,185
Grand Total		\$36,627,435
N. P. Ry. Co's. proportion—50%.....		\$18,313,717

[1762]

PLAINTIFF'S EXHIBIT 14

Northern Pacific Railway Company

1936 Assessment

NONOPERATING DEDUCTION CLAIMED
ON ACCOUNT OF SPOKANE, PORTLAND AND
SEATTLE RAILWAY COMPANY STOCK AND
BONDS BASED ON ASSESSED VALUES, FOR
1935

\$17,437,939

State	Property	Assessed Value
Washington	S. P. & S.....	\$21,000,000
"	Oregon Trunk	500,000
	Total.....	\$21,500,000
Oregon	S. P. & S.....	\$ 6,864,663
"	Oregon Trunk	2,977,245
"	Oregon Electric	2,250,880
"	United Railways	1,283,090
		\$13,375,878
	Grand Total	\$34,875,878
	N. P. Ry. Co.'s proportion—50%.....	\$17,437,939

[1763]

PLAINTIFF'S EXHIBIT 15

Northern Pacific Railway Company

1935 ASSESSMENT

Nonoperating deduction claimed on account of land grant contracts as of December 31, 1934.....\$2,638,010
 Value of land grant property under contract based on assessed values for 1934:

State	Acres	Assessed Value	Basis of Assessment	Full Cash Value
Lands				
Minnesota	3,807.56	\$ 11,183	33 $\frac{1}{3}$ %	\$ 33,549
Montana	691,898.00	2,836,475	100%	2,836,475
Wyoming	1,329.52	3,893	100%	3,893
Idaho	5,125.08	38,815	100%	38,815
Washington	89,499.80	350,327	Note "A"	842,793
Oregon	53,164.46	125,658	Note "B"	176,341
Total	844,824.42	\$3,366,351		\$3,931,866
Town Lots				
Washington		765	Note "A"	1,628
Grand Total		\$3,367,116		\$3,933,494 [1764]

PLAINTIFF'S EXHIBIT 16

Northern Pacific Railway Company

1936 ASSESSMENT

Nonoperating deduction claimed on account of land grant contracts as of December 31, 1935.....\$2,153,419
 Value of land grant property under contract based on assessed values for 1935:

State	Acres	Assessed Value	Basis of Assessment	Full Cash Value
Lands				
Minnesota	4,180.96	\$ 11,681	33⅓%	\$ 35,043
Montana	655,450.82	2,057,853	100%	2,057,853
Wyoming	875.00	875	100%	875
Idaho	5,684.48	31,940	100%	31,940
Washington	97,397.41	355,901	Note "A"	826,856
Oregon	53,164.46	125,658	Note "B"	173,900
Total	816,753.13	\$2,583,908		\$3,126,467
Town Lots				
Washington		\$ 763	Note "A"	1,628
Grand Total		\$2,584,673		\$3,128,095 [1765]

PLAINTIFF'S EXHIBIT 17

Northern Pacific Railway Company

NONOPERATING DEDUCTIONS CLAIMED ON ACCOUNT
OF INVESTMENT IN NORTHERN PACIFIC TERMINAL
CO. OF OREGON

	1935 <u>Assessment</u>	1936 <u>Assessment</u>
Operating property assessed by Oregon		
State Tax Commission.....	\$8,000,000	\$7,800,000
Less property owned by G. N. Ry. Co. (25% of Guilds Lake Terminal).....	240,348	240,761
	<hr/>	<hr/>
	\$7,759,652	\$7,559,239
Nonoperating property		
As assessed by County Assessor.....	155,070	\$ 145,525
Basis of assessment.....	54%	55%
Full cash value.....	\$ 287,167	\$ 264,590
Total value	\$8,046,819	\$7,823,829
N. P. Ry. Co's. proportion—40%.....	\$3,218,728	\$3,129,531

Note: No deduction was claimed in 1935 and \$3,076,619 was claimed in 1936

[1766]

NORTHWESTERN IMPROVEMENT COMPANY
Physical Property as Assessed for 1934

<u>State</u>	<u>Acres</u>	<u>Assessed Value</u>	<u>Base of Assessment</u>	<u>Pull Value</u>
<u>UNSOLD LANDS</u>				
Minnesota	9 023	\$ 49 542	33-1/3%	\$ 148 686
North Dakota	202 260	456 926	50%	913 852
Montana	488 268	1 862 090	100%	1 862 090
Washington	117 317	853 437	Various	1 946 720
Oregon	321	10 530	64%	16 453
	787 189	\$ 3 234 525		\$ 4 867 741
<u>MINERAL RESERVES</u>				
Montana	167 446	\$ 42 102	100%	\$ 42 102
Washington	7 737	48 900	Various	113 302
	175 183	\$ 91 002		\$ 155 404
<u>UNMINED IRON ORE</u>				
Minnesota	5 139 232 tons	\$ 205 392	50%	\$ 410 784
<u>MINE IMPTS. & PERS. PROPERTY</u>				
Minnesota		\$ 26 061	33-1/3%	\$ 78 184
Montana		41 205	100%	41 205
Washington		360 435	43%	838 220
		\$ 427 701		\$ 957 609
<u>PUBLIC UTILITIES</u>				
Montana - Water		\$ 8 654	100%	\$ 8 654
Washington-Electric		16 495	43%	36 360
		\$ 25 149		\$ 47 014
<u>MISCELLANEOUS PROPERTY</u>				
Wisconsin		\$ 257 500	100%	\$ 257 500
Minnesota		56 290	33-1/3% & 40%	142 065
North Dakota		2 743	50%	5 486
Montana		60 833	100%	60 833
Washington		207 745	Various	450 047
Oregon		35 740	54%	66 185
		\$ 620 851		\$ 982 116
<u>NET PROCEEDS OF MINES</u>				
Montana		\$ 475 689	100%	\$ 475 689
GRAND TOTAL		\$ 5 080 309		\$ 7 916 357

Plaintiff's Exhibit 19:

NORTHWESTERN IMPROVEMENT COMPANY
Physical Property as Assessed for 1935

<u>State</u>	<u>Acres</u>	<u>Assessed Value</u>	<u>Basis of Assessment</u>	<u>Full Value</u>
<u>UNSOLD LANDS</u>				
Minnesota	8 909	\$ 48 990	33-1/3%	\$ 146 970
North Dakota	200 422	367 507	50%	735 014
Montana	457 134	1 797 245	100%	1 797 245
Washington	116 920	854 081	Various	1 922 952
Oregon	<u>321</u>	<u>10 530</u>	65%	<u>16 200</u>
	783 706	\$ 3 078 353		\$ 4 618 381
<u>MINERAL RESERVES</u>				
Montana	169 006	\$ 42 482		\$ 42 482
Washington	<u>7 760</u>	<u>47 490</u>	Various	<u>110 014</u>
	176 766	\$ 89 972		\$ 152 496
<u>UNMINED IRON ORE</u>				
Minnesota 5 127 550 tons		\$ 204 925	50%	\$ 409 850
<u>MINE IMPTS. & PERS. PROPERTY</u>				
Minnesota		\$ 25 961	33-1/3%	\$ 77 884
Montana		51 610	100%	51 610
Washington		<u>339 180</u>	43%	<u>788 791</u>
		\$ 416 751		\$ 918 285
<u>PUBLIC UTILITIES</u>				
Montana - Water		\$ 8 654	100%	\$ 8 654
Washington-Electric		<u>18 915</u>	43%	<u>43 988</u>
		\$ 27 569		\$ 52 642
<u>MISCELLANEOUS PROPERTY</u>				
Wisconsin		\$ 257 500	100%	\$ 257 500
Minnesota		55 565	33-1/3% & 40%	140 255
North Dakota		1 578	50%	3 156
Montana		51 250	100%	51 250
Washington		210 432	Various	453 600
Oregon		<u>35 740</u>	55%	<u>64 982</u>
		\$ 612 065		\$ 970 743
<u>NET PROCEEDS OF MINES</u>				
Montana		\$ 733 348	100%	\$ 733 348
GRAND TOTAL		\$ 5 162 983		\$ 7 855 745

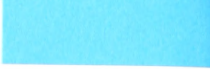


Table 1. Summary of the study design and data collection.

Variable	Value	Unit	Notes
Sample size	1000	Individuals	
Age range	18-75	Years	
Gender	500 Male, 500 Female	Individuals	
Study duration	12 months	Months	
Measurement frequency	Quarterly	Measurements	
Outcome variables	Health status, Quality of life, etc.	Variables	
Statistical methods	Descriptive statistics, Regression analysis	Methods	
Significance level	0.05	Probability	
Confidence interval	95%	Percentage	
Limitations	Self-reported data, Cross-sectional design	Factors	
Strengths	Large sample size, Longitudinal data	Advantages	
Conclusion	Key findings and implications	Summary	

NORTHERN PACIFIC

	Par Value outstanding Dec. 31, 1935	3-year av. market price 1933-35	3-year mkt. value 1933-35	Interest account	current yield
Prior Lien Mortgage 4%	\$ 106,292,600	94 $\frac{1}{2}$	\$100,446,507	\$4,251,704	4.23%
General Lien Mtg. 3%	54,451,500	66 1/8	36,006,054	1,655,545	4.54
St. Paul-Duluth Div. 4%	253,000	not quoted	253,000 $\frac{1}{2}$	10,120	4.00
Ref. & Imp "A" 4 $\frac{1}{2}$ %	20,000,000	77 5/8	15,525,000	900,000	5.50
Ref. & Imp "D" 5%	10,000,000	83 $\frac{1}{2}$	8,350,000	500,000	5.50
St. P. & Duluth R.R. 4%	1,000,000	91 3/4	917,500	40,000	4.36
Wash. Cent Ry let 4%	776,500	86 3/4	675,549	31,140	5.19
Total excluding Series "B" & "C"					
			\$162,175,410	\$7,366,508	4.54%
Ref. & Imp. "B" 6%	105,959,600	90 $\frac{1}{2}$	95,893,438	6,357,576	6.63
Ref. & Imp. "C" 5%	8,702,300	84 $\frac{1}{2}$	7,353,443	435,115	5.92
TOTAL	307,437,500		265,420,291	14,159,200	5.33%

	5-year av. 90-5/8	5-year av. 96,327,669	5-year av. mkt. value 1933-35	Interest account	current yield
Prior Lien Mortgage 4%	\$ 106,292,600	\$ 96,327,669	\$4,251,704	4.41%	
General Lien Mtg. 3%	54,451,500	54,917,024	1,633,545	4.68%	
St. Paul-Duluth Div. 4%	253,000	not quoted	253,000 $\frac{1}{2}$	10,120	4.00%
Ref. & Imp. "A" 4 $\frac{1}{2}$ %	20,000,000	76-3/8	15,275,000	900,000	5.89%
Ref. & Imp. "D" 5%	10,000,000	82-1/8	8,212,500	500,000	6.09%
St. P. & Duluth R.R. 4%	1,000,000	89-5/8	896,250	40,000	4.46%
Wash. Cent. Ry. let 4%	776,500	84-5/8	653,906	31,140	4.73%
Total excluding Series "B" and "C"					
			\$156,540,249	\$7,366,509	4.71%
Ref. & Imp. "B" 6%	105,959,600	89-7/8	95,231,190	6,357,576	6.68%
Ref. & Imp. "C" 5%	8,702,300	82-7/8	7,212,051	435,115	6.03%
Total Series "B" and "C" 114,661,900					
TOTAL	307,437,500		102,443,221	6,792,691	6.63%
			259,983,470	14,159,200	5.47%

†Par value as of Dec. 31, market value not available

STATE OF WASHINGTON

STATEMENT SHOWING COMPARISON OF AREA, ASSESSED VALUES AND ACTUAL VALUES OF LAND (EXCLUSIVE OF TIMBER LANDS) FOR THE YEARS 1917, 1936 and 1936, DIVIDED BETWEEN COUNTIES IN WHICH THE NORTHERN PACIFIC RAILWAY COMPANY OWNS OPERATING PROPERTY AND THOSE COUNTIES IN WHICH IT DOES NOT OWN OPERATING PROPERTY DATA TAKEN FROM PROCEEDINGS OF STATE BOARD OF EQUALIZATION

COUNTIES IN WHICH NORTHERN PACIFIC HAS OPERATING PROPERTY

	<u>1917</u>	<u>1935</u>	<u>1936</u>
Acreage Assessed	14 189 227	15 377 109	15 502 237
Average Assessed Value per acre	\$ 177 173 932	\$143 605 221	\$144 938 856
Actual Value per acre	12.49	9.34	9.35
Average Actual Value per acre	\$ 437 463 209	\$328 126 808	\$329 192 438
Percentage of Decrease per acre	30.83	21.34	21.24
Decrease in Actual Value compared with 1917		30.78	31.11
Percentage of Decrease	\$ 109 336 401	\$108 270 771	24.75

IN CITIES AND TOWNS

Assessed Value	\$ 230 616 631	\$162 707 047	\$160 923 160
Actual Value	528 760 401	355 160 450	349 792 205
Decrease in Actual Value compared with 1917	173 599 951	178 968 196	33.85
Percentage of Decrease	32.85		

TOTALS - Both Inside and Outside Cities & Towns

Assessed Value	\$ 407 790 563	\$506 312 268	\$305 862 016
Actual Value	966 223 610	683 287 258	678 984 643
Decrease in Actual Value compared with 1917	\$282 936 352	\$287 238 967	29.73
Percentage of Decrease	29.28		

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF PROPERTY IN WASHINGTON CLASSIFIED AS "CARRIER PROPERTY" BY THE INTERSTATE COMMERCE COMMISSION AND INCLUDED IN COST OF REPRODUCTION FIGURES REPORTED TO WASHINGTON TAX COMMISSION BUT CLASSIFIED AS "NON-OPERATING PROPERTY" BY SAID TAX COMMISSION, AND LOCALLY ASSESSED

COUNTY	1935 ASSESSMENT		1936 ASSESSMENT		I. C. C.	
	ASSESSED VALUE	VALUE	ASSESSED VALUE	ASSESSED VALUE	I. C. C. VALUE	I. C. C. VALUE
Adams	\$ 699	\$ 11 352	\$ 754	\$ 11 352	\$ 11 352	
Benton	1 150	9 920	1 560	10 344	10 344	
Clark	2 630	1 563	2 650	1 605	1 605	
Columbia	1 555	1 472	1 565	1 556	1 556	
Cowlitz	4 615	57 229	4 160	47 284	47 284	
Franklin	16 160	112 261	23 228	134 642	134 642	
Grant	190	2 701	340	2 695	2 695	
Grays Harbor	834	3 121	954	3 860	3 860	
King	335 560	2 461 605	527 187	3 118 037	3 118 037	
Kittitas	8 365	42 193	10 282	21 841	21 841	
Lewis	2 975	37 938	2 975	37 938	37 938	
Lincoln	5 601	3 367	5 479	3 535	3 535	
Mason						
Pacific	3 735	3 213	3 135	2 784	2 784	
Pierce	142 556	773 541	141 381	711 724	711 724	
Skagit	375	1 191	445	2 044	2 044	
Snohomish	9 880	44 458	13 385	99 085	99 085	
Spokane	34 240	140 810	31 065	139 196	139 196	
Thurston	2 419	4 574	3 140	5 268	5 268	
Walla Walla	14 420	31 574	9 595	21 089	21 089	
Whatcom	7 560	25 547	6 781	25 824	25 824	
Whitman	3 875	5 694	3 815	5 634	5 634	
Yakima	14 235	27 778	14 595	34 108	34 108	
Total	\$ 613 629	\$3 803 102	\$808 472	\$4 441 445	\$4 441 445	

Depreciated values reported by N. P. Ry. Co

\$2 535 401

\$2 960 963

See Note on page 7 and Note 1 on page 8 of Bill of Complaint.

PLAINTIFF'S EXHIBIT 23

is identical with "Exhibit B" attached to the Complaint, and is omitted here, to avoid duplication. [See page 42 of this printed record.] [1772]

PLAINTIFF'S EXHIBIT 24

is identical with Plaintiff's Exhibit C-1, except that vertical columns 10, 11 and 12 appearing in said Exhibit C-1 do not appear in said Exhibit 24. [See page 2223 of this printed record.] [1773]

PLAINTIFF'S EXHIBIT 25

is a copy of the decree, Findings of Fact and Conclusions of Law entered in the U. S. District Court for the Eastern District of Washington, Northern Division, in Equity Cause No. 4300, in which Northern Pacific Railway Company is complainant, and Adams County (and the other county defendants in the present suit) are defendants. Said decree, so far as material, is as follows:

"This cause came on to be heard and was argued by counsel and the court having made and filed Findings of Fact and Conclusions of Law, it is ordered, adjudged and decreed that the plaintiff, Northern Pacific Railway Company, have and recover"

(Here the decree states the name of each defendant followed by the amount of recovery against the same, which separate sums aggregate \$889,366.25.)

The decree then adjudges that any and all taxes appearing upon the rolls of each and all of the defendant counties for the years 1925 and 1926 be cancelled and stricken therefrom, and perpetually enjoins the defendants from collecting the same.

The decree then grants recovery to plaintiff against defendants severally the amount set opposite the name of each, said amounts totalling one-third of the sum of \$29,181.68 allowed the Special Master as compensation, clerk hire and expense. Otherwise no costs allowed.

The decree is dated September 7, 1932, and is signed by "J. Stanley Webster, District Judge."

[1774]

The Findings of Fact, so far as material, are as follows:

In Finding No. 1 the Court finds that defendants are municipal corporations and that the amount in controversy exceeds \$3,000, exclusive of interest and costs as between plaintiff and each defendant.

Finding No. 2: Plaintiff owns and operates a railroad system from a point on Lake Superior in Wisconsin through the States of Minnesota, North Dakota, Montana, Idaho and Washington to Portland and other points in Oregon, with main and branch lines into or through the several counties defendant.

The system consists of 10,458.27 miles of all track

operated, of which 3,227.59 miles are in Washington. The percentage of system all track mileage operated in Washington for the assessment year 1925 was 30.86% and for the year 1926 was 31.29%.

Finding No. 3: The system cost of reproduction new less depreciation as found by the Interstate Commerce Commission in its valuation proceedings pursuant to Sec. 19a of the Interstate Commerce Act, in its condition on the 30th day of June, 1917, at prevailing prices as of June 30, 1914, plus net expenditures for additions and betterments, depreciated at the same rate as used by the Commission, to December 31, 1924, was \$441,547,329, and to December 31, 1925, was \$446,833,095. The percentage of said cost in Washington to system cost was 34.05% for 1924 and 33.77% for 1925.

In Finding No. 4 the Court finds the par value of the stock and bonds and of each of the several issues thereof outstanding on December 31, 1924, and December 31, 1925. [1775]

Finding No. 5: "Said stocks and bonds are listed, quoted daily and have a well established market value on the New York Stock Exchange, and have had for many years. They are and have long been extensively bought and sold on said exchange. Market value based on the monthly average of the high and low prices at which said stocks and bonds were bought and sold on said exchange for three year periods ended December 31, 1924, and 1925 was as follows:

	1925 Assessment 3 years to Dec. 31, 1924	1926 Assessment 3 years to Dec. 31, 1925
Stock	\$168,433,333	\$159,133,333
Bonds		
Nor. Pac. Ry. Prior Lien Mtge.....	\$ 92,207,223	\$ 91,098,309
“ “ “ General Lien Mtge.....	33,049,117	32,844,549
“ “ “ St. Paul-Dul. Div. Mtge.....	332,073	350,562
“ “ “ Ref. & Impt. Mtge. Series “A”	17,158,333	16,991,667
“ “ “ “ “ “ “ “ “D”	9,418,750	9,500,000
St. Paul-Dul. R. R. 1st Mtge.....	991,667	992,500
St. Paul-Dul. R. R. 1st Cons. Mtge.....	895,000	896,667
Washington & Col. Riv. Ry. 1st Mtge.....	140,000	140,000
Washington Central Railway Co.....	643,862	641,235
Equipment Trust Certificates—1920.....	3,150,000	2,700,000
“ “ “ 1922.....	4,050,000	3,600,000
“ “ “ 1925.....	.....	3,525,000
<hr/>		
Total bonds excl. Series “B” and “C” (See Note).....	\$162,036,025	\$163,280,489
Note: Bonds as shown above exclude Nor. Pac. Ry. Ref. & Impt. Series B and C in connection with C. B. & Q. stock.		
Total stock and bonds (exclu. Series B and C bonds)	\$330,469,358	\$322,413,822
Nor. Pac. Ry. Ref. & Impt. Mtge. Ser. “B”	113,689,142	113,421,743
“ “ “ “ “ “ “ “ “C”	8,321,275	8,278,063
<hr/>		
Total Series “B” and “C”.....	\$122,010,417	\$121,699,806
Total stocks and bonds.....	\$452,479,775	\$444,113,628
		[1776]

Finding No. 6: Plaintiff owned on and prior to March 1, 1925, and 1926, and subsequent thereto, various stocks, bonds and other property not used in the operation of its railroad and not assessable by the state valuing officers. Said property, and its market value at said time is as follows:

Stock of Chicago, Burlington & Quincy Railroad Company purchased with bonds of Series B and C	\$136,000,000
Land grant from the United States...	19,677,571
Bonds of Spokane, Portland & Seattle Railway Company.....	7,900,000
Manitoba Railway Company.....	4,968,300
Stock of Northern Pacific Express Co.	343,000
Stock of Northwestern Improvement Co.	16,600,000

The total value of said non-operating properties was at said times the sum of \$49,488,871. Said sum should be deducted from the market value of plaintiff's stock and bonds for each of the assessment years 1925 and 1926 in finding the market value of plaintiff's operating property for each of said years by the stock and bond method.

The value of the Burlington stock purchased with the proceeds of Series B and C bonds exceeds the value of said bonds. In determining system value

by the stock and bond method the B and C bonds are excluded and no deduction is made for the stock.

Finding No. 7: I treat the stocks and bonds in the way stated in Paragraph (6) hereof because plaintiff in its brief has expressed its consent to that method, and it is as favorable to defendants as they have any reason to ask.

Finding No. 8: The net railway operating income earned by plaintiff for the years 1922 to 1925 inclusive was as follows: [1777]

Year ended December 31, 1922,	\$19,450,514
“ “ “ “ 1923,	17,100,557
“ “ “ “ 1924,	19,861,077
“ “ “ “ 1925,	22,227,319

Said net income for the year 1924 capitalized at 6% is \$331,017,950.

Said net income for the year 1925 capitalized at 6% is \$370,455,317.

The average annual net income for the years 1922, 1923 and 1924 is \$18,804,049. Capitalized at 6% is \$313,400,817.

Said average annual net income for the years 1923, 1924 and 1925 is \$19,729,651. Capitalized at 6% is \$328,827,517.

In Findings Nos. 9 and 10, the Court finds that plaintiff's Washington operating property was valued for taxation purposes at \$126,460,000 for 1925, and at \$131,200,000 for 1926; that the equalized assessed valuation thereof was fixed at \$51,999,425 for

1925, and at \$56,112,727 for 1926, and that the total taxes levied thereon were \$2,626,340.32 for 1925 and \$2,991,136.98 for 1926.

Finding No. 12: The fair cash market value of plaintiff's operating property in the State of Washington for the assessment years 1925 and 1926 was \$104,078,987 and \$106,017,715 respectively. The equalized value thereof which should have been apportioned to each defendant at the county ratios found by the State Board of Equalization was the sum of \$42,796,540 and \$45,342,553 for 1925 and 1926 respectively; the tax which should have been levied on said equalized valuations was \$2,161,528.10 and \$2,415,830.24, for the years 1925 and 1926 respectively. * * *

The method by which said valuations are found is as follows:

(A) 1925 Valuation

The system value by the use of the stock and bond method [1778] averaged over three immediately preceding years is \$330,469,358. This does not include the value of the Series B and C bonds with the proceeds of which the stock of the Chicago, Burlington & Quincy Railroad Company was acquired by the Northern Pacific Company. From this must be deducted the value of the non-operating property. I find the value of the land grant to be \$19,677,571; stock of Northwestern Improvement Company \$16,600,000; bonds of Spokane, Portland & Seattle Railway Company \$7,900,000; lease of Mani-

toba railroad \$4,968,300; stock of Northern Pacific Express Company \$343,000, total of \$49,488,871. Making this deduction leaves a system value of the operating property by the stock and bond method of \$280,980,487.

Capitalizing the average net railway operating income of the system at 6% over the three immediately preceding years gives \$313,400,817 as market value of the system by the capitalized net income method.

The cost of reproduction of the system as found by the Interstate Commerce Commission in its valuation proceedings pursuant to Sec. 19a of the Interstate Commerce Act, plus depreciated net additions and betterments to December 31, 1924, is \$441,547,329.

Forty per cent of value of system operating property by the stock and bond method is \$112,392,195; 40% of system value by capitalizing net railway operating income is \$125,360,327; 20% of cost of reproduction is \$88,309,466. The sum of the three is \$326,061,988 which I find to be the system fair cash market value for the assessment year 1925.

31.92% of the total is the fair market value of that portion of the Northern Pacific system in the State of Washington, or the sum of \$104,078,987. The 31.92% is found by using relative miles of all tracks operated and relative cost of reproduction, giving two thirds weight to the first named factor. There is an overvaluation of \$22,381,013, or 21.50%. [1779]

(B) 1926 Valuation

By the same method used for 1925 and making the same deduction for non-operating property, the system value by the stock and bond method for 1926 is \$272,924,951 and 40% is \$109,169,980; capitalized three years average net railway operating income at 6% is \$328,827,517 and 40% is \$131,531,007; cost of reproduction plus depreciated net additions and betterments to December 31, 1925 is \$446,833,095 and 20% is \$89,366,619. The sum of the three is \$330,067,606, which I find to be the system fair cash market value for the assessment year 1926. The allocation factor for 1926 found in the same way as for 1925 is 32.12%. The fair cash market value of that part of the system in the State of Washington is \$106,017,715. There is an overvaluation for the year 1926 of \$25,182,285 or 23.75%.

I find 6% to be a fair rate for capitalizing net income for determination of market value of the system.

In Finding No. 13 the Court finds that of the taxes so levied for 1925, plaintiff paid under protest \$1,842,724.52 leaving unpaid the sum of \$783,615.80, and that of the taxes so levied for 1926, plaintiff paid under protest \$1,756,523.95, leaving unpaid the sum of \$1,234,613.03. The Court further finds that pursuant to stipulation that plaintiff might have judgment of refund for the same if found illegally excessive, plaintiff thereafter in May, 1927, paid the balance of said taxes for 1925 and 1926 under pro-

test except a jurisdictional amount left unpaid in each county.

In Finding No. 14, the Court finds the amount of overpayment of taxes so made by plaintiff to each defendant county for the assessment years 1925 and 1926 respectively, and the amounts which plaintiff is entitled to recover severally from each defendant county are the several amounts set forth in said findings, which, in the aggregate, are found to be \$383,358.32 for 1925 and \$506,007.93 for 1926, or a total of \$889,366.25. [1780]

In Conclusion of Law No. 3 the Court concludes that plaintiff is entitled to recover from each defendant the several amounts set forth therein, amounting in all, to \$889,366.25, and that the unpaid balance of taxes should be cancelled and stricken from the rolls.

The Findings of Fact and Conclusions of Law are dated September 7, 1932, and signed by "J. Stanley Webster, District Judge." [1781]

PLAINTIFF'S EXHIBIT 26

is a copy of the decree, findings of fact and conclusions of law entered in the U. S. District Court for the Eastern District of Washington, Northern Division, in Equity Cause No. 4386, in which the Northern Pacific Railway Company is plaintiff, and Spokane County (and the other county defendants in

the present suit) and their respective treasurers are defendants. Said decree, so far as material, is as follows:

After reciting the hearing of the evidence and the making of the Court's findings of fact and conclusions of law, the Court orders, adjudges and decrees (1) that there is due and unpaid by plaintiff to each defendant as taxes for the years 1927, 1928 and 1929, the several amounts set forth aggregating \$667,541.85 for the 1927 tax, \$625,169.13 for the 1928 tax, and \$620,117.58 for the 1929 taxes, or a grand total of \$1,912,828.56. (2) That upon payment of said several amounts, the balance of the taxes levied for said years shall be cancelled and stricken from the rolls, and defendants enjoined from collecting the same. (3) That said payments are to be made by crediting on the amount payable to each defendant the amount of the judgment entered against said defendant in Cause No. 4300, and the balance to be paid by plaintiff in cash, according to the schedule of debits and credits set forth in said decree.

Said schedule shows the total amount due defendants for 1927, 1928 and 1929 taxes to be \$1,912,828.56, the amount of judgments due [1782] plaintiff to be \$899,093.48, the net amount due the defendant counties other than Adams, Benton, Franklin and Lincoln after off-setting the judgment in plaintiff's favor to be \$1,033,069.63, and the balance of plaintiff's judgment against defendants Adams,

Benton, Franklin and Lincoln counties, after so offsetting the judgment in plaintiff's favor to be \$19,334.55, the latter balance to be carried forward to 1930.

The decree further provides that neither party shall recover costs.

The decree is dated February 20, 1933, and is signed by "J. Stanley Webster, District Judge."

The Findings of Fact, so far as material, are as follows:

In Finding No. 1 the Court finds that defendants are duly organized counties of the State and the individual defendants are their respective duly elected and qualified treasurers, and that the amount in controversy between plaintiff and each defendant exceeds \$3,000 exclusive of interest and costs.

In Finding No. 2 the Court finds that plaintiff's Washington operating property was valued for taxation purposes at \$131,500,000 for 1927, for \$131,750,000 for 1928, and at \$131,750,000 for 1929; that the equalized assessed valuation thereof was fixed at \$56,642,954 for 1927, at \$57,102,359 for 1928, and at \$56,861,151 for 1929; and that the total taxes levied thereon were \$3,015,173.71 for 1927, were \$3,092,709.11 for 1928, and were \$3,180,440.45 for 1929.

In Finding No. 3 the Court finds that prior to the commencement of said action, plaintiff paid taxes for the year 1927 in the sum of \$1,900,514.77, leaving unpaid the sum of \$1,114,658.94; for the year 1928 plaintiff paid taxes in the sum of \$2,003,927.04,

leaving unpaid the sum of \$1,088,782.07; and for the year 1929, plaintiff paid taxes in the sum of \$2,-083,558.54, leaving unpaid the sum of \$1,096,-881.90. [1783]

In Finding No. 4 the Court finds that in Cause No. 4300, on September 7, 1932, judgment was rendered for plaintiff and against defendant counties in the sum of \$889,366.25 on account of taxes for 1925 and 1926 theretofore paid under protest, besides costs.

In Finding No. 5 the Court finds that the parties thereto have agreed upon the terms of a compromise and settlement of the present cause involving the 1927, 1928 and 1929 taxes, Cause No. 4300 involving the 1925 and 1926 taxes, Cause No. 4397 involving the 1930 taxes, Cause No. 4438 involving the 1931 and 1932 taxes and Cause No. 4342 relating to re-assessment of plaintiff's operating property for the year 1924.

Finding No. 6: The terms of compromise and settlement of this cause and said causes relating to the taxation of plaintiff's operating property for said years are as follows:

(1) That plaintiff shall pay taxes on a full value of its operating property, after equalization at the ratios fixed by the State Board of Equalization for the respective years, of \$112,000,000 for the years 1927 to 1931, inclusive, and on a valuation of \$105,-000,000 for the year 1932.

(2) That there be credited on the amount payable by plaintiff the amount of the judgment in said Cause No. 4300 against each county respectively, without interest, and the balance shall be paid in cash without interest, penalties or costs by means of draft on its treasurer which shall be paid in the customary way, and upon such payment or tender plaintiff shall receive from the county treasurer a receipt in full for all taxes, interest, penalties or costs appearing on the tax rolls of the several counties to be due for the years 1927 to 1931, inclusive, and each of them.

(3) That taxes for the year 1932 shall be paid by Northern Pacific Railway Company on said valuation of \$105,000,000 as when provided by law.

[1784]

(4) Immediately after such payment, plaintiff shall satisfy the judgment in said Cause No. 4300 on the docket of this court as paid in full, and both parties shall dismiss the appeal heretofore taken herein.

(5) That the taxes for the year 1924 as reassessed and spread upon the tax rolls of defendant counties for the years 1927 and 1928 shall be cancelled by decree to be entered in Cause No. 4342, together with all penalties, interest and costs appearing to have accrued thereon, and plaintiff shall be given a receipt in full for all taxes, penalties, interest and costs reassessed for said year 1924.

(6) That neither party to either or any of said causes shall recover costs against the other, except only the costs as taxed in the judgment of this court in said Cause No. 4300.

Finding No. 8: The court finds, upon evidence submitted, that the terms of compromise and settlement of this cause and of said other causes are just, fair and in the public interest and should be carried out and consummated accordingly.

Finding No. 9: Under this settlement there remains due by the plaintiff to defendant counties the difference between the amount of taxes which have been paid as above stated, and the amount of taxes which would have been levied on the valuation of \$112,000,000, amounting to the sum of \$1,912,828.56. * * * and said sum is the full amount of taxes which plaintiff owes and should pay the said defendant counties for said years 1927, 1928 and 1929.

The amount of the judgment obtained by plaintiff against the defendants in said Cause No. 4300, and the amount due to each defendant, after crediting the amount of said judgment upon the unpaid taxes for said years 1927, 1928 and 1929, is shown in detail on Exhibit No. 3 hereto attached and made a part hereof, and in the aggregate amounts of \$1,013,735.08. In the counties of Adams, Benton, Franklin and [1785] Lincoln the amount due plaintiff on said judgment is in excess of the amount of taxes due and unpaid for said three years to said four counties as shown on said Exhibit No. 3 hereto

attached, and said balance due said plaintiff from said four counties will be carried forward and deducted from the taxes which plaintiff will pay to said four counties for the year 1930 by the Decree this day entered in Cause No. 4397.

(Exhibit No. 3 referred to said findings shows that the said balance due plaintiff from said four counties aggregated \$19,334.55.)

In Conclusion of Law No. 2 the Court concludes that upon payment or tender of the net amount stated in the findings of fact plaintiff is entitled to a receipt in full for all taxes, penalties, interest and costs for each of said years, 1927, 1928 and 1929, and cancellation of the balance appearing on the rolls to be due for each of said years, and to an injunction perpetually restraining the collection thereof. [1786]

PLAINTIFF'S EXHIBIT 27

is a copy of the decree, findings of fact and conclusions of law entered in the U. S. District Court for the Eastern District of Washington, Northern Division, in Equity Cause No. 4397, in which the Northern Pacific Railway Company is plaintiff and King County (and the other county defendants in the present suit) and their respective treasurers, are defendants. Said decree, so far as material, is as follows:

After reciting the hearing of the evidence and the making of the Court's findings of fact and conclu-

sions of law, the Court orders, adjudges and decrees: (1) that there is due and unpaid by plaintiff to each as taxes for the year 1930 the several amounts therein set forth aggregating \$848,014.24; (2) that upon payment of said several amounts, the balance of the taxes levied for said year shall be cancelled and stricken from the rolls, and defendants enjoined from collecting the same; (3) that neither party shall recover costs from the other.

The decree is dated February 20, 1933, and is signed by "J. Stanley Webster, District Judge."

Finding No. 1 is in substance the same as Finding No. 1 in Cause No. 4386 set forth in Plaintiff's Exhibit 26.

In Finding No. 2 the Court finds that for 1930 plaintiff's Washington operating property was valued for taxation purposes at \$131,750,000, that the equalized assessed valuation thereof was fixed at \$56,514,263, and the total taxes levied thereon were \$3,109,159.49.

In Finding No. 3 the Court finds that prior to the commencement of said action, plaintiff paid taxes for the year 1930 in the sum of \$1,775,731.76, leaving unpaid the sum of \$1,333,427.73.

Finding No. 5 is in substance the same as Finding No. 5 in Cause No. 4386 set forth in Plaintiff's Exhibit 26.

Finding No. 6 is identical with Finding No. 6 in Cause No. 4386 set forth in Plaintiff's Exhibit 26.

[1787]

Finding No. 8: The Court finds, upon evidence submitted, that the terms of compromise and settlement of this cause and of said other causes are just, fair and in the public interest and should be carried out and consummated accordingly.

Finding No. 9: Under this settlement there remains due by plaintiff to defendant counties the difference between the amount of taxes which have been paid in the sum of \$1,775,731.76, as above stated, and the amount of taxes which would have been levied on a valuation of \$112,000,000, amounting to \$848,014.24, after crediting to plaintiff the balance due on the judgment in said Cause No. 4300 by Adams, Benton, Franklin and Lincoln Counties, in the sum of \$19,334.55, as provided by the decree this day entered in said Cause No. 4386, as shown in detail on the statement hereto attached, marked Exhibit 2, and made a part hereof, and said sum of \$848,014.24 is the full amount of taxes which plaintiff owes and should pay defendant counties for said year 1930.

In Conclusion of Law No. 2 the Court concludes that upon payment of tender of the net amount stated in the findings of fact plaintiff is entitled to a receipt in full of all taxes, penalties, interests and costs for the year 1930, and cancellation of the balance appearing on the rolls to be due for said years, and to an injunction perpetually restraining the collection thereof.

The findings and conclusions are dated February 20, 1933, and are signed by "J. Stanley Webster, District Judge." [1788]

PLAINTIFF'S EXHIBIT 28

is a copy of the decree, findings of fact and conclusions of law entered in the U. S. District Court for the Eastern District of Washington, Northern Division, in Equity Cause No. 4438, in which the Northern Pacific Railway Company is plaintiff and Yakima County (and the other county defendants in the present suit) and their respective treasurers, are defendants. Said decree, so far as material, is as follows:

After reciting the hearing of the evidence and the making of the Court's findings of fact and conclusions of law, the Court orders, adjudges and decrees: (1) that there is due and unpaid by plaintiff to each defendant as taxes for the year 1931 the several amounts therein set forth aggregating \$894,399.17, and that there is due and unpaid by plaintiff to defendant counties as taxes for the year 1932 the several amounts therein set forth aggregating \$2,464,-985.88; (2) that upon payment of said several amounts, the balance of the taxes levied for said years shall be cancelled and stricken from the rolls, and defendants enjoined from collecting the same; and (3) that neither party shall recover costs from the other.

The decree is dated February 20, 1933, and is signed by "J. Stanley Webster, District Judge."

Finding No. 1 is in substance the same as Finding No. 1 in Cause No. 4386 set forth in Plaintiff's Exhibit 26.

In Finding No. 2 the Court finds that plaintiff's Washington operating property was valued for taxation purposes for 1931 at \$131,750,000 and for 1932 at \$112,970,000; that the equalized assessed valuation thereof was fixed for 1931 at \$56,516,818, and for 1932 at \$48,048,468, and that the total taxes levied thereon for 1931 were \$2,845,844.59 and for 1932 were \$2,652,090.06.

In Finding No. 3 the Court finds that prior to the commencement of said action, plaintiff paid taxes for the year 1931 amounting [1789] to \$1,524,838.73, leaving unpaid the sum of \$1,321,005.86, and that for the year 1932 the taxes were not due when said action was brought and no part of said taxes have been paid.

Finding No. 4 is in substance the same as Finding No. 5 in Cause No. 4386 set forth in Plaintiff's Exhibit 26.

Finding No. 5 is identical with Finding No. 6 in Cause No. 4386 set forth in Plaintiff's Exhibit 26.

Finding No. 7: The Court finds, upon evidence submitted, that the terms of compromise and settlement of this cause and of said other causes are just, fair and in the public interest and should be carried out and consummated accordingly.

Finding No. 8: Under this settlement there remains due by plaintiff to defendant counties for the year 1931 the difference between the amount of taxes which have been paid in said sum of \$1,524,-838.73 and the sum of \$2,419,237.90, which is the amount of taxes which would have been levied on a valuation of \$112,000,000, or the sum of \$894,399.17, * * * and said sum is the full amount of taxes which plaintiff owes and should pay defendant counties for said year 1931. For the year 1932 there remains due and unpaid to the defendant counties the sum of \$2,464,985.88, being the amount of taxes that would have been levied on a full valuation of \$105,000,000, and said sum is the full amount which plaintiff owes and should pay to defendant counties for the year 1932, as shown in detail on Exhibit 1 heretofore referred to and made a part hereof.

In Conclusion of Law No. 2 the Court concludes that upon payment or tender of the net amount stated in the findings of fact plaintiff is entitled to a receipt in full of all taxes, penalties, interest and costs for the years 1931 and 1932, and cancellation of the balance appearing on the rolls to be due for said years, and to an injunction perpetually restraining the collection thereof.

The findings and conclusions are dated February 20, 1933, and are signed by "J. Stanley Webster, District Judge." [1790]

PLAINTIFF'S EXHIBIT 29

Seattle, Washington,
June 6, 1933

State Tax Commission,
Olympia, Washington.

Gentlemen:

I observe statement in the Press that the Commission valued the railroads by a formula which it is entirely willing to communicate to the companies. Mr. Dudley tells me that Mr. Jenner confirmed this in a conversation with him.

If correctly informed, I would be greatly obliged if you would give me the formula which was used for the S. P. & S. and the Northern Pacific this year.

Yours truly,

(Signed) L. B. daPONTE

daP/em

cc: W. C. Smith [1791]

PLAINTIFF'S EXHIBIT 30

Seattle, Washington,
June 1, 1934.

State Tax Commission,
Olympia, Washington.

Gentlemen:

This will acknowledge receipt of your advice of May 31 giving the primary valuation of the operat-

ing property of the Northern Pacific Railway Company. Last year you kindly gave us the formulas by which you arrived at our valuation.

Kindly give me the same information for this year for the Northern Pacific and the Spokane, Portland & Seattle.

Very truly yours,
(Sgd.) W. C. SMITH
Assistant Tax Commissioner [1792]

PLAINTIFF'S EXHIBIT 31

PROTEST

To the State Board of Equalization,
Olympia, Washington:

The membership of this Board acting as the Tax Commission of the State of Washington, on June 1, 1934, advised this company that the primary value of its operating property in the State of Washington for taxation for the year 1934 was \$94,800,000. By letter of June 1, 1934, Mr. W. C. Smith, Assistant Tax Commissioner, asked the State Tax Commission for the formula by which it had arrived at said valuation and for the same information for the year 1934 with respect thereto which the Tax Commission gave for the year 1933. The Tax Commission, under date of June 6, 1934 answered said letter of June 1, 1934, as per copy attached hereto.

The information requested in letter of June 1, 1934, was not given in said letter of June 6, 1934, nor is any information given in said letter from which this company can determine how its assessed value for the year 1934 was found to be \$94,800,000, nor did said letter of June 6, 1934, give any information from which this company can determine and point out the errors which the Tax Commission committed in fixing the assessed valuation of this company's operating property in the State of Washington for the year 1934 at \$94,800,000, which valuation is grossly excessive.

In view of the foregoing and in order that it may be advised of the facts which the State Tax Commission supposed to be established bearing upon the true cash market value of its operating property for the year 1934 and effectively avail itself of its right to a hearing before this Board, this company now requests the Board to advise it and make of record the following information and facts which bear upon, determine and control the true cash market value of its property for the year 1934, viz:

[1793]

1. What sum was found by the Tax Commission to be the market value of the shares of stock of the Northern Pacific Railway Company and as of what date?
2. What sum was found to be the value of the funded debt of the Northern Pacific Railway Company and as of what date?

3. What sum was found to be the system net operating income of the Northern Pacific Railway Company and for what years?

4. What sum was found to be the net railway operating income in the State of Washington and for what year?

5. For what year or period of years was the value of the capital stock and funded debt averaged and used in determining the value of said property by the stock and bond method?

6. For what year or years was the net railway operating income capitalized, averaged and used in determining the value of said property by the net income capitalized method?

7. What sum was deducted from the value of stocks and bonds for nonoperating property of said company; what items were classified as nonoperating property and what amount deducted for each of them?

8. Did the Board use and consider the cost of reproduction of the property of this company either for the system or within the state and, if so, what was the figure which the Tax Commission so found and used?

9. What sum was found by the Board to be the value of the whole system of said company?

10. What percentage of the system value was allocated to the State of Washington in determining its assessed value?

11. What factors were used in allocating a proportion of system value to the State of Washington?

12. If there are any other facts reflected in and bearing upon the assessed value of \$94,800,000, the Board is requested to advise this company thereof.

The Northern Pacific Railway Company protests that the valuation of \$94,800,000, fixed by the State Tax Commission, is grossly excessive and in violation of its rights under the constitution and laws of the State of Washington, the 14th Amendment, and Article I of Section 8 of the Constitution of the United States, and prays that [1794] the same be reduced to a sum not exceeding \$47,400,000; and further requests that the Board advise it of the matters and things inquired about and make the same of record before it finally determines the assessed valuation of said property for the year 1934.

NORTHERN PACIFIC RAILWAY
COMPANY

By: L. B daPONTE

Western Counsel

Dated the 6th day of
September, 1934. [1795]

State of Washington
Tax Commission
Olympia

June 6, 1934.

Northern Pacific Railway Company,
Smith Tower,
Seattle, Washington.

Attention: Mr. W. C. Smith, Assistant
Tax Commissioner.

Gentlemen:

This commission has recently received requests from representatives of certain interstate railroads that they be furnished the formula employed in determining the primary valuation of the operating property of such railroads for the year 1934.

You are advised that in arriving at such valuations no rigid mathematical formula was used or invented; the commission, however, considered and in some measure utilized the generally accepted methods of determining the value of railroad operating property.

Due consideration was given to all evidence, testimony, argument and information supplied or adduced through our own independent investigations, and we are of the opinion that the valuations determined and set forth below actually represent the true and fair 100% primary values of the operating properties of the respective railroads in the State of Washington as of March 1, 1934:

Railroad	Real Property	Personal Property	Total
Northern Pacific Ry.....	\$82,891,710.00	\$11,908,290.00	\$94,800,000.00
Great Northern Ry.....	55,827,274.00	6,372,726.00	62,200,000.00
Oregon-Washington RR & Nav. Co.....	33,795,999.00	2,704,001.00	36,500,000.00
Spokane, Portland & Seattle Railway Co.....	20,684,900.00	1,665,100.00	22,350,000.00
Chicago, Milwaukee, St. Paul & Pac. RR.....	29,474,922.00	2,725,078.00	32,200,000.00

Very truly yours,

TAX COMMISSION OF THE
STATE OF WASHINGTON

By T. M. JENNER

Commissioner. [1796]

PLAINTIFF'S EXHIBIT 32

Seattle, Washington,
June 14, 1935.

State Tax Commission,
Olympia, Washington
Gentlemen:

I have received the value you placed on the operating property of the Northern Pacific Railway Company for 1935, and Mr. Daries forwarded to me a copy of your advice giving the value of the Spokane, Portland & Seattle Railway Company's operating property.

If consistent, please advise how you arrive at the two values. You will remember that in 1933, you kindly gave the method used by you, and it is similar information I am asking for the 1935 values.

Very truly yours,
(Sgd.) W. C. SMITH
Assistant Tax Commissioner [1797]

PLAINTIFF'S EXHIBIT 33

State of Washington
Tax Commission
Olympia

June 17, 1935.

Mr. W. C. Smith,
Assistant Tax Commissioner,
Northern Pacific Railway Company,
Smith Tower,
Seattle, Washington.

Dear Sir:

In response to your letter of June 14th relative to the commission's findings in fixing the primary values of the operating properties of the Northern Pacific Railway Company and the Spokane, Portland & Seattle Railway Company within the State of Washington for the year 1935, we advise you that the commission did not adhere to any fixed mathematical formula.

Consideration was given to all the indicia of values customarily used by assessing officials and by the courts in arriving at railroad values.

The values found, to-wit, the sum of \$90,000,000 for the Northern Pacific and \$21,000,000 for the Spokane, Portland & Seattle are, in the judgment of this commission, the full values of said operating properties within this state for assessment and taxation for the year 1935.

Very truly yours,

TAX COMMISSION OF THE
STATE OF WASHINGTON

By: H. H. HENNEFORD

Chairman [1798]

PLAINTIFF'S EXHIBT 34

Seattle, Washington,
March 16, 1937.

State Tax Commission,
Olympia, Washington.

Attention Mr. Jenner:

Gentlemen:

We would like to know, in connection with our pending tax case, whether the Commission will give us similar information concerning the 1935 assessment that it gave us at the hearing on the 1936 assessment. Our request was in the form of certain questions, and I am enclosing you copy for conven-

ient reference. You will recall that Mr. Jenner gave certain information in answer to these questions.

We would also like to have a list of the non-operating property and the value placed on each item and deducted from the system value by the stock and bond method for both 1935 and 1936. You will recall that the Commission gave us this information in connection with the 1933 assessment.

Yours very truly,

W. C. SMITH

Assistant Tax Commissioner [1799]

1. What sum was found to be the market value of the shares of stock of the Northern Pacific Railway Company, and as of what date?
2. What sum was found to be the value of the funded debt of the Northern Pacific Railway Company and as of what date?
3. What sum was found to be the system net railway operating income of the Northern Pacific Railway Company and for what years?
4. What sum was found to be the net railway operating income in the State of Washington and for what years?
5. For what year or period of years was the value of the capital stock and funded debt averaged and used in determining the value of said property by the stock and bond method?
6. For what year or years was the net railway operating income capitalized, averaged and used in

determining the value of said property by the capitalization of income method?

7. What sum was deducted from the value of stock and bonds for non-operating property of said company; what items were classified as non-operating property and what amount deducted for each of them?

8. Did the Commission use and consider the cost of reproduction of the property of this company either for the system or within the state and, if so, what was the figure which the Commission so found and used?

9. What sum was found by the Commission to be the value of the whole system of said company?

10. What percentage of system value was allocated to the State of Washington in determining its assessed value?

11. What factors were used in allocating a proportion of system value to the State of Washington?

12. If there are any other facts reflected in and bearing upon the assessed value of \$88,500,000, the Commission is requested to advise this company thereof. [1800]

PLAINTIFF'S EXHIBIT 35

State of Washington
Tax Commission
Olympia

May 25, 1937.

Mr. W. C. Smith
Assistant Tax Commissioner
Northern Pacific Railway Company
Seattle, Washington

Dear Sir:

In response to your letter of March 16, relative to certain information requested by you bearing upon the railroad valuation for the year 1935, we advise you that in view of the pending litigation attacking this valuation the Commission does not deem it proper to answer your questionnaire.

Yours very truly,

TAX COMMISSION OF THE
STATE OF WASHINGTON
By T. M. JENNER [1801]

PLAINTIFF'S EXHIBIT 36

Seattle, Washington
May 21, 1936

Mrs. Irene Schafer
Treasurer, Adams County,
Ritzville, Washington

Dear Madam:

The Northern Pacific Railway Company herewith pays to you the sum of \$17,326.55, being first half of

1935 taxes, levied on its operating real and personal property in your county, but nevertheless makes such payment under protest on the ground that the total amount of the taxes levied on its operating property for the year 1935 is unjust and excessive, due to the gross overvaluation of said operating property for said year by the State Tax Commission and the State Board of Equalization.

Very truly yours,

W. C. SMITH

Assistant Tax Commissioner [1802]

PLAINTIFF'S EXHIBIT 37

Seattle, Washington,

November 13, 1936

Mrs. Irene Schafer,
Treasurer, Adams County,
Ritzville, Washington.

Dear Madam:

The Northern Pacific Railway Company heretofore paid the first half of taxes levied on its operating real and personal in your county, but under protest, and now herewith pays to you the second half of the personal property taxes, amounting to \$2,003.70, protesting that it has heretofore paid more than the just and lawful tax which it should pay, and the payment is now made under protest on the ground that its operating property was

grossly overvalued by the Tax Commission and Board of Equalization and was discriminatory and at a far greater percentage of fair market value than applied to the general property in the state, and that the assessment and taxation of the operating property of this company violates the 14th Amendment to the State Constitution and the statutes of the state and the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States and imposes an unjust burden upon interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

NORTHERN PACIFIC RAILWAY
COMPANY

By W. C. SMITH

Its Assistant Tax Commissioner

[1803]

Plaintiff's Exhibit 38:

NORTHERN PACIFIC RAILWAY COMPANY

Freight and Passenger Revenues

	System		State of Washington	
	Freight revenue Acct.101	Passgr. revenue Acct.102	Freight revenue Acct.101	Passgr. revenue Acct.102

10 months ended June 30, 1897	\$10,958,475	\$2,744,018	\$12,246,529	\$4,750,622
1898	17,227,691	4,659,176	13,151,694	5,368,672
1899	19,162,419	4,867,721	13,974,474	6,204,242
1900	21,783,904	6,006,156	13,756,543	5,995,388
1901	23,036,438	7,017,823	12,954,191	7,834,821
1902	29,709,700	8,885,636	12,292,546	5,910,813
1903	32,725,997	10,192,268	11,520,847	4,810,907
1904	32,434,044	10,676,852	12,775,316	4,818,093
1905	36,264,129	10,897,765	12,154,711	4,649,821
1906	43,431,782	13,791,340	10,799,903	3,818,778
1907	47,668,244	16,330,875	12,058,753	3,577,875
1908	46,423,836	18,133,239	13,033,753	3,502,286
1909	47,073,305	17,330,608	15,216,359	4,401,258
1910	48,758,736	21,333,313	18,338,702	5,036,075
1911	43,332,918	17,278,813	17,556,954	5,414,683
1912	43,793,522	15,343,752	20,115,753	5,973,553
1913	52,270,686	15,808,036	18,331,800	4,767,260
1914	48,058,812	15,707,000	19,096,829	4,407,760
1915	43,823,637	13,619,114	21,479,927	4,416,658
1916	55,656,395	13,852,254	19,368,476	3,677,353
1917	59,543,090	13,959,370	20,481,192	3,758,549
1918	65,258,995	15,646,778	21,689,234	3,432,539
1919	78,534,344	17,146,144	20,601,488	3,097,503
1920	72,934,723	20,331,317	21,934,362	2,897,437
1921	81,090,390	21,143,708	21,580,918	2,496,956
1922	69,246,505	17,015,155	18,389,952	1,895,503
1923	71,725,006	15,551,897	14,657,047	1,396,903
1924	77,422,540	13,167,942	10,570,609	943,251
1925	76,301,308	13,201,179	10,153,354	732,256
1926	76,226,065	12,639,990	11,215,258	740,315
1927	75,462,955	11,773,283	11,284,500	825,622
1928	81,724,976	10,732,830	13,941,853	1,057,796
1929	76,862,142	9,820,918		
1930	65,135,270	7,727,955		
1931	50,823,027	5,472,083		
1932	38,789,246	3,648,156		
1933	40,224,392	3,208,871		
1934	43,205,825	3,362,558		
1935	45,262,826	3,525,510		
1936	51,993,325	4,201,068		

Year ended December 31,

N O R T H E R N P A C I F I C R A I L W A Y C O M P A N Y

Plaintiff's Exhibit 39.

Year ended December 31	Passenger revenue (Account 102)		Percent of 1920 (Total)	Number of tons of L.C.L. freight			
	Total			Originated	Total carried	Percent of 1920 (Total)	
	<u>S Y S T E M</u>						
1920	\$21	143 708	100.	677	103	831 176	100.
1921	17	015 155	80.47	487	114	596 326	71.74
1922	15	551 897	73.55	510	297	618 129	74.37
1923	15	438 784	73.02	490	273	609 332	73.31
1924	13	167 942	62.28	458	452	566 989	68.22
1925	13	201 179	62.44	462	651	576 928	69.41
1926	12	639 990	59.78	435	426	546 848	65.79
1927	11	773 283	55.68	419	059	531 704	63.98
1928	10	732 830	50.76	420	549	531 050	63.89
1929	9	820 918	46.45	393	174	500 107	60.17
1930	7	727 955	36.55	315	006	402 818	48.46
1931	5	472 083	25.88	235	204	305 797	36.79
1932	3	648 156	17.25	160	878	217 045	26.11
1933	3	208 871	15.18	135	635	192 020	23.10
1934	3	362 558	15.90	152	072	217 384	26.15
1935	3	525 510	16.67	132	445	195 531	23.52
	<u>STATE OF WASHINGTON</u>						
Year ended December 31	Interstate	Intrastate					
1920	\$ 2 550 895	\$3 422 658	\$ 5 973 553	100.	199 463	224 622	100.
1921	2 047 649	2 719 631	4 767 280	79.81	134 387	201 473	89.69
1922	1 926 110	2 481 650	4 407 760	73.79	145 758	215 022	95.73
1923	2 026 487	2 390 171	4 416 658	73.94	146 974	218 200	97.14
1924	1 776 108	1 901 245	3 677 353	61.56	128 631	192 204	85.57
1925	1 992 220	1 766 329	3 758 549	62.92	126 540	190 515	84.82
1926	1 791 154	1 641 385	3 432 539	57.46	120 694	183 591	81.73
1927	1 615 638	1 481 865	3 097 503	51.85	110 570	171 024	76.14
1928	1 497 230	1 400 207	2 897 437	48.50	110 910	172 139	76.63
1929	1 325 471	1 171 485	2 496 956	41.80	105 478	163 880	72.96
1930	1 102 512	792 992	1 895 504	31.73	74 240	122 933	54.73
1931	851 692	545 211	1 396 903	23.38	45 696	84 127	37.45
1932	563 536	379 715	943 251	15.79	27 865	56 977	25.37
1933	419 807	312 449	732 256	12.26	23 797	51 827	23.07
1934	423 060	317 255	740 315	12.39	25 261	57 307	25.51
1935	489 044	336 578	825 622	13.82	24 563	55 679	24.79

PLAINTIFF'S EXHIBIT 40

Northern Pacific Railway Company

REVENUE FREIGHT IN STATE OF WASHINGTON

Coal

Calendar Year	Originated on Nor. Pac. within the State		All other freight carried in State		Total freight carried in the State	
	Tons	Ratio of 1922	Tons	Ratio of 1922	Tons	Ratio of 1922
1922	817,004	100	136,918	100	953,922	100
1923	780,356	96	112,171	82	892,527	94
1924	761,140	93	148,806	109	909,946	95
1925	811,808	99	129,720	95	941,528	99
1926	826,653	101	116,299	85	942,952	99
1927	837,537	103	114,379	84	951,916	100
1928	785,763	96	142,007	104	927,770	97
1929	816,529	100	167,081	122	983,610	103
1930	749,121	92	140,940	103	890,061	93
1931	622,781	76	113,774	83	736,555	77
1932	502,557	62	89,281	65	591,838	62
1933	400,633	49	73,454	54	474,087	50
1934	385,286	47	73,561	54	458,847	48
1935	428,991	53	101,504	74	530,495	56
1936	474,853	58	96,028	70	570,881	60

[1806]

PLAINTIFF'S EXHIBIT 41
Northern Pacific Railway Company
WASHINGTON INTRASTATE LOG TRAFFIC
YEARS 1926 TO 1936, INCLUSIVE

Year	Cars	Ratio to 1926	Tons	Ton-miles	Northern Pacific revenue	Revenue per car	Average haul (miles)
1926	143,484	100	4,878,889	209,808,333	\$2,742,311	\$19,112	43.00
1927	122,898	86	4,181,514	154,167,284	2,233,035	18,170	36.87
1928	137,553	96	4,676,955	176,929,352	2,443,144	17,761	37.83
1929	127,667	89	4,341,826	163,660,949	2,262,033	17,718	37.69
1930	96,538	67	3,361,201	130,416,312	1,821,247	18,866	38.80
1931	59,939	42	2,038,152	78,692,102	1,126,291	18,791	38.61
1932	34,941	24	1,188,126	47,836,775	660,825	18,913	40.26
1933	50,009	35	2,000,463	77,642,091	766,411	15,325	38.81
1934	42,797	30	1,712,473	66,845,648	658,882	15,396	39.03
1935	45,711	32	1,828,593	78,669,224	707,665	15,481	43.02
1936	62,303	43	2,488,517	103,050,933	962,143	15,443	41.41

[1807]

PLAINTIFF'S EXHIBIT 42

Northern Pacific Railway Company

REVENUE FREIGHT IN STATE OF WASHINGTON
REFINED PETROLEUM AND ITS PRODUCTS

Calendar Year	Originated on Nor. Pac. within the State		All other freight carried in State		Total freight carried in the State	
	Tons	Ratio of 1922	Tons	Ratio of 1922	Tons	Ratio of 1922
1922	46,777	100	128,497	100	175,274	100
1923	49,577	106	179,326	140	228,903	131
1924	54,974	118	183,789	143	238,763	136
1925	91,656	196	169,575	132	261,231	149
1926	141,639	303	157,874	123	299,513	171
1927	133,200	285	170,083	132	303,283	173
1928	176,802	378	177,798	138	354,600	202
1929	167,462	358	188,778	147	356,240	203
1930	152,600	326	194,594	151	347,194	198
1931	106,946	229	162,518	126	269,464	154
1932	90,688	194	136,573	106	227,261	130
1933	79,193	169	101,417	79	180,610	103
1934	91,612	196	121,470	95	213,082	122
1935	74,719	160	126,646	99	201,365	115
1936	77,831	166	142,977	111	220,808	126

[1808]

NORTHERN PACIFIC RAILWAY COMPANY

NORTHERN PACIFIC RAILWAY COMPANY

Comparison of freight and passenger revenues - State of Washington, Class 1 roads.

Chgo., Milw., St. P. & Pac. R.R.	Ratio		Percent	Great Northern By Co.		Northern Pacific By Co.		Ore-Wash. R.R. & Nev. Co.		Spokane International By		Spok., Port. & Seattle By Co.		Total							
	Revenue	to of 1922		total	Revenue	to of 1922	Revenue	to of 1922	Revenue	to of 1922	Revenue	to of 1922	Revenue	to of 1922	Revenue	to of 1922					
FREIGHT REVENUE (Account 101)																					
1922	\$ 420 587	100.00	16.30	\$ 802 944	100.00	19.33	\$ 19 096 829	100.00	41.94	\$ 5 722 217	100.00	12.57	\$ 201 849	100.00	.44	\$ 4 238 168	100.00	9.42	\$ 45 532 594	100.00	100.
1923	6 203 817	110.55	15.52	11 271 048	128.04	21.32	21 479 927	112.48	40.62	6 536 732	114.23	12.36	166 285	82.38	.31	5 218 775	121.70	9.87	52 976 584	116.13	100.
1924	7 649 899	103.09	15.81	10 042 264	114.08	20.75	19 368 476	101.42	40.03	5 837 235	102.01	12.06	161 313	79.92	.33	5 332 211	124.35	11.02	48 391 401	106.28	100.
1925	7 735 241	104.24	15.46	10 413 371	118.29	20.81	20 481 192	107.25	40.93	5 976 467	104.44	11.95	190 244	94.25	.38	5 240 601	122.21	10.47	50 037 116	109.89	100.
1926	7 416 217	99.94	13.93	11 343 636	128.86	21.31	21 689 234	113.58	40.74	6 763 197	118.19	12.70	193 073	90.70	.34	5 845 468	136.32	10.98	53 241 025	116.93	100.
1927	6 953 352	93.70	13.46	11 425 125	129.79	22.11	20 601 488	107.88	39.88	6 272 023	109.61	12.14	192 666	95.45	.37	6 217 969	145.00	12.04	51 662 623	113.44	100.
1928	7 436 953	100.22	13.35	12 842 075	145.88	23.06	21 934 362	114.86	39.38	6 118 294	115.66	11.88	180 644	89.49	.33	6 685 922	155.92	12.00	55 698 250	122.33	100.
1929	6 945 981	93.60	12.74	12 628 995	145.46	23.17	21 580 917	113.01	39.59	6 503 011	113.64	11.93	191 930	96.09	.35	6 661 404	155.44	12.22	54 512 238	119.72	100.
1930	5 210 095	70.21	11.23	11 621 573	126.02	26.05	18 389 950	96.30	39.14	5 356 051	93.60	11.95	141 735	70.22	.31	5 671 567	132.26	12.22	46 390 973	101.89	100.
1931	3 721 689	50.15	10.27	8 982 610	102.04	24.79	14 597 048	76.75	40.45	3 317 032	75.44	11.92	120 870	59.88	.33	4 432 920	103.30	12.24	36 232 169	79.57	100.
1932	2 701 287	36.40	10.48	6 351 791	72.16	24.04	10 970 669	59.35	41.01	2 833 224	49.51	10.39	91 055	45.11	.36	3 226 325	75.24	12.92	25 774 291	56.61	100.
1933	2 896 624	39.03	11.23	6 315 390	71.74	24.49	10 153 354	53.17	39.37	3 021 736	52.81	11.72	77 997	38.44	.30	3 328 549	77.53	12.69	25 789 650	56.64	100.
1934	3 202 331	43.15	10.98	7 109 451	80.76	24.38	11 215 257	58.73	38.44	3 596 998	62.86	11.34	93 932	46.54	.32	3 943 562	91.96	13.92	29 161 531	64.05	100.
1935	3 953 800	47.89	11.73	7 164 309	81.39	23.65	11 284 500	59.09	37.20	3 950 604	69.04	13.04	96 970	48.04	.32	4 238 336	98.84	14.00	30 288 519	66.52	100.
PASSENGER REVENUE (Account 102)																					
1922	\$ 1 407 962	100.00	11.10	\$ 3 481 659	100.00	27.44	\$ 4 407 760	100.00	34.74	\$ 2 236 810	100.00	17.63	\$ 24 967	100.00	.20	\$ 1 128 679	100.00	8.39	\$ 22 687 777	100.00	100.
1923	1 497 469	106.36	11.45	3 627 369	104.19	27.74	4 416 698	100.20	33.78	2 246 373	100.43	17.18	31 035	124.70	.24	1 257 117	111.38	9.61	13 076 011	103.06	100.
1924	1 319 828	93.74	11.68	3 264 527	93.48	28.79	3 177 335	83.43	36.54	1 967 467	86.17	17.05	25 241	101.34	.22	1 098 577	97.33	9.72	11 302 953	89.09	100.
1925	1 168 337	82.98	10.78	3 038 454	87.27	28.02	3 758 549	85.27	34.67	1 801 042	80.52	16.71	21 732	87.25	.20	1 055 207	93.49	9.73	10 843 321	85.46	100.
1926	1 108 869	78.76	11.16	2 819 432	80.98	26.37	3 432 539	77.87	34.54	1 533 159	68.54	15.43	19 240	77.25	.19	1 024 868	90.80	10.31	9 938 107	78.33	100.
1927	1 214 786	86.28	12.85	2 705 044	77.69	28.61	3 097 503	70.47	36.76	1 471 025	65.76	15.56	18 056	72.49	.19	947 841	83.98	10.03	9 458 256	74.51	100.
1928	1 298 897	92.25	14.59	2 578 312	74.05	28.96	2 597 437	58.73	36.55	1 239 337	55.43	13.92	11 614	47.90	.19	871 565	77.22	9.79	8 902 212	70.16	100.
1929	1 074 467	75.60	13.13	2 594 396	74.52	32.00	2 469 957	56.25	30.80	1 109 079	49.58	13.68	13 834	57.54	.17	828 974	73.45	10.22	8 107 747	63.90	100.
1930	782 695	55.59	12.57	2 034 470	58.43	36.17	1 895 504	44.00	30.44	834 165	37.29	13.40	9 439	37.90	.15	670 907	59.44	10.77	6 227 180	49.08	100.
1931	514 043	36.55	11.51	1 444 447	41.49	36.31	1 391 903	31.19	31.24	407 136	27.14	13.58	5 217	20.95	.12	502 759	44.54	11.24	4 471 095	35.24	100.
1932	284 567	20.21	9.57	1 008 523	28.97	33.74	943 251	21.40	31.74	409 363	18.30	13.78	3 393	13.62	.11	326 654	28.89	10.86	2 971 771	23.42	100.
1933	258 767	18.38	10.17	864 673	24.84	34.00	732 256	17.01	28.79	380 409	17.01	18.96	2 376	9.54	.09	305 082	27.03	11.99	2 543 563	20.05	100.
1934	267 899	19.03	9.71	889 336	25.54	32.24	740 315	16.80	21.84	499 832	22.35	18.12	2 663	10.69	.10	358 408	31.75	12.99	2 758 453	21.74	100.
1935	281 341	19.98	9.29	969 528	27.85	32.01	825 622	18.74	27.26	553 371	24.74	18.27	2 800	11.24	.09	396 042	35.09	13.08	3 028 704	23.87	100.

Plaintiff's Exhibit 44:

Comparison of ratio of tonnage (intercoastal) via Panama Canal 1927-1935
and freight revenue in State of Washington for Class I roads operating in that state.

Year (see note)	Tonnage via Panama Canal		Freight revenue (Acct. 101)		Frt. revenue (Acct. 101)		System frt. revenue (Acct. 101)		System freight revenue of rds. optg. in Wash.*	
	Tons of 2240 pounds	% of 1927	(Acct. 101) Nor. Pac.	% of 1927	All Class I rds. in Wash.*	% of 1927	(Acct. 101) Nor. Pac.	% of 1927	(Acct. 101)	% of 1927
1927	10 862 402	100.	\$ 20 601 488	100.	\$ 51 662 623	100.	\$ 75 462 955	100.	\$328 361 118	100.
1928	10 233 699	94.21	21 934 362	106.47	55 698 250	107.81	81 724 976	108.30	353 793 938	107.75
1929	10 176 773	93.69	21 580 918	104.75	54 512 237	105.52	76 862 142	101.85	347 067 295	105.70
1930	10 490 064	96.57	18 389 952	89.27	46 390 973	89.80	65 135 270	86.31	293 551 367	89.40
1931	8 805 375	81.06	#14 657 048	71.15	36 232 169	70.13	#50 823 027	67.35	226 572 008	69.00
1932	6 622 984	60.97	#10 570 609	51.31	25 774 292	49.89	#38 789 246	51.40	169 811 135	51.71
1933	6 426 608	59.16	#10 153 354	49.28	25 789 650	49.92	#40 224 392	53.30	179 334 395	54.61
1934	8 925 058	82.16	#11 215 258	54.44	29 161 530	56.45	#43 205 825	57.25	194 530 212	59.24
1935	7 963 410	73.31	#11 284 500	54.78	30 288 519	58.63	#45 262 826	59.98	213 368 251	64.98

Excludes Northern Pacific Transport Co., in Washington, as follows:

1931	50 463
1932	132 642
1933	102 002
1934	120 751
1935	127 964

Source of information: "The Panama Canal Record" volumes 21 to 29, inclusive.

NOTE: Panama Canal Tonnage on basis of years ended June 30. All other figures on calendar year basis.

- * Chicago, Milwaukee, St. Paul & Pacific R.R. Company
- Great Northern Railway Company
- Northern Pacific Railway Company
- Oregon-Washington Railroad & Navigation Company
- Spokane-International Railway Company
- Spokane, Portland & Seattle Railway Company

Plaintiff's Exhibit 45:

United States intercoastal traffic moving through Panama Canal (in tons of 2,240 pounds)
years ended June 30, 1927-1936, inclusive.

Year ended	Atlantic to Pacific	Pacific to Atlantic	Total	Selected commodities - Pacific to Atlantic								
				Canned goods	Flour	Lumber	Metals			Total	Wheat	Wool
June 30, 1927	2 822 598	8 039 804	10 862 402	489 970	57 689	2 255 611	75 361	7 479	8 211	91 051	876	26 384
" 1928	2 576 399	7 657 300	10 233 699	542 245	63 531	2 572 373	105 048	1 932	9 240	116 220	7 849	47 571
" 1929	3 184 141	6 992 632	10 176 773	622 784	77 385	2 237 124	79 513	4 882	17 277	101 672	14 006	31 586
" 1930	3 161 530	7 328 534	10 490 064	555 675	64 580	2 205 097	106 366	7 438	30 873	144 677	3 181	46 109
" 1931	2 379 751	6 425 624	8 805 375	598 746	71 385	1 792 626	54 298	8 237	21 129	83 664	2 004	46 274
" 1932	1 917 052	4 705 932	6 622 984	466 706	65 389	1 496 888	42 838	15 812	14 243	72 893	963	34 309
" 1933	1 595 087	4 831 521	6 426 608	575 127	121 506	1 041 968	50 090	9 313	6 332	65 735	5 007	40 481
" 1934	2 074 707	6 850 351	8 925 058	556 917	213 914	1 143 670	76 564	15 124	7 969	99 657	158 145	49 605
" 1935	2 162 641	5 800 769	7 963 410	633 778	281 003	1 155 635	85 083	10 176	7 209	102 468	141 105	38 253
" 1936	2 578 508	5 140 567	7 719 075	660 454	296 683	1 519 063	124 599	8 158	4 884	137 641	82 435	42 197

Source of information: "The Panama Canal Record" volumes 21 to 29, inclusive.

PLAINTIFF'S EXHIBIT 46

COMMERCIAL TRAFFIC THROUGH THE PANAMA
CANAL (IN TONS OF 2,240 LBS.)

Fiscal years ended June 30	Atlantic to Pacific	Pacific to Atlantic	Total
1915	2,071,000	2,817,000	4,888,000
1916	1,369,000	1,725,000	3,094,000
1917	2,929,000	4,129,000	7,058,000
1918	2,639,000	4,893,000	7,532,000
1919	2,740,000	4,176,000	6,916,000
1920	4,093,000	5,282,000	9,375,000
1921	5,892,000	5,707,000	11,599,000
1922	5,496,000	5,389,000	10,885,000
1923	7,086,000	12,482,000	19,568,000
1924	7,860,000	19,135,000	26,995,000
1925	7,398,000	16,560,000	23,958,000
1926	8,037,000	18,000,000	26,037,000
1927	8,583,000	19,165,000	27,748,000
1928	8,310,000	21,321,000	29,631,000
1929	9,883,000	20,780,000	30,663,000
1930	9,476,000	20,555,000	30,031,000
1931	6,680,000	18,402,000	25,082,000
1932	5,635,000	14,173,000	19,808,000
1933	4,512,000	13,666,000	18,178,000
1934	6,167,000	18,551,000	24,718,000
1935	7,530,000	17,780,000	25,310,000

Northern Pacific Railway Company,
St. Paul, Minnesota.
April 8, 1937.

[1812]

PLAINTIFF'S EXHIBIT 47
Northern Pacific Railway Company
MARKET VALUE OF STOCKS AND BONDS

	<u>One Year</u>	<u>Three Years</u>	<u>Five Years</u>
1933 Assessment.			
Stock	\$ 36,890,000	\$105,400,000	\$163,680,000
Bonds ex. Series B & C	138,337,012	156,502,681	160,355,662
Total	175,227,012	261,902,681	324,035,662
1934 Assessment.			
Stock	50,530,000	60,760,000	124,310,000
Bonds ex. series B & C	142,852,305	147,689,479	154,568,655
Total	193,382,305	208,449,479	278,878,655
1935 Assessment.			
Stock	60,140,000	49,290,000	85,250,000
Bonds ex. Series B & C	169,780,279	151,011,835	157,031,605
Total	229,920,279	200,301,835	242,281,605
1936 Assessment.			
Stock	44,950,000	51,770,000	57,350,000
Bonds ex. Series B & C	180,356,793	164,524,410	158,891,249
Total	235,306,793	216,294,410	216,241,249

COMPARISON OF WASHINGTON ASSESSMENTS WITH STOCK
AND BOND VALUES BASED ON FIVE YEAR AVERAGES AS
SHOWN ABOVE.

Year	Stock and Bond Value	Washington Assessment	Ratio
1933	\$324,035,662	\$100,450,000	31.00%
1934	278,878,655	92,804,500	33.28%
1935	242,281,605	90,000,000	37.15%
1936	216,241,249	88,500,000	40.93%

VALUES FOR 1934, 1935 AND 1936 COMPUTED ACCORDING
TO 1933 RATIO.

1934	\$278,878,655	@ 31%	\$86,452,383
1935	242,281,605	@ 31%	75,107,298
1936	216,241,249	@ 31%	67,034,787

PLAINTIFF'S EXHIBIT 48

Northern Pacific Railway Company

	<u>1935</u> <u>Assessment</u>	<u>1936</u> <u>Assessment</u>
Market value of Stock and Bonds based on average quotations during year preceding year of assessment as found by Washington Tax Commission.....	\$339,315,872	\$344,874,344
Net railway operating income:		
Total for years 1930 to 1934.....	38,051,083	
Total for years 1930 to 1935.....		45,317,000
Nonoperating income:		
Total for years 1930 to 1934.....	61,871,540	
Total for years 1930 to 1935.....		69,104,843
All income	99,922,623	114,421,843
Operating income pro.....	38.08%	39.61%
Nonoperating income pro.....	61.92%	60.39%
Market value of Stock and Bonds divided according to percentages shown.		
Applicable to operating property.....	\$129,211,484	\$136,604,728
Applicable to nonoperating prop.....	210,104,388	208,269,616
Average net railway operating income for 5 and 6 year periods shown above.....	7,610,217	7,552,833
Value of operating property found by capitalization of average net railway operating income at 6%.....	\$126,836,950	\$125,880,550
Stock and bond value computed as above.....	129,211,484	136,604,728
Apportionment to Washington:		
Five factor basis used by N. P. Ry. Company.		
Percent	27.348%	26.69%
Amount	\$ 35,336,757	\$ 36,459,802
Two factor basis used by Judge Webster.		
Percent	30.93%	30.87%
Amount	39,965,112	42,169,880
Composite factor basis used by Tax Commission in reassessment proceedings.		
Percent	34.47%	33.92%
Amount	44,539,199	46,336,324

[1814]

PLAINTIFF'S EXHIBIT 49

Northern Pacific Railway Company

	<u>1935</u> Assessment	<u>1936</u> Assessment
Non-carrier and Tax-exempt Property as appraised by Washington Tax Commission in reassessment proceedings:		
1. N. W. I. Co. Stock.....	\$ 12,000,000	\$ 10,500,000
2. S. P. & S. Stock and Bonds.....	9,123,342	10,451,308
Based on capitalization of corporate net income—2 year average—at 6%.		
3. C. B. & Q. Stock.....	56,917,348	49,296,620
Based on capitalization of corporate net earnings—average for 4 year period 1930-1934 and for 5 year period 1930-1935 at 8%.		
4. Land Grant Lands.....	6,500,000	6,500,000
5. Roads leased	5,879,483	5,839,400
Based on capitalization of rentals—3 year average—at 6%.		
6. Miscellaneous Physical Properties.....	8,788,562	8,426,337
Based on capitalization of gross rentals—3 year average—at 8%.		
7. Cash on hand.....	6,560,115	8,307,996
8. Miscellaneous Stocks, Securities and Accounts	2,262,317	1,347,633
Based on capitalization of income—3 year average—at 6%.		
	<hr/>	<hr/>
	\$108,031,167	\$100,669,294
Carrier Property:		
Value found by capitalization of net railway operating income—3 year average—		
at 6%	90,788,863	120,097,350
	<hr/>	<hr/>
System Value	\$198,820,030	\$220,766,644

Stock and Bond value found by Washington
 Tax Commission 339,315,782 344,874,344

Based on quotations for single years ended
 with February 1935 and February 1936.

Excess of Stock and Bond value over Com-
 mission's value of non-carrier property plus
 capitalized value of carrier property.....\$140,495,842 \$124,107,700

[1815]

PLAINTIFF'S EXHIBIT 50

Northern Pacific Railway Company

COMPARISON OF WASHINGTON ASSESSMENTS WITH SYSTEM
 VALUES PRODUCED BY CAPITALIZATION OF NET RAIL-
 WAY OPERATING INCOME.

Assessment Year	Net Ry. Optg. Inc. 5 Yr. Average	Capitalized Value at 6%	Washington Assessment	Ratio
1933	\$14,159,502	\$235,991,700	\$100,450,000	42.565%
1934	10,263,822	171,063,700	92,804,500	54.25 %
1935	7,610,217	126,836,950	90,000,000	70.96 %
1936	6,156,213	102,603,550	88,500,000	86.25 %

WASHINGTON VALUES FOR 1934, 1935 AND 1936
 COMPUTED AT 1933 RATIO.

1934	\$171,063,700	@ 42.565%	\$ 72,813,264
1935	126,836,950	@ 42.565%	53,989,148
1936	102,603,550	@ 42.565%	43,673,201

[1816]

PLAINTIFF'S EXHIBIT 51

Northern Pacific Railway Company
OPERATIONS OF THE LAND DEPARTMENT

Acreage Account:

On January 1, 1917.....	5,864,007.41 acres.
On January 1, 1935.....	6,023,390.93 acres.
On January 1, 1936.....	6,029,514.35 acres.

Cash Transactions:

Cash Received	Expenses	Taxes	Net Cash Receipts
	January 1, 1917 to January 1, 1935		
\$40,259,645	\$7,929,394	\$13,603,022	\$18,727,229
	January 1, 1917 to January 1, 1936		
\$41,286,050	\$8,273,115	\$14,086,641	\$18,926,294
	January 1, 1930 to January 1, 1935		
\$ 5,034,711	\$1,923,920	\$ 3,139,138	28,347*
	January 1, 1931 to January 1, 1936		
\$ 4,438,202	\$1,792,005	\$ 2,906,809	260,612*

*Indicates red figures.

[1817]

Plaintiff's Exhibit 52:

NORTHERN PACIFIC RAILWAY COMPANY

Washington Assessments

	1935		1936	
	COLUMN "A"	COLUMN "B"	COLUMN "A"	COLUMN "B"
Market Value - 3 year average				
Stock	\$ 49 290 000	\$ 49 290 000	\$ 51 770 000	\$ 51 770 000
Bonds, exclusive of Series B. & C. bonds	<u>151 011 835</u>	<u>151 011 835</u>	<u>164 584 410</u>	<u>164 584 410</u>
	\$200 301 835	\$ 200 301 835	\$ 216 354 410	\$216 354 410
Nonoperating Deductions				
N.W.I.Co.	16 533 333	12 000 000	15 000 000	10 500 000
S.P.& B.	18 315 717	9 123 342	17 437 539	10 451 308
Land Grant	31 304 739	6 500 000	29 696 743	6 500 000
Land contracts	2 636 010		2 153 419	
Locally assessed nonoperating real estate	9 500 434	8 788 562	12 318 811	8 426 337
Manitoba Railway	5 837 550	5 879 463	5 000 000	5 635 400
Nor. Pac. Terminal Co. of Oregon			3 076 619	
Cash	6 078 660	6 560 115	10 537 312	8 307 996
Miscellaneous Treasury Securities-	<u>3 527 666</u>	<u>2 262 317</u>	<u>2 795 369</u>	<u>1 347 633</u>
	93 734 129	51 113 819	96 012 242	51 372 674
Stock and bond value of operating property	105 567 706	149 188 015	120 282 168	164 921 736
Net Railway Operating Income - 3 year average	5 447 332	5 447 332	7 205 841	7 205 841
Capitalized value of operating property (at 6%)	90 788 863	90 788 863	120 097 350	120 097 350
Cost of Reproduction-	406 671 775	420 119 888	395 685 894	478 252 920
Composite system value				
Stock and bond value - 40%	42 627 082	59 676 206	48 112 867	65 958 694
Capitalized value - 40%	36 315 545	36 315 545	48 038 940	48 038 940
Cost of reproduction - 80%	<u>81 334 355</u>	<u>96 023 978</u>	<u>79 137 179</u>	<u>95 650 584</u>
	160 276 982	192 014 729	175 288 986	209 658 218
Basis for allocation - 1/3 of cost of reproduction and 2/3 all track mileage owned and operated	30.93%	30.93%	30.87%	30.87%
Computed value	\$ 49 573 671	\$ 59 390 156	\$ 54 111 710	\$ 64 721 492

In column A for each year the nonoperating deductions are as claimed by N.P.Ry.Co. and the cost of reproduction figures are as computed by the N.P.Ry.Co.

In Column B for each year the nonoperating deductions and cost of reproduction areas claimed by the Washington Tax Commission in its reassessment proceedings.

The method of computation is that used by Judge Webster in deciding the 1925-1926 suit of N.P.Ry.Co. v. Adams County, et al.

PLAINTIFF'S EXHIBIT 54

Northwestern Improvement Company

VALUE OF ASSETS AS OF MARCH 1, 1936

Physical property

Full value based on assessed

value for year 1935

Assessed value\$5,450,208

Full value

\$ 8,300,082

Securities owned

Marketable securities

	<u>Par value</u>	<u>Book value</u>	<u>Market value</u>
U. S. Treasury bds. 27/8%	\$ 190,000	\$ 197,184	\$ 191,396
U. S. Treasury notes 11½%	652,050	676,706	652,050
Nor. Pac. capital stock.....	1,929,100	2,744,916	665,540
“ “ “ “			
sub. receipts	120	98	41
St. Paul-Duluth Div. bonds	1,000	800	1,000
Wash. Central Ry. bonds.....	500	328	493
Col. & Sou. Ry. capital stock	160,000	95,999	55,200
Total			1,565,720

Other securities

Walla Walla Valley Ry. Co.

Full value based on

assessed value

203,255

Lemhi Tel. Co. & Gales Creek

& Wilson River R. R.

Full value based on

assessed value

161,075

Other securities—stock..... 229,794 243,974 243,974

bonds..... 28,600 29,693 29,693

notes..... 155,157 155,157 155,157

Deferred land contracts..... 398,833

Cash 789,132

Accounts receivable—book value 4,705,932 6,687,051

16,552,853

Less current liabilities..... 206,895

\$16,345,958

[1819]

PLAINTIFF'S EXHIBIT 55

Northern Pacific Railway Company

COMPARISON OF INTERSTATE FREIGHT REVENUE—STATE OF WASHINGTON—YEAR ENDED DECEMBER 31, 1934, ON VARIOUS BASES

Freight revenue (Acct. 101) interstate State of Washington proportion as determined by Washington Tax Commission for purpose of re-assessment of 1935-1936 taxes.....	\$7,654,473
Freight revenue (Acct. 101) interstate, State of Washington as computed by Northern Pacific Railway Company on mileage basis and as reported to Washington Department of Public Works	6,332,557
Excess of assignment of freight revenue (interstate) to State of Washington under Tax Commission's plan as compared with basis used by Northern Pacific Railway.....	\$1,321,916
Percentage of such increase.....	20.87%
Amount of such increase—years 1930-1935, incl.....	\$8,956,497
Percentage of such increase for years 1930-1935, incl.	23.12%
Freight revenue (Acct. 101) interstate as apportioned to State of Washington on Tax Commission's method (as above).....	7,654,473
Apportioned to Washington on basis of east as used by Washington Tax Commission but assigning to Washington a proportion of revenue of traffic that in some degree affected State of Washington	6,445,036
Excess of assignment on Tax Commission basis by use of system revenue instead of only that portion of system revenue in which Washington traffic participated	\$1,209,437
Percentage of such increase on Washington Tax Commission basis as compared with revision of such basis to reflect State of Washington traffic	18.77%

[1820]

PLAINTIFF'S EXHIBIT 56

Northern Pacific Railway Company

COMPARISON OF REVENUE STATISTICS INTERSTATE FREIGHT TRAFFIC—CARLOAD—WASHINGTON AND BALANCE OF SYSTEM YEAR ENDED DECEMBER 31, 1934.

	<u>System</u>	<u>Total Northern Pacific Revenue on freight to, from, or passing through State of Washington</u>	<u>Balance of Traffic</u>
Freight revenue (Acct. 101)			
Interstate carload traffic.....	\$31,608,100	\$18,395,281	\$13,212,819
	% 100%	58.20%	41.80%
Revenue net ton miles (thousands)	3,272,409	2,196,485	1,075,924
Revenue per net ton mile (cents) .....	.966	.838	1.228
	% 100%	87%	127%
Ratio of revenue per ton mile earned on interstate carload traf- fic handled wholly outside the State of Washington to revenue per ton mile earned on interstate carload traffic handled partly within and partly without the State of Washington.....	147%		
Revenue tons	6,624,473	2,563,127	4,061,346
Revenue net ton miles (thousands)	3,272,409	2,196,485	1,075,924
Average haul (miles).....	493.99	856.96	264.92
			[1821]

PLAINTIFF'S EXHIBIT 57

Northern Pacific Railway Company

COMPARISON OF PERCENTAGES OF INTRASTATE
REVENUE NET TON MILES TO TOTAL REVENUE
NET TON MILES IN STATE OF WASHINGTON AND
FOR BALANCE OF SYSTEM

	Intrastate of total	
	State of Washington	Other States
Revenue net ton miles—		
Year ended December 31, 1933.....	39.86%	8.62%
“ “ “ “ 1934.....	35.25%	9.17%
“ “ “ “ 1935.....	33.86%	8.41%
Average for three year period.....	36.13%	8.72%
		[1822]

PLAINTIFF'S EXHIBIT 58

Northern Pacific Railway Company

COMPARISON OF NET RAILWAY OPERATING INCOME SYSTEM
AND WASHINGTON FOR YEAR ENDED DECEMBER 31, 1934

System

Net railway operating income..... \$7,915,209

Washington

Net railway operating income before tax accruals, based on revision of interstate freight revenue to reflect Washington interstate traffic\$3,300,120

Deduct tax accruals year 1934:

State of Washington (exclusive of federal taxes)\$1,833,863

Proportion of federal taxes..... 19,890 1,853,753 \$ 1,446,367

Ratio of Washington to System..... 18.27%

Washington net railway operating income as above capitalized at 6%..... \$24,106,117

[1823]

PLAINTIFF'S EXHIBIT 59

Northern Pacific Railway Company

The following statement shows the value in Washington found by capitalizing at 6% the average of the net railway operating income, five years averages, as found by the Washington Tax Commission in its reassessment opinion, page 104, line 11, after deducting annual average taxes for the five years on the operating property:—

Net railway operating income, page 104, line 11, as explained above, 1930-1934.....	\$ 4,862,626
Deduct taxes for the five year averages as explained above	2,249,538
Total.....	\$ 2,613,088

Capitalized at 6%.....	43,551,460
------------------------	------------

The following shows the same results for the 1936 assessment using average of years 1931-1935, page 104, line 11.....	4,146,306
Deduct taxes as explained above.....	2,001,171
Total.....	2,145,135

Capitalized at 6%.....	\$35,752,250
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[1824]

PLAINTIFF'S EXHIBIT 60.

Northern Pacific Railway
 COMPARISON OF ALLOCATION FACTORS
 Gross Operating Revenue, Locomotive and Car Miles and
 Revenue Traffic Units.

 State of Washington

	Gross operating revenue	Loco. & car miles	Revenue traffic units (ton mi. & pass. mi.)	Average of three (use factors shown)
Year ended Dec. 31, 1920.....	25.88	21.95	21.44	23.09
1921.....	27.01	22.53	23.12	24.22
1922.....	27.22	22.31	22.33	23.95
1923.....	28.01	22.82	23.01	24.61
1924.....	26.80	21.83	22.03	23.55
Average 1920-1924				23.88
Year ended Dec. 31, 1930.....	27.65	22.72	23.36	24.58
1931.....	28.32	23.44	25.62	25.79
1932.....	27.28	23.05	24.56	24.96
1933.....	25.36	21.95	23.49	23.60
1934.....	26.00	21.34	24.03	23.79
1935.....	25.29	21.35	23.09	23.24
Average 1920-1935				24.33

[1825]

PLAINTIFF'S EXHIBIT 72

NUMBER OF TAXING DISTRICTS WHICH INCLUDE
PROPERTY OF NORTHERN PACIFIC RAILWAY
COMPANY

Year 1936

County	Roads	Cities	Schools	Others	Total
Adams	5	3	9		17
Benton	3	2	10	2	17
Clark	2	3	15	1	21
Columbia	3	1	5		9
Cowlitz	5	5	13	2	25
Franklin	1	2	9		12
Grant	2	2	10		14
Grays Harbor	3	6	23	3	35
King	2	12	51	6	71
Kittitas	3	3	12	4	22
Lewis	2	6	19		27
Lincoln	3	6	15		24
Mason	1	1	6		8
Pacific	2	2	5	2	11
Pierce	3	10	30	2	45
Skagit	2	1	10		13
Snohomish	3	4	16	2	25
Spokane	14*	4	24		42
Thurston	2	5	21	1	29
Walla Walla	4	4	22	1	31
Whatecom	5*	6	16	2	29
Whitman	4	8	39		51
Yakima	3	12	29		44
	—	—	—	—	—
	77	108	409	28	622
		23 Counties.....			23
					—
					645

*Townships

[1826]

Plaintiff's Exhibit 73:

STATEMENT SHOWING TOTAL PROPERTY TAXES UNCOLLECTED JANUARY 1, 1936; COLLECTIONS, AND NET OF CANCELLATIONS AND ADDITIONS, DURING THE YEAR; AND UNCOLLECTED BALANCE DECEMBER 31, 1935.

Table with columns for Current Tax Roll (1935), Delinquent Tax Rolls (1936), and Current and Delinquent Tax Rolls (1936). Rows list various locations and their respective tax amounts, collections, and unpaid balances.

** Net of cancellations and additions
* Net addition

TAX COMMISSION OF THE STATE OF WASHINGTON
Compiled May, 1937, from Reports
Submitted by County Treasurers

Plaintiff's Exhibit 74:

NORTHERN PACIFIC RAILWAY COMPANY
FRANKLIN COUNTY, WASHINGTON

TOTAL OF 1936 TAX ROLLS IN TAXING DISTRICTS IN WHICH NORTHERN PACIFIC IS INTERESTED				N.P. RY. VALUATION AND TAXES EXTENDED ON TAX ROLLS		EXCESSIVE N. P. VALUE AND TAXES - 65.75294%		CORRECT ASSESS. VALUE OF COUNTY AFTER DEDUCTING N.P. EXCESSIVE VALUE (Col. 2 minus Col. 7)		LEVY TO RAISE 1936 TAXES IN COL. 4 ON FUND VALUE IN (Col. 8 on Col. 9)		LEVY TO RAISE AFTER MAKING LEVY IN COL. 11 REMAINS WITHIN 40 MILL ACT (Col. 8 on Col. 9 A LEVY OF:		MAXIMUM TAXES UNDER 40 MILL ACT (Col. 12 multiplied by Col. 9)		NECESSARY FUND THAT COULD NOT BE LEVIED (Col. 4 minus Col. 13)		CORRECT NORTHERN PACIFIC VALUE		REFUND TAX TO BE PAID BY NORTHERN PACIFIC		
F U N D	VALUATION	LEVY	T A X	VALUATION	T A X	VALUATION	T A X															
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)							
State County	\$ 8,299,770	3.194	\$ 26,509.46	\$ 2,204,562	\$ 7,041.37	\$ 1,405,473	\$ 16,559.28	\$ 6,894,297	10.339	2.402	7.598	\$ 52,382.87	\$ 18,895.56	\$ 799,089	\$ 1,919.41							
Road No. 1	6,521,256	3.0	19,563.77	1,874,382	5,623.15	1,194,974	3,584.92	5,326,282	3.673	.673	2.327	12,394.26	7,169.51	679,408	457.24							
Cities:																						
Connell	179,349	24.428	4,381.14	57,448	1,403.34	36,625	894.67	142,724	30.697	6.269				20,823	130.54							
Pasco	1,544,973	15.0	23,174.60	272,732	4,090.98	173,875	2,608.12	1,371,098	16.902	1.902				98,857	188.03							
Schools																						
Current Expense																						
Dist. No. 1	2,847,525	9.373	26,689.85	672,077	6,299.38	428,469	4,016.04	2,419,056	11.033	2.320	7.680	18,578.35	8,111.50	243,608	565.17							
15	548,012	7.852	4,302.99	379,545	2,908.19	241,971	1,854.06	306,041	14.060	7.988	2.012	615.75	3,687.24	137,574	1,098.94							
20	225,429	5.871	1,323.49	6,149	36.10	3,920	23.01	221,509	5.975	.104	9.896	2,132.05		2,229	.23							
23	329,546	4.940	1,627.96	64,592	319.08	41,179	203.42	288,367	5.645	.705	9.295	2,680.37		23,413	16.51							
45	1,553,256	9.862	15,318.21	195,504	1,928.06	124,640	1,229.19	1,428,616	10.722	2.168	8.928	12,754.68	2,563.53	70,864	75.97							
49	483,485	2.950	1,426.28	321,213	947.58	204,783	804.11	275,702	5.119	2.188	7.332	2,152.79		116,430	252.42							
51	1,365,141	9.722	13,271.90	495,606	4,818.28	315,963	3,071.80	1,049,178	12.650	3.088	6.912	7,251.32	6,019.98	179,643	554.74							
54	470,441	4.907	2,306.45	69,876	342.88	44,548	218.60	425,893	5.420	.703	9.297	3,959.53		25,328	17.01							
TOTAL Current School Expenses			\$ 66,269.13		\$ 17,599.55		\$ 11,220.23						\$ 20,382.25		\$ 2,561.79							
SCHOOL TAXES Outside 40 Mill Act (Bond Retirement and bond interest)																						
Dist. No. 1	2,676,341	3.408	9,335.08	672,077	2,326.85	428,469	1,463.44															
15	548,012	2.260	1,238.51	379,545	929.77	241,971	592.76															
45-53	1,353,932	2.144	2,987.15	195,504	419.16	124,640	287.23															
51	1,365,141	.531	724.39	495,606	233.17	315,963	167.78															
54	470,441	1.021	856.67	69,876	127.25	44,548	81.13															
Total School bonds and interest			\$ 15,122.30		\$ 4,066.20		\$ 2,592.34															
Total All School Taxes			\$ 81,391.43		\$ 21,665.75		\$ 13,012.57															
GRAND TOTALS.....			\$ 226,298.83		\$ 58,757.37		\$ 37,459.56						\$ 46,447.32 *		\$ 5,277.01 **							

Note: Taxing Districts in which Northern Pacific is not interested are not shown.

*\$46,447.32 is the amount over the forty mill limit act that must be raised to equal the amount of the budget requirements (Column 4) after taking out the refund fund (Column 8).

**\$5,277.01 is the amount that would be levied on Northern Pacific Railway to pay its own judgment and equals 14.1% of total excess. This amount does not include estimated two year's interest on the refund fund warrants nor any increased levy for delinquency.

Plaintiff's Exhibit 75:

NORTHERN PACIFIC RAILWAY COMPANY
BENTON COUNTY, WASHINGTON

TOTAL OF 1936 TAX ROLLS IN TAKING DISTRICTS IN WHICH NORTHERN PACIFIC IS INTERESTED				N. P. RY. VALUATION AND TAXES EXTENDED ON TAX ROLLS		EXCESSIVE N. P. VALUE AND TAXES - 63.75294%		CORRECT ASSED VALUE OF COUNTY AFTER DEDUCTING N. P. EXCESSIVE VALUE (Col. 2 minus Col. 7)		LEVY TO RAISE 1936 TAXES IN COL. 4 ON VALUE IN COL. 9		LEVY TO RAISE FUND REMAINS WITHIN 40 MILL ACT IN COL. 9		AFTER MAKING LEVY IN COL. 11 (Col. 12 multiplied by Col. 9)		MAXIMUM TAXES UNDER 40 MILL ACT (Col. 12 minus Col. 9)		NECESSARY FUND THAT COULD NOT BE LEVIED (Col. 4 minus Col. 13)		CORRECT NORTHERN PACIFIC VALUE		REFUND TAX TO BE PAID BY NORTHERN PACIFIC				
FUND	VALUATION	LEVY	TAX	VALUATION	TAX	VALUATION	TAX	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)											
State County	\$ 9,132,630	3.43	\$ 31,324.92	\$ 1,556,605	\$ 5,339.16	\$ 992,361	\$ 3,403.67	\$ 8,140,249	11.22	1.64	2.36	\$ 68,052.48	\$ 23,273.92	\$ 564,224	\$ 925.33											
Road Dist. 1	2,407,638	3.0	7,222.91	459,582	1,378.75	292,997	878.99	2,114,641	3.42	.42	2.58	5,455.77	1,767.14	166,585	69.97											
" " 2	2,103,497	3.0	6,310.49	493,353	1,480.05	314,527	943.58	1,708,970	3.53	.53	2.47	4,418.76	1,891.73	178,826	94.78											
" " 3	2,740,177	3.0	8,220.53	457,183	1,371.55	291,468	874.40	2,448,709	3.36	.36	2.64	6,464.59	1,755.94	165,715	59.66											
Cities:																										
Kennewick	1,072,058	20.0	21,457.16	88,439	1,769.79	56,362	1,127.65	1,016,476	21.11	1.11				32,067	35.58											
Prosser	753,293	21.0	15,818.94	58,048	1,219.01	37,007	777.15	718,276	22.08	1.08				21,041	22.72											
Port of Kennewick	1,205,237	0.5	602.62	123,338	61.67	70,632	39.32	1,126,605	0.54	0.04				44,706	1.79											
Utility District	9,132,630	0.77	7,032.12	1,556,605	1,198.59	992,361	764.14	8,140,249	0.86	0.09				564,224	50.70											
Schools:																										
Current Expense																										
Dist.No. Jt.l	118,828	10.	1,188.28	15,610	156.10	9,952	99.52	108,676	10.91	1.08	8.92	971.17	217.11	5,658	6.11											
6	568,871	10.	5,885.71	107,915	1,079.15	68,799	687.99	519,772	11.32	1.58	8.42	4,376.45	1,509.23	39,116	61.80											
16	1,776,367	0.	14,210.83	469,947	3,759.58	299,615	2,396.84	1,476,762	9.62	3.04	6.96	10,278.26	3,932.67	170,342	517.84											
17	2,150,206	7.	17,201.65	466,807	3,267.62	297,603	2,083.20	1,852,603	9.29	1.87	8.13	15,061.66	2,139.99	169,204	316.41											
20	209,361	10.	2,093.61	136,161	1,361.61	86,807	866.07	122,554	17.03	7.08	2.92	357.86	1,735.75	49,354	349.43											
27-52	754,595	11.	8,299.55	294,321	3,237.53	187,638	2,064.02	566,957	11.98	6.62	3.38	1,916.31	4,875.04	106,683	708.24											
36	264,214	10.	2,642.14	27,900	279.00	17,787	177.87	246,427	10.72	0.72	9.28	2,286.94	355.30	10,113	7.28											
16-67	42,430	10	424.30	37,944	379.44	24,190	241.90	10,240	23.01	13.01	3.01 Def.	69.49 Def.	424.30	13,754	189.94											
Total Current School Expenses....			\$ 50,237.97		\$ 12,931.39		\$ 8,244.14																			
Outside 40 Mill Limit Act																										
(Bond Retirement & Bond Interest)																										
Dist. No. Jt.l	118,828	3.	356.48	15,610	46.03	9,952	29.06																			
6	568,871	2.	1,177.14	107,915	215.83	68,799	137.60																			
16	1,776,367	7.	12,434.57	469,947	3,289.63	299,605	2,097.24																			
17	1,783,668	6.	10,702.00	259,303	1,555.02	165,313	991.86																			
27-52	754,595	11.	8,300.55	294,321	3,237.53	187,638	2,064.02																			
17-23	213,621	3.	640.86	160,489	481.47	102,316	306.95																			
17-35	77,957	3.	233.77	47,015	141.05	29,973	89.92																			
Total School bonds and interest			\$ 33,845.47		\$ 8,968.16		\$ 5,717.47																			
Total All School Taxes			\$ 84,283.44		\$ 21,899.55		\$ 13,961.61																			
GRAND TOTALS.....			\$ 273,599.43		\$ 51,283.16		\$ 32,694.52							\$ 43,876.02*	\$ 3,415.66**											

Note: Taxing Districts in which Northern Pacific is not interested are not shown.

*\$43,876.02 is the amount over the forty mill limit act that must be raised to equal the amount of the budget requirements (Column 4) after taking out the refund fund (Column 8).

**\$3,415.66 is the amount that would be levied on Northern Pacific Railway to pay its own judgment and equals 10.4% of total excess. This amount does not include estimated two year's interest on the refund fund warrants nor any increased levy for delinquency.

Plaintiff's Exhibit 76, page 1

NORTHERN PACIFIC RAILWAY COMPANY
GRAYS HARBOR COUNTY, WASHINGTON

FUND	TOTAL OF 1916 TAX ROLLS IN TAKING DISTRICTS IN WHICH NORTHERN PACIFIC IS INTERESTED				V. P. RY. VALUATION AND TAXES EXTENDED ON TAX ROLLS		EXCESSIVE N. P. VALUE AND TAXES - 63.75% 2/4		CORRECT ASSN. VALUE OF COUNTY AFTER DEDUCTING EXCESSIVE VALUE (Col. 2 minus Col. 7	LEVY TO RAISE 1916 TAXES IN COL. 9	LEVY TO RAISE FUND (Col. 8 ON VALUE in Col. 9	AFTER MAKING LEVY IN COL. 11 FUND REMAINS WITHIN 40 MILL ACT (Col. 8 ON VALUE OF LEVY OF	MAXIMUM TAXES UNDER 40 MILL ACT (Col. 12 multiplied by Col. 9	NECESSARY FUND THAT WOULD NOT BE LEVIED (Col. 4 minus Col. 13)	CORRECT NORTHERN PACIFIC VALUE	REFUND TO BE PAID BY NORTHERN PACIFIC
	TOTAL VALUATION	LEVY	T & T		VALUATION	T & T	VALUATION	T & T								
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	
State County	\$24,104,761	4.0	\$ 96,418.24	\$ 1,107,304	\$ 4,429.22	\$ 705,939	\$ 17,930.85	\$ 23,293,204	10.30***	0.77	9.23	\$ 214,996.27	\$ 24,993.05	\$ 401,565	\$ 309.05	
Voted	21,999,143	10.	239,969.32		23,696.31											
Bonds		7.0	167,992.51													
		4.4	105,595.30													
Board No. 1	4,079,544	3.	12,217.41	436,870	1,310.61	278,517	\$35.55	3,794,027	3.22	0.22	2.78	10,547.40	1,670.01	158,353	34.24	
" 2	3,969,172	3.	11,907.37	180,415	541.85	116,148	385.45	3,854,324	3.09	0.09	2.91	11,215.21	692.16	65,468	5.89	
" 3	2,013,768	3.0	8,741.18	257,527	772.59	164,181	442.54	2,749,587	3.18	0.18	2.82	7,753.84	987.34	93,346	16.80	
Port of Grays Harbor	23,999,143	5.0	119,994.70	1,107,304	5,536.52	705,939	3,529.69	23,293,204	5.15	0.15				401,365	60.20	
Cities:																
Aberdeen	7,289,996	19.4	141,289.95	93,436	1,812.66	59,568	1,155.62	7,223,428	19.56	0.16				33,868	5.42	
Ehlerman	237,716	13.7	3,255.54	7,332	100.45	4,674	64.04	233,042	13.97	0.27				2,658	0.72	
Elma	365,017	20.	7,300.30	10,152	691.04	20,223	384.46	345,794	21.11	1.11				10,929	12.13	
Houliam	4,444,033	23.9	106,210.94	69,637	1,664.32	44,396	1,051.05	4,299,637	24.14	0.24				25,241	6.06	
Montesano	601,568	20.	12,031.24	21,164	423.28	13,493	269.85	588,075	20.46	0.46				7,671	3.53	
Oakville	72,658	15.7	1,140.66	10,570	165.95	6,739	105.80	65,919	17.30	1.60				3,831	6.13	
Hoquiam Flood Control	4,363,431	1.5	6,545.05	68,511	102.77	43,678	65.82	4,319,753	1.52	0.02				24,833	.50	
Schools:																
Current Expense																
Dist. No. 5	\$ 7,995,559	10.	\$ 79,955.59	\$ 184,699	\$ 1,846.99	\$ 117,751	\$ 1,177.51	\$ 7,877,808	10.15	0.22	9.78	\$ 77,044.96	\$ 2,910.63	\$ 66,948	\$ 14.73	
16	63,598	10.	63,598	28,474	28,474	18,153	181.53	45,445	14.00	4.00	6.00	272.67	363.31	10,321	41.28	
19	122,127	10.	1,221.27	22,438	224.38	14,305	143.05	107,822	11.33	1.86	8.14	343.60	8,133	15.13		
24	102,470	10.	1,024.70	31,762	317.62	20,249	202.49	82,221	12.46	2.46	7.54	619.95	11,513	28.32		
25	57,911	10.	579.11	8,790	87.90	5,604	56.04	52,337	11.07	1.07	8.93	467.37	112.04	3.11		
27	72,464	10.	724.64	21,057	210.57	13,424	134.24	59,042	12.27	2.27	7.73	456.39	7,633	17.43		
28	5,061,732	10.	50,617.32	139,751	1,397.51	89,095	890.95	4,972,637	10.29	0.29	9.71	48,284.31	2,333.01	50,656	14.69	
29	566,865	6.	3,401.10	7,332	140.77	4,674	28.04	562,191	6.05	0.05	9.95	2,914.80	-	2,658	.33	
41-98	319,304	10.	3,193.04	14,977	149.77	9,548	95.48	309,756	10.31	0.59	9.41	2,691.80	278.24	5,429	7.20	
45	200,068	5.	1,000.34	73,808	738.08	47,055	470.55	235,28	153,013	6.54	7.54	1,353.72	-	26,753	65.81	
62	67,449	10.	674.49	1,264	12.64	13,689	136.89	67,267	10.85	1.62	9.68	632.67	41.72	1,183	.38	
70	42,934	10.	429.34	21,472	214.72	20,81	208.1	24,418	11.62	1.62	5.23	152.07	277.27	7,783	37.12	
74	158,398	10.	1,583.98	19,408	194.08	12,373	123.73	146,025	14.77	4.77	7.46	1,089.35	494.63	7,035	17.87	
75-98	175,257	10.	1,752.57	38,301	383.01	24,418	244.18	150,839	11.62	1.62	8.38	1,264.03	488.54	13,883	22.49	
76	188,924	10.	1,889.24	37,655	376.55	24,006	240.06	164,918	11.46	3.06	6.94	1,144.53	744.71	33,649	41.77	
100	1,094,013	8.5	9,350.11	48,259	482.59	40,220	402.20	1,063,246	8.80	0.36	9.64	10,240.69	-	17,492	6.30	
104	102,549	10.	1,025.49	18,510	185.10	11,801	118.01	90,748	11.30	1.30	8.70	789.51	235.98	6,709	8.72	
106	294,003	3	882.01	1,842	5.83	20,181	201.81	292,765	3.01	1.11	8.89	1,622.14	404.35	11,474	12.74	
114	202,649	10.	2,026.49	31,655	316.55	20,181	201.81	182,468	11.11	1.11	6.21	1,275.53	1,275.43	44,341	168.05	
115-200	273,551	9	2,551.96	122,331	1,100.88	77,990	701.91	205,561	12.41	3.79	9.10	6,307.82	1,246.18	35,383	31.84	
116	765,400	10.	7,654.00	97,616	976.16	62,233	622.33	693,167	10.90	0.90	9.15	7,066.65	1,021.49	20,753	17.64	
118	408,834	10.	4,088.34	57,255	572.55	36,502	365.02	407,321	10.47	0.85	9.15	7,066.65	1,021.49	20,753	17.64	
123	87,863	10.	878.63	76,548	765.48	48,802	488.02	839,061	10.58	1.11	8.89	7,459.25	1,419.38	27,746	30.80	
Total Current School Expense	\$ 189,042,25		\$ 1,890,422.25	\$ 10,456.36	\$ 104,563.6	\$ 6,472.61	\$ 64,726.1					\$ 14,661.53	\$ 599.73			

Plaintiff's exhibit 76, page 2:

NORTHERN PACIFIC RAILWAY COMPANY

GRAYS HARBOR COUNTY, WASHINGTON.

FUND	TOTAL 1936 TAX ROLLS IN TAXING DISTRICTS IN WHICH NORTHERN PACIFIC IS INTERESTED		N. P. RY. VALUATION AND TAXES EXTENDED ON TAX ROLLS		EXCESSIVE N. P. VALUE AND TAXES - 63.75204%		CORRECT ASSD. VALUE OF COUNTY AFTER DEDUCTING N. P. EXCESSIVE VALUE (Col. 2 minus Col. 7)	LEVY TO RAISE 1936 TAXES IN CCL. 4 ON VALUE IN Col. 9	LEVY TO RAISE REFUND FUND (Col. 8 ON VALUE OF Col. 7)	AFTER MAKING LEVY WITHIN 40 MILL ACT (Col. 12 Multiplied by Col. 9 OF:	MAXIMUM TAXES UNDER 40 MILL ACT (Col. 12)	NECESSARY FUND THAT COULD NOT BE LEVIED (Col. 4 minus Col. 13)	CORRECT NORTHERN PACIFIC VALUE	REFUND TAX TO BE PAID BY NORTHERN PACIFIC		
	VALUATION	LEVY	TAX	VALUATION	TAX	VALUATION									TAX	(10)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
Taxes not within 40 mill act (Bond Retirement and Bond Interest)																
Dist. No.	5	\$ 7,005.550	5.	\$ 39,977.80	\$ 184,609	1	923.50	\$ 117,751	\$ 588.71	} Refund fund levy for these excessive school taxes included in school refund fund levies shown above.						
	10	122,127	4.	488.51	22,438		80.75	14,305	57.22							
	28	5,051,742	6.	30,370.39	139,751		838.51	80,006	534.57							
	41	319,304	0.	2,873.74	14,977		134.70	9,548	85.53							
	46	200,068	3.	600.20	73,808		221.42	47,055	141.16							
	74	188,398	10	1,583.98	19,408		194.08	12,373	123.73							
	76	188,924	5	444.62	37,655		188.28	24,006	120.03							
	100	1,004,013	4	4,376.05	48,250		193.04	30,767	123.07							
	106	204,003	4	1,576.01	1,942		7.77	1,248	4.86							
	115-200	283,551	1	283.55	122,331		122.33	77,890	77.99							
	118	808,814	8	6,470.51	57,255		456.04	36,502	292.02							
Total School Bonds and Interest		\$ 26,548.36		\$ 3,371.81					2,149.38							
Levies voted:																
Dist. No.	123	\$ 887,863	0	7,990.77	76,548		688.93	48,802	439.22		} Total school taxes voted					
	74	188,398	10	1,583.98	19,408		194.08	12,373	123.73							
	76	188,924	6	1,133.54	37,655		225.93	24,006	144.10							
Total school taxes voted		\$ 10,708.29		\$ 1,108.94				\$ 707.05								
TOTAL ALL SCHOOL TAXES		\$ 289,302.50		\$ 314,946.81				\$ 9,529.04					\$ 14,663.53		\$ 599.75	
GRAND TOTALS		\$ 1,329,933.25		\$ 56,106.37				\$ 35,769.46					\$ 43,006.09 *		\$ 1,061.02 **	

Note: Taxing Districts in which Northern Pacific is not interested are not shown.

* \$ 43,006.09 is the amount over the forty mill limit act that must be raised to equal the amount of the budget requirements (Column 4) after taking out the refund fund (Column 8)

** \$ 1,061.02 is the amount that would be levied on Northern Pacific Railway to pay its own judgment and equals 3.0% of total excess. This amount does not include estimated two year's interest on the refund fund warrants nor any increased levy for delinquency.

Plaintiff's Exhibit 77, Page 1:

NORTHERN PACIFIC RAILWAY COMPANY

THURSTON COUNTY, WASHINGTON

TOTAL OF 1936 TAX ROLLS IN TAXING DISTRICTS IN WHICH NORTHERN PACIFIC IS INTERESTED				N. P. RY. VALUATION AND TAXES EXTENDED ON TAX ROLLS		EXCESSIVE N. P. VALUE AND TAXES - 63-75894%		CORRECT ASSD. VALUE OF COUNTY AFTER DEDUCTING N. P. EXCESSIVE VALUE (Col. 7 minus Col. 9)		LEVY TO RAISE 1936 TAXES IN FUND (Col. 8 ON VALUE IN Col. 9)		LEVY TO RAISE AFTER REFUND IN COL. 11 REMAINS WITHIN 40 MILL ACT (Col. 8 MINUS COL. 9)		MAXIMUM TAXES UNDER 40 MILL ACT multiplied by Col. 9		NECESSARY FUND THAT COULD NOT BE LEVIED minus Col. 13)		CORRECT NORTHERN PACIFIC VALUE		REFUND TAX TO BE PAID BY NORTHERN PACIFIC	
FUND	TOTAL VALUATION	LEVY	TAX	VALUATION	TAX	VALUATION	TAX														
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)						
State	\$ 12,877,467	4.3	\$ 55,373.18	\$ 1,795,621	\$ 7,721.17	\$ 1,144,761															
County-Current Exp.	"	4.0	128,774.86	"	17,956.21	"															
County Bonds	"	10.	51,509.95	"	7,182.48	"															
							\$ 20,949.13	\$ 11,732,726	10.98	1.79	8.21	\$ 96,372.61	\$ 32,402.26	\$ 650,860	\$ 1,165.04						
Port of Olympia	"	3.1	36,920.20	"	5,566.43	"	3,548.76	"	3.40	0.30				650,860	195.26						
Road 1	3,462,274	3.	10,446.82	699,842	2,099.53	446,170	1,338.51	3,036,104	3.44	0.44	2.56	7,772.43	2,674.39	253,672	111.62						
" 2	3,972,055	3.	11,916.16	923,304	2,769.91	588,633	1,765.90	3,383,422	3.52	0.52	2.48	8,390.89	3,525.27	334,671	174.03						
Cities:																					
Buena	206,798	18.4	3,805.08	38,660	711.34	24,547	453.50	182,151	20.88	2.49										14,013	34.89
Olympia	4,369,456	17.25	75,373.12	47,033	811.32	29,985	517.24	4,339,471	17.37	0.12										17,048	2.05
Penino	227,668	14.9	3,392.25	72,996	1,087.64	46,537	693.40	181,131	18.7	3.83										26,459	101.34
Thurwater	390,059	19.	7,411.11	3,257	61.88	2,076	39.45	387,983	19.1	0.01										1,181	-
Yelm	67,160	30.	2,014.80	10,529	315.87	6,713	201.38	60,447	33.3	0.33										3,816	1.26
Schools:																					
Current Expense																					
Dist. No. 1-318-320	5,130,285	10.	51,302.85	72,426	724.26	46,174	461.74	5,084,111	10.01	0.02	9.98	50,739.43	563.42	26,252	4.75						
7	72,364	9.	651.28	28,126	253.13	17,931	161.36	54,433	11.96	2.98	7.04	353.21	285.07	10,195	30.18						
9	72,942	4.	291.37	44,275	177.10	28,227	112.91	44,615	6.5	2.53	7.47	333.27		16,048	40.60						
12	163,054	10.	1,630.54	76,209	782.09	49,861	498.61	113,193	14.4	4.40	5.60	633.88	996.66	28,348	124.73						
15	183,962	4.	735.45	123,032	492.13	78,437	313.75	105,425	7.0	2.98	7.02	740.08		44,595	132.89						
22	208,365	10.	2,083.65	37,603	376.03	23,973	239.73	184,392	11.3	1.30	8.70	1,604.21	479.44	13,630	17.72						
29	133,029	5.5	731.66	85,170	468.44	54,296	298.54	78,731	9.3	3.79	6.21	488.92	242.74	30,872	117.00						
31	298,244	10.	2,982.44	101,245	1,012.45	64,547	645.47	233,697	12.8	3.59	5.41	1,498.00	1,498.00	36,698	131.75						
35	152,198	9.	1,369.78	45,153	406.20	28,774	258.96	123,424	11.1	2.10	7.90	975.05	394.73	16,359	34.35						
36	133,737	10.	1,337.37	62,002	620.02	39,528	395.28	94,209	14.1	4.20	5.80	546.41	790.96	22,474	94.39						
16-325	241,324	10.	2,413.24	15,844	158.44	10,101	101.01	231,223	10.4	0.83	9.17	2,120.31	292.93	5,743	4.77						
65	131,701	10.	1,317.01	2,271	22.71	1,448	14.48	130,253	10.1	0.11	8.99	1,288.20	28.81	823							
79	157,553	10.	1,575.53	83,551	835.51	53,266	532.66	104,287	15.1	5.10	4.90	511.50	1,065.03	30,285	154.45						
307	535,183	10.	5,351.83	126,578	1,265.78	80,697	806.97	454,486	11.8	2.57	7.43	3,376.83	1,975.09	45,901	117.97						
309	634,909	9.	5,714.18	66,084	594.76	42,150	379.17	592,759	9.6	1.20	8.80	5,216.46	497.72	23,954	28.80						
310	358,338	10.	3,583.38	31,809	318.09	58,531	585.31	299,807	12.	3.12	6.88	2,062.67	1,520.71	33,278	103.83						
311-322	645,068	8.5	5,483.08	249,848	2,128.71	159,285	1,353.93	485,783	11.3	4.59	5.41	2,622.09	2,654.99	90,563	415.68						
325	241,324	10.	2,413.24	48,050	480.50	30,638	306.33	210,691	11.5	1.89	8.11	1,708.70	704.54	17,417	32.92						
317	648,370	10.	6,483.70	292,245	2,922.40	186,315	1,863.15	462,055	14.	5.85	4.35	2,009.94	4,473.76	105,930	598.50						
319	690,932	10.	6,909.32	426,771	4,267.71	27,204	272.04	611,728	10.4	1.11	8.89	5,438.26	951.06	15,467	17.17						
321	166,396	10	1,663.96	99,449	994.49	63,401	634.01	102,985	16.2	6.15	3.85	396.49	1,267.37	36,048	221.70						
Total school current expenses			\$ 105,505.76		\$ 16,054.95		\$ 10,235.53					\$ 20,852.38		\$ 2,424.13							

Plaintiff's Exhibit 77, PAGE 2:

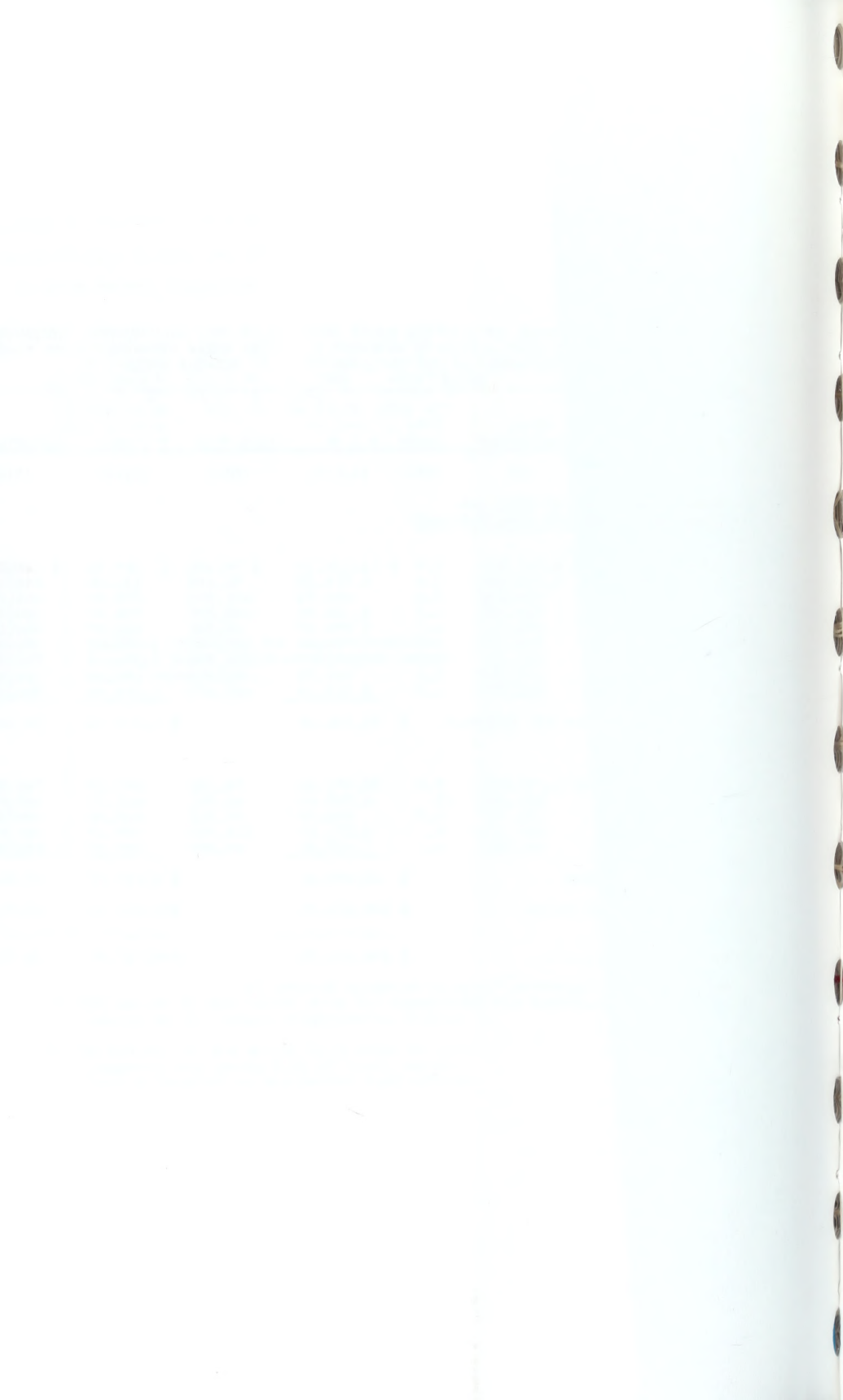
NORTHERN PACIFIC RAILWAY COMPANY
THURSTON COUNTY, WASHINGTON

FUND	TOTAL VALUATION	LEVY	TAX	N. P. RY. VALUATION AND TAXES EXTENDED ON TAX ROLLS	TAX	EXCESSIVE N. P. VALUE AND TAXES - 63.75294%	CORRECT ASPD. VALUE OF COUNTY AFTER DEDUCTING N. P. EXCESSIVE VALUE (Col. 2 minus Col. 7)	LEVY TO RAISE 1936 TAXES IN COL. 4 ON VALUE IN COL. 9	LEVY TO RAISE REFUND FUND ON VALUE IN COL. 9	AFTER MAKING LEVY IN COL. 11 REMAINS WITHIN 40 MILL ACT A LEVY OF:	MAXIMUM TAXES UNDER 40 MILL ACT (Col. 12 multiplied by Col. 9)	NECESSARY FUND THAT COULD NOT BE LEVIED (Col. 4 minus Col. 13)	CORRECT NORTHERN PACIFIC VALUE	REFUND TAX TO BE PAID BY NORTHERN PACIFIC
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(14)	(15)	(16)
Taxes Outside the 40 Mill Act. (Bond Retirement and Bond Interest)														
Dist. No. 1	\$ 4,707,046	3.0	\$ 14,121.14	\$ 72,426	\$ 217.28	\$ 46,174	\$ 138.52							
318	4,859,611	2.0	9,719.22	72,426	144.85	46,174	92.35							
31	296,244	3.0	894.73	101,245	303.74	64,547	193.64							
307	535,163	4.5	2,408.32	126,578	569.60	80,697	363.14							
309	634,909	6.0	3,809.27	66,066	528.67	42,130	357.04							
310	356,336	2.0	712.68	91,609	183.62	56,531	117.06							
311	593,431	5.5	3,263.87	249,848	1,374.16	159,235	476.07							
316-325	209,250	3.0	627.75	48,050	144.15	30,633	91.90							
317	548,379	4.0	2,593.48	292,245	1,168.98	106,315	745.26							
Total School Bonds and interest			\$ 39,424.46		\$ 4,635.05		\$ 2,954.98							
LEVIES VOTED:														
Dist.No.1-318-320	5,130,265	5.0	25,651.43	72,426	362.13	46,174	230.87							
319	636,932	15.0	9,563.98	42,671	640.07	27,204	400.06							
36	133,737	9.5	802.42	62,002	569.02	39,528	375.52							
307	535,163	6.0	3,211.10	126,578	759.47	80,697	498.18							
310	356,336	4.0	1,433.35	91,609	367.23	56,531	234.10							
Total school voted			\$ 40,682.26		\$ 2,717.92		\$ 1,732.73							
TOTAL ALL SCHOOL TAXES			\$ 185,612.50		\$23,407.92		\$14,923.24							
GRAND TOTALS.....			\$ 575,550.03		\$69,691.70		\$44,430.51					\$ 59,454.30*		\$ 4,209.62 **

Note: Taxing Districts in which Northern Pacific is not interested are not shown.

* \$59,454.30 is the amount over the forty mill limit act that must be raised to equal the amount of the budget requirements (Column 4) after taking out the refund fund (Column 8).

** \$4,209.62 is the amount that would be levied on Northern Pacific Railway to pay its own judgment and equals 9.5% of total excess. This amount does not include estimated two year's interest on the refund fund warrants nor any increased levy for delinquency.



Plaintiff's Exhibit 78, page 1

NORTHERN PACIFIC RAILWAY COMPANY

STATE OF WASHINGTON

TAXES LEVIED FOR STATE AND COUNTY PURPOSES ON 1936 TAX ROLLS

TAXES LEVIED FOR STATE COUNTY PURPOSES ON 1936 TAX ROLLS IN WHICH NORTHERN PACIFIC IS INTERESTED					N. P. RY. VALUATION AND TAXES EXTENDED ON TAX ROLLS		EXCESSIVE N. P. VALUE AND TAXES - 63.75294%		CORRECT ASSD. VALUE OF COUNTY AFTER DEDUCTING N.P. EXCESSIVE VALUE IN COL. 8	LEVY TO RAISE 1936 COUNTY TAX REFUND IN COL. 5	LEVY TO RAISE FUND ON VAL. IN COL. 10	AFTER MAKING LEVY IN COL. 12 REMAINS WITHIN 40 MILL ACT A LEVY OF:	MAXIMUM TAXES UNDER 40 MILL ACT (col. 13 multiplied by col. 10)	NECESSARY FUND THAT COULD NOT BE LEVIED (Col. 5 minus Col. 14)	CORRECT NORTHERN PACIFIC VALUE	REFUND FUND TO BE PAID BY NORTHERN PACIFIC
COUNTY	FUND	VALUATION	LEVY	T A X	VALUATION	T A X	VALUATION	T A X	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
Adams	State County	\$14,126,690	3.41 1.00	\$46,172.04 14,126.70	\$2,058,778	\$ 9,079.21	\$ 1,312,532	\$ 5,788.26	\$12,814,166	1.102	0.45	9.55	\$ 122,375.29	-	\$ 746,246	\$ 335.61
Benton	State County	9,132,630	3.43 10.	31,324.92 91,326.30	1,556,605	20,905.21	992,361	13,327.68	8,140,249	11.22	1.64	8.36	68,052.48	\$ 23,273.82	564,224	925.33
Clark	State County " Bonds	20,741,356	4.20 10.00 1.80	87,113.70 207,413.50 37,334.44	1,025,343	16,405.49	653,686	10,458.98	20,007,672	10.33	0.52	9.48	190,431.13	16,982.45	371,657	193.26
Cowlitz	State County " Bonds	18,563,292	4.64 10.00 4.00	86,133.67 185,632.92 74,253.17	1,664,796	31,031.79	1,061,356	19,783.67	17,501,936	10.61	1.13	3.87	155,242.17	30,390.75	603,440	681.09
Franklin	State County	8,299,770	3.194 5.588	26,509.47 46,278.42	2,204,562	25,974.15	1,405,473	16,559.28	6,894,297	10.339	2.402	7.598	52,302.07	18,895.55	799,009	1,919.41
Grant	State County	10,120,867	4.96 9.00	50,199.50 91,037.79	878,979	12,270.55	560,375	7,822.84	9,560,492	9.53	0.82	9.10	87,765.32	3,322.47	318,604	261.26
Grays Harbor	State County " Voted	24,110,892	4.00 10.00 7.00	96,475.57 241,188.92 168,632.24	1,107,304	28,125.53	705,939	17,930.85	23,412,953	10.3	0.766	9.234	216,195.21	24,993.71	401,365	307.45
King	State County Bonds	309,444,182	3.586 10. 2.984	\$1,109,666.84 3,094,441.82 923,381.44	5,635,962	93,387.89	3,593,092	59,537.53	305,651,090	10.117	0.195	9.805	2,998,869.94	95,571.88	2,042,070	398.36
Kittitas	State County Bonds	16,451,445	4.5 9.0 3.0	70,741.21 148,063.00 49,354.34	2,668,430	43,495.41	1,701,203	28,069.65	14,750,242	10.04	1.90	0.10	119,476.96	28,586.04	967,227	1,037.73
Lewis	State County Bonds	26,129,975	3.38 9.02 0.90	88,319.32 235,692.37 23,516.98	2,118,265	28,173.19	1,350,469	17,961.24	24,779,506	9.51	0.73	9.27	229,706.02	5,986.30	767,816	560.51
Lincoln	State County	21,269,062	3.334 6.099	70,898.29 129,739.15	1,480,461	13,965.63	943,837	8,903.50	20,325,225	6.3631	0.438	9.562	194,349.80	-	536,624	235.04
Pacific	State County " Bonds	10,842,016	4.398 10. 2.688	46,835.34 108,420.16 29,058.77	355,773	6,048.14	226,816	3,855.87	10,615,200	10.2136	0.3632	9.6368	102,296.56	6,123.60	128,957	46.84
Pierce	State County " Bonds	76,364,076	3.99 10. 3.31	304,492.66 763,640.76 252,765.09	3,983,986	68,922.95	2,539,908	43,940.41	73,824,168	10.344	0.595	9.405	694,316.30	69,324.46	1,444,078	859.23
Skagit	State County " Bonds	20,194,296	3.932 10. 1.548	79,403.97 201,342.96 31,260.77	476,873	7,381.99	304,021	4,706.25	19,890,275	10.153	0.237	9.763	194,188.76	7,754.20	172,852	40.97
Snohomish	State County Bonds	41,464,727	3.76 10. 2.04	155,907.37 414,647.27 84,588.04	1,122,353	17,733.18	715,533	11,305.42	40,749,194	10.176	0.277	9.723	396,204.41	18,442.86	406,820	112.89

Plaintiff's Exhibit 78, page 21

NORTHERN PACIFIC RAILWAY COMPANY

STATE OF WASHINGTON

TAXES LEVIED FOR STATE AND COUNTY PURPOSES ON 1936 TAX ROLLS

COUNTY	FUND	TAXES LEVIED FOR STATE COUNTY PURPOSES ON 1936 TAX ROLLS IN WHICH NORTHERN PACIFIC IS INTERESTED			M. P. RY. VALUATION AND TAXES EXTENDED ON TAX ROLLS		EXCESSIVE N. P. VALUE AND TAXES - 43.75294%		CORRECT ASSD. VALUE OF COUNTY AFTER DEDUCTING EXCESSIVE VALUE (Col. 3 minus Col. 8)	LEVY TO RAISE 1936 COUNTY TAX REFUND IN COL. 5 ON VAL. 10 (Col. 3 minus Col. 8)	LEVY TO RAISE 1936 COUNTY TAX REFUND IN COL. 5 ON VAL. 10 (Col. 9 minus Col. 10)	AFTER MAKING LEVY IN COL. 12 REMAINS WITHIN 40 MILL ACT A LEVY OF:	MAXIMUM TAXES UNDER 40 MILL ACT (Col. 13 multiplied by Col. 10)	NECESSARY FUND THAT COULD NOT BE LEVIED (Col. 5 minus Col. 14)	CORRECT NORTHERN PACIFIC VALUE	REFUND TO BE PAID BY NORTHERN PACIFIC
		VALUATION	LEVY	TAX	VALUATION	TAX	VALUATION	TAX								
Spokane	State	\$98,407,870	3.406	\$335,177.21	\$2,901,717	\$49,039.82	\$1,849,930	\$31,263.82	\$96,557,940	10.192	0.324	9.876	\$934,294.63	\$49,784.07	\$1,051,787	\$340.78
	County		10.	984,078.70												
	Bonds		3.494	343,837.10												
Thurston	State	12,877,487	4.300	55,373.19	1,795,621	32,859.86	1,144,761	20,949.13	11,732,726	10.976	1.786	8.214	96,372.61	32,402.28	650,860	1,162.44
	County		10.0	128,774.87												
	Bonds		4.0	51,509.95												
Walla Walla	State	27,321,802	3.461	95,107.19	1,360,673	19,049.42	867,469	12,144.57	26,454,333	10.328	0.459	9.541	252,400.79	20,617.23	483,206	226.38
	County		10.	273,218.02												
	Bonds		-319	14,180.02												
Whitcom	State	25,785,186	3.71	95,663.04	688,053	9,433.21	438,654	6,764.05	25,346,532	10.17	0.267	9.753	246,697.80	11,154.06	249,399	66.59
	County		10.	257,851.86												
	Bonds		1.71	44,092.67												
Whitman	State	35,913,310	4.130702	148,347.18	1,100,195	11,332.01	701,407	7,224.49	35,211,903	6.29287	0.206171	9.794829	344,894.57	-	398,788	81.82
	County		6.19298	221,559.91												
Yakima	State	35,310,113	4.18	147,596.27	2,804,335	45,991.09	1,787,846	29,320.67	33,522,267	10.533	0.875	9.125	305,890.69	47,210.44	1,016,469	869.43
	County		10.	353,101.13												
	Bonds		2.22	76,388.45												
						\$ 590,804.92*			\$ 377,618.36**				\$ 511,016.15***			11,483.22****

* This \$590,804.92 is total state and county taxes for 1936.

** This \$377,618.36 is excess M. P. state and county taxes for 1936. The levy shown in Column 12 is the levy required to raise this excess tax.

*** \$511,016.15 is the amount over the 40 mill limit act that must be raised to equal the amount of the county budget requirements (Column 5) after taking out the refund fund (Column 9)

**** \$11,483.22 is the amount that would be levied on Northern Pacific Railway to pay its own judgment and equals 3% of total excess. This amount does not include estimated two years' interest on the refund fund warrants nor any increased levy for delinquency.

Plaintiff's Exhibit 79:

STATE OF WASHINGTON
CURRENT EXPENSE FUND

STATUS OF FUNDS IN COUNTIES IN WHICH NORTHERN PACIFIC
RAILWAY COMPANY HAS OPERATING PROPERTY
(Cents omitted)

COUNTY	CASH ON HAND		WARRANTS OUTSTANDING		DELINQUENT TAXES
	Jan. 1, 1936	Dec. 31, 1936	Jan. 1, 1936	Dec. 31, 1936	Dec. 31, 1936
Adams	\$ 175,933	\$ 128,170	\$ 5,210	\$ 3,806	\$ 100,000*
Clark	26,033	26,094	4,308	5,077	100,000*
Columbia	20,403	41,695	2,046	161	70,000*
Cowlitz	14,595	17,994	191,175	168,813	160,000*
Franklin	79,690	85,523	6,183	5,856	40,000*
Grant	80,242	121,260	2,789	5,897	75,000*
Grays Harbor	79,179-(1)	8,814	61,051	13,166	300,000*
King	166,291	61,413-	(1)2,725,866	3,646,504	1,170,503
Kittitas	57,450	111,670	2,295	1,644	125,000*
Lewis	4,494	5,138	287,841	319,492	108,556
Lincoln	105,051	113,985	7,015	7,685	25,000*
Pacific	9,932-(1)	13,469-(1)	63,041	31,955	115,000*
Pierce	132,542	109,930	384,022	231,601	330,000*
Skagit	46,613	16,333	49,586	16,886	120,000*
Snohomish	102,155-(1)	23,199	35,337	148,351	269,783
Spokane	310,820	453,434	40,738	37,433	225,000*
Thurston	30,015	8,559	224,417	203,459	100,000*
Walla Walla	20,275	21,665	52,841	14,369	100,000*
Whatcom	53,299	6,476	286,093	403,225	217,000*
Whitman	138,806	208,351	24,281	26,070	59,527
Yakima	36,577-(1)	50,120	100,514	148,305	250,000*

* Estimated

(1) Overdraft

(Benton and Mason Counties not shown as
have not the information.)



PLAINTIFF'S EXHIBIT 80

purports to be typewritten report of a hearing held before the Tax Commission of the State of Washington at the office of H. H. Henneford, Chairman, in the Insurance Building at Olympia, Washington, on Thursday, July 15, 1937, at 2:00 P. M. Said Exhibit is as follows:

IN THE MATTER OF THE REASSESSMENT FOR THE YEARS 1935 and 1936 OF THE OPERATING PROPERTIES OF THE NORTHERN PACIFIC RAILWAY COMPANY SITUATED IN THE STATE OF WASHINGTON.

Be it remembered that the above entitled hearing came on regularly at the office of H. H. Henneford, in the Insurance Building at Olympia, Washington, on Thursday, the 15th day of July, A. D. 1937 at the hour of two o'clock P. M., the parties herein appearing by their representatives as follows:

The Northern Pacific Railway Company by L. B. daPonte, General Counsel for the Northern Pacific Railway Company; E. A. McCrary, Tax Commissioner for the Northern Pacific Railway Company, W. C. Smith, Assistant Tax Commissioner of the Northern Pacific Railway Company, Robert S. McFarlane, Western Counsel for the Northern Pacific Railway Company:

The Tax Commission of the State of Washington by G. W. Hamilton, Attorney General; R. G.

(Plaintiff's Exhibit 80—Continued)

Sharpe and E. P. Donnelly, Assistant Attorneys General;

Others present were Mr. A. O. Colburn, Deputy Prosecuting Attorney for the county of Spokane; and C. A. Manschreck, Supervisor of Valuation of the State Tax Commission of the State of Washington; and George L. Harrigan, Secretary of the State Tax Commission of the State of Washington.

[1837]

Whereupon, the following proceedings were had:

Chairman Henneford: Now, George, you will read the notice of reassessments and we will proceed like any ordinary hearing, shall we?

Mr. Harrigan: "Notice of Reassessment for the years 1935 and 1936 of the operating property of the Northern Pacific Railway Company situated in the state of Washington: To Northern Pacific Railway Company and to all persons known and unknown having or claiming any interest in the property in this notice described:

"Pursuant to the provisions of Chapter 106, Laws of Washington, 1931, you and each of you are hereby notified that on the 5th day of July, 1937, at the hour of two o'clock P. M., at the office of the Tax Commission of the State of Washington in Olympia, Washington, the State Tax Commission will proceed to reassess and retax all of the operating real and personal property of the Northern Pacific Railway Company, located in the state of Washington, for the years 1935 and 1936, and the said Northern Pacific Railway Company or other

(Plaintiff's Exhibit 80—Continued)

interested persons may appear at the time and place above set forth and show cause, if any there be, why said reassessment and retaxation should not be made, and make such showing as they shall desire to make as to the claimed illegality of such tax.

“Dated at Olympia, Washington, this 8th day of June, 1937. H. H. Henneford, Chairman, T. S. Hedges, Commissioner, T. M. Jenner, Commissioner.

“Attest: George L. Harrigan, Secretary.”

Chairman Henneford: Mr. daPonte, you may proceed.

Mr. daPonte: Proceed with what?

Chairman Henneford: Whatever you may wish to.

Mr. daPonte: Well, we have nothing but what has been placed before the Commission heretofore, which is more fully stated in the [1838] testimony. If the commission thinks, as I judge it does, that this assessment is illegal, I think the Commission should state what the illegality consists of; then maybe we can throw some further light on it. But what is wrong with the assessment?

Chairman Henneford: Mr. Sharpe will speak for the Commission.

Mr. daPonte: Will the Commission state what the error is?

Chairman Henneford: Mr. Sharpe will speak for the Commission.

(Plaintiff's Exhibit 80—Continued)

Mr. Sharpe: I don't think that the law contemplates that the Commission is required to state what they feel is wrong with the assessment. The statute provides that if, upon the beginning of a suit or the filing of a protest, the Commission examines the complaint and finds there may be something wrong with the assessment, it may call for a reassessment and reexamination and make an original assessment of the property as though it had never theretofore been assessed. There is nothing that requires them to state what their findings are in that regard, and they haven't attempted to do so so far, but have set forth that they propose to make such a reassessment, have determined to do so as provided by statute, and have called upon the parties, the interested taxpayer, to appear and make such showing as they wish in the case. They have responded, and it seems to me that if they wish to make any showing it is perfectly proper for them to do so. If there is any countershowing to be made on behalf of the Commission or by any person interested in the assessment, other than the taxpayer himself, then those parties should be given an opportunity to make such showing, and the Tax Commission should also make such proper showing as it wishes to make, and then the taxpayer and other interested parties could make any countershowing they wish to make. [1839]

The Tax Commission, so far as I am concerned, isn't in a position to make a showing today, but

(Plaintiff's Exhibit 80—Continued)

would be or will be able to do so at a later date on an adjournment hearing; and I think it is perfectly proper that the matter should be handled in that way because of the importance and magnitude of the case, and also because of the informality of the hearings before a taxing or assessing body such as this. So I would suggest that the proper procedure would be that the taxpayer should proceed to make such a showing as he wishes to make, speaking now of counsel, of course, and then the hearing should be adjourned to a time satisfactory to the Commission and to the taxpayer and to the interested parties, and they should be permitted at that time to make such countershowing as they wish to make, and then, if necessary, have a still further hearing so that the taxpayer and others interested can meet that countershowing and so on all to the end that the matters on either side, that either the Tax Commission itself or the interested parties and taxpayer wish to put before the Commission in this case should be properly before the Board before the hearing is closed. We are prepared, the Tax Commission is prepared to serve upon the taxpayer certain underlying data which does not appear in the reports of the taxpayer to the Commission or in the reports to their stockholders which we conceive, or, speaking, of course, as the Tax Commission, conceive to be facts. And if they wish to make a countershowing, or if they think that the facts, that there have been mistakes or errors that

(Plaintiff's Exhibit 80—Continued)

have been made in our classes, they can point those things out, and we will be glad to make every effort to correct them before the valuations are made by the Board.

If we haven't stated all the underlying data not shown by these reports that we feel might be material, we will serve this [1840] material upon the taxpayer a reasonable time before the adjourned hearing so they can raise such objections as they deem applicable thereto. I think that is a fair way of conducting the hearing.

Mr. daPonte: I repeat the question and request the information concerning what error the Tax Commission believe they have discovered in this assessment. Will that be given? Any information—— (interrupted)

Chairman Henneford: The Commission prefers to speak through counsel.

Mr. Sharpe: The suit brought by the taxpayer here has raised a doubt in the mind of the Commission as to whether or not it has in fact fixed a value for that year in excess of the true market value of the property, and they want, for that reason, to examine all the material data connected with the value of the property and determine anew what the true market value of the property is.

Mr. daPonte: Of course, the statute provides that it cannot be increased, and I assume from the fact that a reassessment has been called for, that the error suspected has resulted in an excessive

(Plaintiff's Exhibit 80—Continued)

valuation. That would be the natural conclusion, wouldn't it?

Mr. Sharpe: Not a conclusion. The Tax Commission hasn't concluded that is true, but it has concluded it may be true, and for that reason it is asking for this reassessment of the property.

Mr. daPonte: Of course, the Commission can proceed to a reassessment. I will say that the time for the Commission to take depositions has expired and the case is going to be tried, regardless of this proceeding. We are not going to hold up the lawsuit until the Commission follows out— (interrupted)

Mr. Sharpe: Well, we personally have nothing to do with the lawsuit. The Commission is not a party to the lawsuit. [1841]

Mr. daPonte: I will state, just for information, so we will all understand what the program is, I don't know when the Commission expects to make this reassessment, or whether they propose to make a lower assessment, or what their conclusion will be. Of course, it is always possible that this reassessment might be such as we would accept. I don't know. I hope that is the case.

Mr. Sharpe: I would suggest that if any showing is to be made by the taxpayer at this time— (interrupted)

Mr. daPonte: Showing on what?

Mr. Sharpe: As to the value of the property, the showing you would make when the property was originally assessed.

(Plaintiff's Exhibit 80—Continued)

Mr. daPonte: Well, we take it for granted that all the showing heretofore made is before the Commission and it has a copy of the testimony that was taken in court and the exhibits. We have nothing more than that, and that is before the Commission. Is that right?

Commissioner Hedges: That is all you want to present, is it?

Mr. daPonte: That is all I know about. I can't for the life of me think of anything else unless the Commission tells me what data it has that might lead to a discussion of something further.

Mr. Sharpe: Do you want to formally offer your depositions? I will say that I haven't gone through the depositions. I haven't had time to go through them carefully, but I find there are a great many things here that are merely conclusions of the witness. Under the circumstances, these depositions, they may offer them, but subject to the reservation of the right to object to any particular question on the ground of its relevancy and materiality and competency and as hearsay, and for any other valid reasons that might be urged against the questions. I don't know, but if these depositions are received in evidence before the Board, [1842] I would like them received subject to the objections, subject to each and all valid objections that might be raised to each and all of the questions propounded to the witness; otherwise it would be impossible for the depositions to be accepted; and also to the

(Plaintiff's Exhibit 80—Continued)

right of the State to cross examine the individual who testified, whose depositions are offered. Evidently, no cross examination was made, and certainly the Commission ought to have the benefit in every case of this importance, ought to have the benefit of cross examination of these various witnesses before the case is finally submitted to them. I think it is perfectly proper to fix a time when that can be done, and that it will be convenient for these witnesses to be present.

Mr. daPonte: If you want to summon any witnesses you can summon them yourselves and get them here. The depositions haven't been offered.

Mr. Sharpe: Well, if you are not offering them, why, all right.

Mr. daPonte: It is already before the Commission. We don't have to go and bring evidence to the Commission before they can perform their official duty. You can do as you like, but you evidently acquired a copy for some purpose, or the Commission did.

Mr. Sharpe: If the deposition is not formally offered in evidence the Commission cannot demand or require that they be submitted for cross examination; and so, until they are offered, I wouldn't attempt to make any request or demand of that kind. I would like, if no showing is to be made, then, I would like the opportunity of submitting this data to counsel and have the Board fix a date at a reasonable time in the future that will be con-

(Plaintiff's Exhibit 80—Continued)

venient for both parties, for the presentation of any data and facts and evidence that they wish to present on the valuation of this property. [1843]

Mr. daPonte: Well, I don't think—it is not my understanding that the statute contemplates any such procedure. It is my position that it doesn't. The Commission presumably knows what it was about when it gave this notice, and I think now is the time and place fixed for the Commission to let it be known what the object is and if any further hearing is contemplated.

Mr. Sharpe: Do you wish to make a suggestion as to when would be a convenient time for an adjourned hearing?

Mr. daPonte: No.

Mr. Sharpe: Then I suggest that the Commission fix it of their own motion.

Mr. daPonte: If you submit your evidence we may not want to attend any further hearing. Submit your evidence and we will let you know.

Mr. Sharpe: We will be glad to do that before this hearing is adjourned, this underlying data to which I refer.

Mr. daPonte: You might do that and we will let the Commission know whether we want to go any further.

Mr. Sharpe: I would ilke it continued to a day certain, today, so no further notice would be required.

Mr. daPonte: Any date you fix is all right with us. I am going to be here until about the first, and

(Plaintiff's Exhibit 80—Continued)

any date you fix, I would like it to be before the first.

Chairman Henneford: How about the 30th of July, or Saturday morning, the 31st?

Mr. Sharpe: I think that would be all right.

Commissioner Hedges: We don't want to inconvenience anybody, and one day probably wouldn't make much difference; and we might be ready by Thursday, rather than Friday. If we are not ready we would have to let him know again.

[1844]

Chairman Henneford: Thursday, the 29th of July?

Mr. daPonte: That would be the extreme date that I could be here.

Chairman Henneford: Shall we make it at ten o'clock?

Mr. daPonte: That is all right.

Chairman Henneford: All right, then, ten o'clock. Is there any county that wishes to make a showing at this time?

Mr. daPonte: We can probably look over that this afternoon and let you know if there is anything—I take it for granted those figures are correct.

Mr. Sharpe: Well, I will ask that this be not received in evidence, but lodged with the Commission until the next hearing for preservation.

(Counsel referring to an instrument, copies of which were at this point delivered to counsel for Northern Pacific Railway Company.)

(Plaintiff's Exhibit 80—Continued)

Mr. Sharpe (continuing): It might be called Commission's "A" for identification, is all.

(Instrument above referred to marked by the Chairman Commission's Exhibit A for identification.)

Mr. daPonte: Now, in case we don't want to offer any showing with respect to those exhibits that have been lodged, then will there be any further hearing?

Mr. Sharpe: Well, if you want to have our material and have the mind of the Commission exposed here—

Mr. daPonte: No, I am asking for information. As I understand, this is the evidence that is placed, or will be placed before the Tax Commission. Now, in the event that we can decide to say what we have to say, if anything, in writing to the Tax Commission, put it in the form of a writing and send it in, will there be any further hearing or further evidence? [1845]

Mr. Sharpe: The Commission doesn't want to be accused of withholding any fact or computation or any theories or anything else they propose to use or adopt, and at this hearing I would expect that somebody would go on the stand as a witness formally and testify as to what the effects of the various exhibits and set-up have been upon this data and other data contained in your reports will be.

Mr. daPonte: You mean explanatory of these exhibits?

(Plaintiff's Exhibit 80—Continued)

Mr. Sharpe: Oh, no, but set-ups in which the underlying data contained in the exhibits are used.

Mr. daPonte: All right, I just wanted to know.

Mr. Sharpe: If you want such a hearing as that, I think the Commission is perfectly willing and glad to afford you such a hearing.

Chairman Henneford: That is correct.

Mr. daPonte: Judge McFarlane is a little in doubt, as I was a while ago, but as I understand it, all the evidence placed before the Commission at the regular hearing is before the Commission. There is no use offering that again, is there?

Mr. Sharpe: Yes, that is all right.

Mr. daPonte: And further, it is understood that the Commission has a copy of the testimony and the exhibits that were taken in court. That is correct?

Mr. Sharpe: Not introduced and received in evidence.

Mr. daPonte: Well, the Commission has this copy before it.

Mr. Sharpe: It has a piece of paper—— (interrupted)

Mr. McFarlane: Well, you don't deny the depositions——

Mr. Sharpe: They are not depositions. There have been none, so far as this Commission is concerned, surely.

Commissioner Hedges: I think we are absolutely right in taking the position we are taking. I have read most of those depositions, [1846] and

(Plaintiff's Exhibit 80—Continued)

if I am correct in my memory, the depositions provide that further cross examination may be held.

Mr. McFarlane: But I want it very definitely in this record, without any possible misunderstanding or dispute, that it is our position that the evidence that was taken and the exhibits which were introduced and which have been in your possession and which Mr. Hedges has just stated he has read, is the showing that we made before the Commission at its regular hearings for the assessments for the 1935 and 1936 are before the Commission, and any re-assessment that this Commission makes, that that data is all before them for their consideration.

Mr. Sharpe: Well, I will object to that until it is offered in evidence.

Mr. McFarlane: It is already before the Commission.

Mr. daPonte: The Commission has got it.

Mr. Sharpe: Well, I will object to its being used until the witnesses are submitted for cross examination.

Commissioner Hedges: It is not our business to accept the statements of your witnesses without the benefit of cross examination.

Mr. daPonte: Well, you can do as you please about it. You have that data before you. If you don't choose to believe it, then you run the chance of making a mistake, that is all. You have got it and it can't be helped, and you can't get away from it. Those are the facts. However, I will say this:

(Plaintiff's Exhibit 80—Continued)

There is no use quibbling about the testimony because I don't think there is anything in there that is anything essential or determinative of the data you already had. It is true it has been explained at great length and commented upon, but I don't think I recall anything of great consequence that has added to what was placed before you at the regular hearing. [1847]

Commissioner Hedges: We want to make it plain that this evidence of your witnesses was presented to develop certain theories. Now—— (interrupted)

Chairman Henneford: It must have been done for some purpose.

Commissioner Hedges: And we certainly have the same right to develop our own theory.

Mr. daPonte: Oh, there is no question about that. We have never suggested anything to the contrary. If you have any new facts, we would like to know them. You have given us some information and data here and it appears about the same, and some additional. It goes back to an antediluvian period, as I recall it now.

Mr. Sharpe: I imagine if it is more convenient for these witnesses to appear in Seattle, probably it would be all right for the Commission to go down there, if you propose to put in any sworn statement——

Mr. daPonte: Oh, we don't propose to do that.

Mr. Sharpe: Well, these are merely affidavits.

(Plaintiff's Exhibit 80—Continued)

Mr. daPonte: That don't cut the slightest ice with me. That matter is before the court and the court will consider whether it is or not.

Mr. Sharpe: If you wish it considered by the Commission you will have to produce these witnesses for cross examination.

Mr. daPonte: Well, that is for the Commission to say. They can close their eyes to it if they wish.

Mr. Sharpe: You can produce them or not, as you see fit. The Commission will reserve its ruling on the question of the admission of these until that time.

Mr. daPonte: It has already been offered before the Commission.

Mr. Sharpe: Well, I think Mr. McFarlane practically offered them in evidence. [1848]

Mr. McFarlane: No, sir, I did not. It is before the Commission as a matter of fact, though.

Commissioner Hedges: Well, we refuse to accept them without the right of cross examination.

Mr. daPonte: That is immaterial.

Chairman Henneford: You concede that we have as much right in this case as you have?

Mr. daPonte: Oh, you have a right to go to St. Paul or anywhere else and take testimony; if you don't believe the data you have is correct, then you have a right to take any other course, and if you want anything further from us we would be glad to give it to you if we have it.

(Plaintiff's Exhibit 80—Continued)

Mr. Sharpe: Do you want the hearing held in Seattle or up here? That is, if you contemplate any witnesses, for convenience, it might be possible to go down there. If you don't contemplate that, we might as well have the hearing up here and adjourn to this same place of meeting for July 29th, 1937, at ten o'clock A.M. And if we supply you with any additional data in regard to any additional facts that don't appear—that is, facts, statistical data, which doesn't appear in your report, I assume that you are cognizant of everything in your report, and report to the stockholders,—in that exhibit that we served, if there is anything that we wish to offer in addition to that, how much time would you let me have before this hearing? It is rather a short time; it is two weeks.

Mr. daPonte: If it is nothing more than what this is, Mr. Sharpe, why, we don't wish any time at all.

Mr. Sharpe: Say five days before?

Mr. daPonte: If it is like this. I presume it is a correct compilation. There is a lot of stuff in here about companies that we don't know anything about. I take it Mr. Manschreck supervised [1849] this compilation and the figures are accurate. No doubt this is an accurate copy for whatever it purports to be.

Mr. Sharpe: Well, I think there is nothing else to do but adjourn the meeting until that time.

Chairman Henneford: Everything has been said, has it, that is to be said?

(Plaintiff's Exhibit 80—Continued)

Mr. Colburn: If the Commission hasn't already got it, I would like to ask the railroad to produce their record, or a copy of it, showing the exact amount of stock, capital stock, that has been transferred on the books.

Chairman Henneford: I think Mr. Manschreck has that.

Mr. Manschreck: Yes, I have that statement.

Mr. Colburn: There is another thing that I would like to see.

Mr. daPonte: You don't have to ask the Commission. Anything that counsel in this case requests us to furnish, if we have it, we will be glad to furnish it.

Mr. Colburn: In these reports is there any detailed statement of the costs of running the railroad? Is it a lump sum or detailed out?

Mr. McFarlane: It is detailed.

Mr. Colburn: And separated into the departments of the railroad, the land department, the immigration department and various departments that you have?

Mr. daPonte: According to the classifications of the I.C.C., the only way we can keep it. Anything that you and counsel want, as I told you before, if you will tell us what it is, we will give it to you without any formality about it.

Chairman Henneford: I know we have that. Your books are all kept the same as the Great Northern and according to I.C.C. [1850]

(Plaintiff's Exhibit 80—Continued)

Mr. daPonte: The same thing.

Chairman Henneford: Very well, then, the meeting is adjourned.

(Whereupon the meeting was adjourned until Thursday, July 29, 1937, at ten o'clock a.m.) [1851]

PLAINTIFF'S EXHIBIT 81

purports to be a typewritten report of a hearing before the Tax Commission of the State of Washington held at 10:30 A.M. Monday, August 16, 1937, and is as follows:

HEARING ON THE REASSESSMENT OF THE OPERATING PROPERTY OF THE NORTHERN PACIFIC RAILWAY COMPANY IN THE STATE OF WASH- INGTON for 1935 and 1936.

Held before the Tax Commission of the State of Washington at ten-thirty o'clock A.M. on Monday, August 16, 1937.

This hearing was held before the Tax Commission of the State of Washington, at the hour of ten-thirty A.M. on Monday, August 16, 1937.

All members of the Tax Commission, T. S. Hedges, T. M. Jenner and H. H. Henneford were present, with H. H. Henneford presiding.

Other appearances made were L. B. daPonte and Robert S. Macfarlane for the Northern Pacific Railway Company; George F. Sareault, Prose-

(Plaintiff's Exhibit 81—Continued)

cuting Attorney for Lewis County; C. R. Krater, Assessor for Lewis County, and R. G. Sharpe, Assistant Attorney General for the State of Washington.

Mr. Henneford: This is on the reassessment.

Mr. Sharpe: Reassessment for 1935, 1936.

Mr. Henneford: Mr. Sharpe, have you anything to present first?

Mr. Sharpe: Well, I wish to present for the consideration of the Board a notice of matters to be considered by the Tax Commission, which was served upon the attorneys for the interested railroad company on August 9, together with the admission of service; and I also wish to submit a—several additional set-ups, numbered pages—in lead pencil—pages 20-A, 20-B, 20-C, 22-A, 38-A, 42, and 42 to 53, inclusive, which I understand was served upon the attorneys for the taxpayer on last Friday, was it not? [1852]

Mr. Sharpe: By Mr. Jenner. And asking the privilege of inserting those sheets in the original that was served on the 9th of August.

This notice sets forth certain matters which the Board say they proposed to consider at this hearing, and sets out certain evidence and exhibits in various court proceedings which have been heretofore had; and states that the records in those particular proceedings are located in certain places which are available to us and to the company; and also has attached a large number of setups, setting

(Plaintiff's Exhibit 81—Continued)

forth certain data and matters that the Board believes pertinent; and that the supplemental setups that were served later are of the same nature as the setups in the original.

Mr. Henneford: These become part of the record, then?

Mr. Sharpe: Yes.

Mr. Macfarlane: Before those are received by the Commission, please——

Mr. Henneford: Yes.

Mr. Macfarlane: First, I would like to leave for the commission a document which we have headed "Demand for information as to the error or errors in the above assessments." That is the ones referred to in the title, the ones that would be under consideration. It says:—

"To the State Tax Commission: The Northern Pacific Railway Company hereby demands that the Tax Commission advise it of the error or errors which occurred in the assessments for the years 1935 and 1936 heretofore made, for the correction of which the Tax Commission proposes to proceed to make a reassessment for said years."

Mr. Henneford: Mr. Sharpe, are we ready to give this answer today?

Mr. Sharpe: I think so. I can present my views today. [1853]

Mr. Henneford: Yes, you will speak for us.

Mr. Sharpe: The 1931 reassessment act provides——

(Plaintiff's Exhibit 81—Continued)

Mr. Macfarlane: Do I understand you are speaking for the Tax Commission?

Mr. Henneford: Yes.

Mr. Sharpe: I think so. The 1931 assessment act provided that if there were any assessments attacked regarding the assessments for any particular year, the Tax Commission, without awaiting the outcome of the suit, may examine the pleadings to see whether or not there is anything in the pleadings which would indicate that there was an error made in the assessment which is the subject of attack. Examining the particular complaint that you filed in the United States District Court at Spokane, we find the allegation that whereas the property was assessed by the Tax Commission a hundred percent value of \$90,000,000 in 1935 and \$88,500,000 in 1936, the actual value of the property did not exceed in the neighborhood of \$35,000,000. That is, I assume, deemed by the Commission to be a sufficient allegation to justify a re-assessment of the property to determine whether or not the allegation of the complaint, representations of the taxpayer in this litigation, were correct; and that, as I understand, is the basis for the re-assessment that is now being made.

Mr. daPonte: Isn't it a fact that that same condition was shown to the Tax Commission at the hearing for both 1935 and 1936, and that there was nothing whatsoever in the complaint in that regard that was new? Isn't that a fact?

(Plaintiff's Exhibit 81—Continued)

Mr. Sharpe: I don't know whether it was or not.

Mr. daPonte: Let the Commission answer it.

Mr. Henneford: Mr. Sharpe is speaking for the Commission in this case.

Mr. Sharpe: The reassessment doesn't go back.

[1854]

Mr. daPonte: That isn't the question.

Mr. Sharpe: I don't know what showing was made or——

Mr. daPonte: Is that the only error that is going to be corrected?

Mr. Sharpe: Yes, if there was an error.

Mr. daPonte: What is the error?

Mr. Sharpe: In overvaluation.

Mr. daPonte: Due to what?

Mr. Sharpe: I don't know.

Mr. Macfarlane: I suppose if you are speaking for the Tax Commission you could advise us specifically as to the errors you think there are in the 1935 and possibly '36 assessment. Did you use the wrong stock and bond values, capitalize at the wrong rate, your capital income, or net income? Did you use the wrong allocation factors in the 1935 and '36?

Mr. Sharpe: That is a matter for determination in the reassessments. The primary reason for the reassessment was the great disparity in that made by the Tax Commission and that claimed by the taxpayer.

(Plaintiff's Exhibit 81—Continued)

Mr. daPonte: The Tax Commission has had everything in this complaint before it from the time of the hearing long before the suit was brought, and there wasn't anything in the complaint that was different in that particular, so that can't be the reason for this reassessment.

Mr. Macfarlane: Your answer does not specifically give the information we specifically request as to the specific errors you have discovered in your 1935-'36 assessments.

Mr. Sharpe: That is unfortunate if it doesn't.

Mr. daPonte: That is all the answer you have?

Mr. Sharpe: Yes.

Mr. daPonte: All right. [1855]

Mr. Macfarlane: I want to offer this, "Objection to this proceeding and objection to jurisdiction." I will read it for the benefit of those who are here as it is short:—

"To the State Tax Commission:—

"The Northern Pacific Railway Company objects to this proceeding and states that the Tax Commission has no jurisdiction thereof for the reason that its only power is to proceed to a reassessment for the correction of errors which it believes have occurred in the assessments heretofore made, and unless and until the Northern Pacific Railway Company is advised of the errors which the Tax Commission believes have occurred and which it proposes to correct by this assessment, it is wholly without power to proceed further with the proposed reassessment.

(Plaintiff's Exhibit 81—Continued)

“The Northern Pacific Railway Company further protests against this proceeding and states that the Tax Commission has no jurisdiction to proceed to make an assessment de novo, but only has power and authority to correct the valuation heretofore made herein due to the errors which the Tax Commission believes occurred in the assessments heretofore made.”

I take it it is just a question of whether the Commission sustains the objection or overrules it.

Mr. Henneford: Mr. Sharpe?

Mr. Sharpe: Of course, the objection to the proceedings, as far as I can see, should be overruled. The action is entirely within the rights of the Commission to proceed with the reassessment. Certainly, the first part in the value of the property claimed by the taxpayer is a sufficient justification for the reexamination, for the reassessment of the property.

Mr. Henneford: Yes.

Mr. Macfarlane: Does the Commission rule that the objection to the proceeding and objection to jurisdiction be overruled? [1856]

Mr. Henneford: Overruled.

Mr. Macfarlane: With reference to the statistics in the notice Mr. Sharpe just referred to, the title of this objection is “Objection to notice and testimony, data and exhibits therein referred to.” It is of considerable length, and, unless the Commission specifically requests, I would not take the

(Plaintiff's Exhibit 81—Continued)

trouble of reading it, but I would say that generally, the gist of it generally, is it objects to the data and the testimony and the exhibits; and the reasons for our objection, which testimony and data and exhibits are referred to in this notice that was served on us on the various dates Mr. Sharpe referred to when he first spoke this morning.

Mr. Sharpe: Do you want to read them? I don't know what they are, I am sure.

Mr. Macfarlane: I would be very glad to read them.

Mr. Sharpe: May be you can set them out without reading them in detail.

(Summary of contents of "Objection to notice and testimony, data and exhibits therein referred to" made by Mr. Macfarlane.)

Mr. Macfarlane: Now, that is a statement of the gist of the objections so that it is apparent we have made full and complete showing. You have had the data and figures before you as the result of our '35 showing, our '36 showing; and, except as this showing of this data, testimony, exhibits referred to in this notice that was subsequently served upon us, agrees with the showing we have previously made, it is objected to.

Mr. Henneford: That is in the record.

Mr. Macfarlane: That is right; but it is all stated in writing and nothing can be added to it by any oral statement. [1857]

(Plaintiff's Exhibit 81—Continued)

Mr. Sharpe: Do you set out any of the matters referred to in this—do you set out or claim that any of the matters that are referred to by the Commission in this notice that you have received, the data attached to the notice contains an erroneous statement of the facts, actual facts, whether the, tests whether it is proven or established in a wrong way? Do you claim it is established in a wrong way or that the facts set forth there in the exhibits referred to in those proceedings are wrong, are erroneous?

Mr. Macfarlane: Our objection has been made in writing and in considerable detail, and it will have to speak for itself, Mr. Sharpe.

Mr. Sharpe: I want to ask further, do you understand the method of allocation that is explained in the last three sheets, I think, of the exhibit that was furnished to you on August 9th, headed, "Relative—"No,—"Division of Interstate Revenue on Basis of Cost"? Do you understand the method that has been elaborated in these setups and in the supplemental setups that were served on you last Friday?

Mr. daPonte: That is a question.

Mr. Sharpe: I want to explain that the method set up there, by the method set up, it is proposed to apportion the value of the Northern Pacific operating property, in the state of Washington with relation to its net earnings, net railway operating income less taxes within the state, and for the sys-

(Plaintiff's Exhibit 81—Continued)

tem, as nearly as can be shown. The method pursued has been that method which was proposed by the Great Northern Railroad in the case of Great Northern Railway Company versus Weeks, I think, with one slight exception.

Now, the Commission would be very glad, I am sure, to hear any specific objections to the use of that particular method. [1858]

Mr. Macfarlane: May I inquire, Mr. Sharpe, if you understand the method?

Mr. Sharpe: I think so.

Mr. Macfarlane: And do I understand that you now, as spokesman for the commission, are saying to us that you are using the so-called 'Turnburke theory, for want of a better name, in the proposed reassessment of the Northern Pacific?

Mr. Sharpe: I think it is the Commission's purpose to give serious consideration to that particular method and to use it, at least as one factor, in arriving at the valuation of the property.

Mr. Macfarlane: We have stated in writing, and fully, our objections to any such 'Turnburke theory unsupported by decision, unaccepted any place in the United States, rejected by the courts, and abandoned by the Great Northern when they got to the Supreme Court of the United States in the Weeks case.

Mr. Sharpe: I don't understand it was abandoned. The Supreme Court decision recites that it was urged. At any rate, it is a question of—
(interrupted)

(Plaintiff's Exhibit 81—Continued)

Mr. Macfarlane: Was the Turnburke theory used in assessing the Great Northern in 1936 and '37?

Mr. Sharpe: I don't know. I don't know anything about it. We are interested, of course, in arriving at a correct valuation of the Northern Pacific property at this time.

Mr. daPonte: If he can't answer the questions, the Commission should.

Mr. Sharpe: I am quite sure it wasn't in 1935-'36, no. I am quite sure it wasn't used in the Great Northern case, although I don't know; but I am quite sure that the Commission——

Now, my view is that the Commission is trying to arrive at a fair valuation of property in this case. It isn't a case of trying to upset some other allocation factor that has been used [1859] by some other board, but is the case of the Commission attempting to arrive, as nearly as possible, at a factor that will correctly, properly reflect the value of the Northern Pacific's property within the state as compared with that of the system, and it has always been recognized it is a very difficult problem to arrive at a correct valuation factor. The Commission has proposed the use of this factor and has explained it quite fully and explained the results that will flow from it. If there is any fundamental objection to the use of this factor, any reason why the factor or the process of calculation by which this factor is arrived at is improper, I

(Plaintiff's Exhibit 81—Continued)

believe, in fairness to the Commission, the taxpayers should explain why it is not correct; in what respect it falls down, falls short of correctly reflecting that value.

Mr. daPonte: I can answer that if you want a specific answer to that.

Mr. Sharpe: Beg pardon?

Mr. daPonte: I can answer that if you want a specific answer to that.

Mr. Sharpe: Well, if you——

Mr. daPonte: The reason is that the apportionment of revenue on the basis of cost is fundamentally erroneous. That is the reason why you can't apportion the value of the property on the relation of the cost. In the first place, you haven't got the costs; no evidence here what the costs are. The theories on which you figure the costs in Washington are not established. They have no authority back of them.

Mr. Sharpe: You mean precedent?

Mr. daPonte: Neither precedent nor authority. It never has been done. It was rejected by the court and abandoned by the Great Northern. Furthermore, the condition in North Dakota on the Great Northern has no bearing on the question in Washington [1860] with reference to the Northern Pacific, and you could go on indefinitely with objections to it. It is utterly improper, utterly erroneous. That is our objection to it. It is stated in this——

(Plaintiff's Exhibit 81—Continued)

Mr. Sharpe: Of course, the Tax Commission doesn't realize—realizes that you can't get the cost down to each state by *valuation*. An exhaustive study of the question would result in an exact apportionment of the net earnings by states.

Mr. daPonte: I believe you do purport to reach a figure of net earnings in Washington for this——

Mr. Sharpe: Yes.

Mr. daPonte: And that is the opinion of the Tax Commission of the net earnings in Washington?

Mr. Sharpe: I say as near as it is possible to arrive at them for the purpose of apportioning.

Mr. daPonte: Why do you want to apportion anything if you have the net earnings itself?

Mr. Sharpe: Of course, you haven't a figure. It is merely apportionment. You arrive at your system earnings not only by net earnings, but by stocks and bonds. There is no method by which you can apportion the stocks and bonds to the state.

Mr. daPonte: As long as you are using the net earnings, why use any other figures when you say you have used the approximate amount? Why apportion anything on the basis of net earnings when you have the exact figure as nearly as humanly possible, you say?

Mr. Sharpe: If relying on net earnings alone, you might capitalize in net earnings, but if relying on stock and bond earnings by the system,

(Plaintiff's Exhibit 81—Continued)

you have to use some allocation factor to apportion that.

Mr. daPonte: The stock and bond value, yes; but not the net earning value. [1861]

Mr. Sharpe: The net value reflected by capitalizing net earnings.

Mr. daPonte: All right.

Mr. Sharpe: The portion, of course, is always approximate, can't be gotten down to a nicety. What the Commission wants to know is whether or not, by the use of this particular method, as close and correct an apportionment can be arrived at as is practically possible for the Commission to follow; and if not, then why? In what respects does this method do injustice to the state or the railway company, this apportionment?

Mr. daPonte: I have given my objection. The injustice done is to apportion probably a third to a half more value than is in Washington, tax property in Washington that is not in Washington. I have nothing more to say about that.

Mr. Sharpe: Then you don't want to be cross-examined?

Mr. daPonte: I am not a witness.

Mr. Sharpe: You don't want to offer any witnesses, then, on it?

Mr. daPonte: I will let you know what witnesses we have to offer.

Mr. Sharpe: I think the objection should be overruled, as far as I can see.

(Plaintiff's Exhibit 81—Continued)

Mr. Henneford: Very well.

Mr. Macfarlane: This not being a court, of course, we don't have to take exceptions to the rulings, but in view of the friendly way we have proceeded, we don't want the Commission to think we are not objecting very strenuously to every step of the proceedings, and the computed results served upon us, and we thought time would be saved if we stated our objections in writing, and we rely on our written objections.

Mr. Sharpe: Then the objections will be overruled by the Commission?

Mr. Henneford: Yes.

Mr. Sharpe: Anything further? [1862]

Mr. Henneford: Then do we proceed with the hearing?

Mr. Sharpe: Anything further you want to offer?

Mr. daPonte: I just want to state this, that there is nothing we can offer, nothing we can say that hasn't been already offered and said; but if the Commission advises us of the error that they thought inhered in this assessment, then we may be able to offer something helpful. Otherwise, we are talking at random. It isn't that we don't want to say anything, that we are standing on our rights and dignity, but there isn't anything we can say. There isn't anything we can say we haven't already said.

(Plaintiff's Exhibit 81—Continued)

Mr. Sharpe: Well, do you want an explanation of why the Commission thinks it made some error in the past assessment? We will be glad to point out some of the things that, or, rather, the Commission will be glad to point out some of those things. I imagine if you really want to attempt to meet anything that the Commission proposes to use here—it is, it appeared,—I am quite sure it appeared to the Tax Commission that probably in their first assessment they did not include the B and C bonds of the Northern Pacific, and did not treat the Burlington stock as non-operating property, and they believe a comparative valuation of the Burlington Road with the B and C, or rather, the Burlington stock with the B and C bonds made six years ago, was of little or no value in the determination of the value of the Northern Pacific at the present time, and therefore believed that in determining the value of the Northern Pacific reflected by stocks and bonds for the 1935 and '36 assessments, the Burlington stock should be treated like any other non-operating property; or, rather, that the system should be first valued with reference to all its outstanding bonded debt and then the Burlington bonded stock should be treated as all other known carrier assets and the proper [1863] deduction made for that purpose. That is one fundamental error that the Board found, discovered in the complaint.

(Plaintiff's Exhibit 81—Continued)

Mr. daPonte: Now, if that error were corrected, it would increase the assessment, wouldn't it?

Mr. Sharpe: We don't know if it would or not.

Mr. daPonte: That standing alone would.

Mr. Sharpe: I don't know if there was a—if there was a proper valuation made it would. That is what the Board wants light on, what the value of the Burlington stock is.

Mr. daPonte: We have already put that before the Board.

Mr. Sharpe: I don't think so. I don't remember any attempt being made by the carrier to show the value of the Burlington stock.

Mr. daPonte: What is the use of trying to consider objections which would increase the assessment, which the statute says can't be increased? Can't take that seriously. You can't increase the assessment.

Mr. Hedges: May I suggest that we are trying to arrive at an honest value of your property?

Mr. daPonte: You can't increase it because the statute says so. What is the reason for going into errors that the—if errors, would increase the assessment?

Mr. Sharpe: The Board didn't know what effect putting in your Burlington stock would have.

Mr. daPonte: It was all put before the Board. That statement is erroneous; so if that is all there is, nothing can be said about that. We have already put that fact before the Board, and that

(Plaintiff's Exhibit 81—Continued)

error would increase the assessment, if it is an error.

Mr. Sharpe: There was also a claim made by the company as to the true cost of reproduction of the property within the state, showing a [1864] figure that was very decidedly less than that fixed by the Interstate Commerce Commission; and that also inclined the Board to believe that, along with the great disparity in value alleged by the taxpayer, inclined the Board to believe that an error had been made in the assessment. They felt it their duty as a Board to investigate that fact along with the other. They also felt that possibly, probably, there had been an error made in the apportionment of property to the State of Washington. That is another matter.

Mr. daPonte: Would these errors result, if corrected, in a reduction or increase of the assessment?

Mr. Sharpe: I am speaking of the situation when the Board proposed to make the reassessment.

Mr. daPonte: Just answer that question.

Mr. Sharpe: I don't know what the correct rule is. The Board hasn't made up its mind.

Mr. daPonte: Why have a reassessment if you aren't going to reduce the assessment? You can't increase it.

Mr. Sharpe: It doesn't know if these things would increase or decrease the former assessment.

(Plaintiff's Exhibit 81—Continued)

It is entirely open in mind as to whether or not it would.

Mr. daPonte: Does the Board know whether or not there has been any error committed?

Mr. Sharpe: Not unless it is fully informed as to the facts.

Mr. daPonte: I move to dismiss this hearing.

Mr. Sharpe: The Board believed in the examination of the complaint that there had been an error in the assessments for those two years.

(Argument.) [1865]

Mr. Hedges: You don't have anything further to offer?

Mr. daPonte: No, no, sir.

Mr. Sharpe: Will you consider the proceedings closed, then?

Mr. Hedges: Yes. [1866]

PLAINTIFF'S EXHIBIT 82

January 27, 1938.

Mr. Robert S. Macfarlane,
Western Counsel,
Northern Pacific Railway Company,
Seattle, Washington.

Dear Mr. Macfarlane:

On a number of occasions you have requested the Tax Commission to advise you relative to certain information and facts before the Commission bear-

ing upon the valuation placed upon the operating property of the Northern Pacific Railway Company for the year 1937.

Your questions, and our responses thereto, are as follows:

(1) "What sum was found to be the market value of the shares of stock of the Northern Pacific Railway Company and as of what date?"

(A) Averages for the year were found to be as follows: for 1934, \$60,088,333; for 1935, \$45,001,667; for 1936, \$70,667,083.

(2) "What sum was found to be the value of the funded debt of the Northern Pacific Railway Company and as of what date?"

(A) The value of the funded debt was found to be the par thereof as of December 31, of the years 1934, 1935 and 1936, respectively.

(3) "What sum was found to be the system net railway operating income of the Northern Pacific Railway Company and for what years?"

(A) The system net railway operating income for the year 1936 was found to be \$10,788,187, as reported.

(4) "What sum was found to be the net railway operating income in the State of Washington and for what years?"

(A) The net railway operating income in the State of Washington, before deducting ad valorem tax accruals, was found to be \$6,123,776.

(5) "For what year or period of years was the value of the capital stock and funded debt aver-

aged and used in determining the value of said property by the stock and bond method?"

(A) The average value for the three years immediately preceeding the assessment year.

(6) "For what year or years was the net railway operating income capitalized, averaged and used in determining the value of said property by the capitalization of income method?" [1867]

(A) Compilations were made capitalizing net railway operating income for one, three and five years. Your question presumes that capitalization of net was used as an independent element in determining value.

(7) "What sum was deducted from the value of stock and bonds for non-operating property of said company; what items were classified as non-operating property and what amount deducted for each of them?"

(A) The following deductions were made from the value of stock and bonds for non-operating property, viz: Lease of roads, \$6,623,516; miscellaneous rent income, \$5,868,112; miscellaneous non-operating property, \$2,410,250; dividend income, \$1,068,600; C. B. & Q., \$46,729,003; S. P. & S., \$10,870,800; N. W. I. Co., \$10,500,000; land grant, \$6,500,000; cash, \$11,821,676.

(8) "Did the Commission use and consider the cost of reproduction of the property of this company either for the system or within the state and, if so, what was the figure which the Commission so found and used?"

(A) The Commission did consider the cost of reproduction of the operating property, both for the system and within the state. System cost—\$472,657,189; cost within the state—\$157,320,413.

(9) “What sum was found by the Commission to be the value of the whole system of said company?”

(A) The value of the whole system, as indicated by elements other than cost of reproduction, was found to be \$369,406,194.

(10) “What percentage of system value was allocated to the State of Washington in determining its assessed value?”

(A) 34.5 plus per cent of the system value, as indicated by elements other than the cost of reproduction, was allocated to the State of Washington.

(11) “What factors were used in allocating a proportion of system value to the State of Washington?”

(A) A composite factor composed of relative net earnings and relative replacement cost was used in allocating to the State of Washington a proportion of the system value as above found.

(12) “If there are any other facts reflected in and bearing upon the assessed value of \$89,250,000, the Commission is requested to advise this company thereof.”

(A) In addition to mathematical calculations made, the Commission considered general economic conditions, and also economic conditions of the

northern transcontinental roads, generally, and of the Northern Pacific in particular; the future prospects of the system and of the various portions of the road; the past and future effect of Panama Canal and highway transportation competition; the demands of labor; and the cost of materials and supplies, etc., including all the evidence submitted by the taxpayer to this commission. [1868]

(13) "Did the Commission, in arriving at the 1937 valuation, use the same method stated in the opinion on the reassessments for the years 1935 and 1936?"

(A) The mathematical calculations made in respect to the 1937 assessment were similar to those made upon the reassessments for the years 1935 and 1936, except that certain modifications thereof were used in computing the relative net earnings allocation factor. The Commission did not strictly adhere to any mathematical formula in order to determine the value for the year 1937, since it is the opinion of the Commission that in the final analysis such value must be determined by the judgment of the appraising body.

Yours very truly,

TAX COMMISSION OF THE
STATE OF WASHINGTON,

By T. M. JENNER,

Commissioner. [1869]

PLAINTIFF'S EXHIBIT 84

COMPARISON OF RESULT OF USE OF 8% IN CAPITALIZING NET INCOME OF BURLINGTON AS COMPARED WITH PROPER PERCENTAGE BASED ON SIMILAR PERIOD FOR INCOME AND MARKET VALUE OF STOCK

	<u>1935</u> Assessment	<u>1936</u> Assessment
Market value of Northern Pacific proportion of Burlington stock as computed by Washington Tax Commission for purpose of reassessment proceedings	\$ 56,917,348	\$ 49,296,620
If proper percentage relation of Northern Pacific net income to market value of stock of Northern Pacific be used, result is as follows:		
Burlington net income—		
Average—1930-1934, incl.	9,371,039	
“ —1930-1935, “		
Capitalizing at correct rates on basis as proposed by Washington Tax Commission—		
1930-1934, incl.	5.94	
1930-1935, “		5.46
Capitalized value of Burlington.....	\$157,761,599	\$148,650,916
Nor. Pac. prop'n—48.59%.....	\$ 76,656,361	\$ 72,229,480
Excess over amount as determined by Washington Tax Commission....	\$ 19,739,013	\$ 22,932,860
		[1870]

ix (wherein the ~~present~~ plaintiff railroad ~~has~~ attacked ~~its~~ ^{on behalf of the railroad company} North Dakota assessments for 1932 and 1933), proposed a method of allocation based upon relative net railway operating income, less taxes paid. ^{The use of this method was originally urged by the General Counsel} ~~Mr. Turnburke's~~ proposal was based upon the following premises:

(1) Since taxes are themselves the subject of inquiry, the item of taxes should be excluded ~~as an element of apportionment;~~

(2) The ~~relative/operating~~ ^{railway (other} ~~expenses~~ ^{relative/operating} ~~can be determined,~~ ^{expenses} ~~and are reported~~ ^{to the various state assessing boards} ~~with reasonable accuracy;~~

(3) ~~Those expenses in~~ ^{rental}

(2) The ~~relative/operating~~ ^{relative/operating} expenses (other than equipment ~~and~~ ^{by states,} ~~and are reported~~ ^{to the various state assessing boards with reasonable accuracy;}

(3) ~~System equipment and joint facility rentals~~ ^{a given state's proportion of debit in credit,} ~~may be readily computed by~~ ^{and jointly apportioned between freight and passenger services;}

(4) Operating revenues other than revenues from interstate movements of freight and passengers ~~may be readily localized~~ ^{and are readily reported to the various state taxing and regulatory boards with reasonable accuracy;}

(5) ~~The~~ ^{A uniform} ~~rate per passenger mile~~ ^{being} ~~in~~ ^{interstate} ~~passenger revenues~~ ^{prorate} ~~as reported~~ ^{is fair and equitable;}

(6) The ~~apportionment~~ ^{apportionment} ~~between states of the revenue from the interstate movements of freight traffic~~ ^{is wholly} ~~arbitrary and unfair~~ ^{for the reason} ~~that freight rates are intended to cover the cost of service rendered plus a reasonable profit, and consequently such revenues should be apportioned~~ ^{with due regard to the relative cost of service rendered in the states so traversed by such}

~~treating as a factor in property affected~~

traffic, including a ~~ix~~ ^{property} return on the operating, utilized in such service; ~~and~~ ^{Hence, in}

(7) ~~in~~ order to determine, ^{by states, and with reasonable accuracy,} the company's net railway operating appraiser's income, ^{the} ~~(less taxes), the~~ ^{problem is:}

(a) To apportion ~~ix~~ to the taxing state the company's interstate freight revenues, not on a mileage ~~pro~~ ^{pro} prorate, but on the basis of the relative cost of service; ~~and~~

(b) To apportion to such taxing state ~~ix~~ its fair proportion

^{rents} of the equipment ~~and~~ ^{joint facility costs of income and} ~~available for taxing revenues, and~~ ^{the} ~~small~~ ^{ix} system item of uncollectible operating revenues, and

^{carriers reported state} ~~(c) ^{ix} From the~~ ~~ix~~ ^{ix} revenues and expenses

~~as reported by the carrier~~ ~~ix~~ ^{ix} ~~together with the~~ ~~ix~~ ^{ix} ~~additional~~ ~~revenues and expenses computed according to paragraphs (a) to (c), to~~ determine the indicated state net railway operating income less taxes;

~~(e) To allocate~~ ~~ix~~ ^{ix} ~~to the~~ ~~ix~~ ^{ix} ~~taxing state~~ ~~ix~~ ^{ix} ~~that portion of the system value which~~ ~~ix~~ ^{ix} ~~such state net~~ ~~ix~~ ^{ix} ~~less taxes~~ ~~ix~~ ^{ix} ~~operating income/bears to that of the~~ ~~ix~~ ^{ix} ~~system for the~~ ~~ix~~ ^{ix} ~~same~~ ~~ix~~ ^{ix} ~~test period.~~

~~(6) The~~ ~~ix~~ ^{ix} ~~taxing state is~~

(8) For taxation purposes, the taxing state is entitled to that proportion of the system value which such state net railway operating income, less taxes, bears to that of the system for the test period adopted.

Following Mr. Turnburke's ~~method~~ method, the Commission's first problem was to ~~find~~ allocate to Washington its proper proportion of revenue from interstate ~~shipment~~ freight shipments on the basis of the ~~cost~~ relative cost of service. This, of course, involved ~~xxx~~ a comparison of the total freight expense incurred in ~~with~~ Washington with that of the remainder of the system. For ~~xxxx~~ Northern Pacific purposes of illustration, we take the operations of the ~~xxxx~~ for the year 1932.

The total Washington freight service expense ~~Washington freight expense~~ applicable to ~~Washington~~ ^{Washington freight expense} is ~~1,444,802.997~~ ^{1,444,802.997} the ~~cost~~ for 1932 was ~~1,444,802.997~~ ^{1,444,802.997}

Hire of Equipment:
 To ~~us~~ we must add or subtract Washington's proportion of the unapportioned ~~hire of locomotives~~ ^{equipment} incident to freight service; ~~hire of locomotives~~ ^{equipment}, i. e. freight cars, locomotives, and work equipment.

(1) Freight cars. ~~xxxxxxx~~ For 1932 the ~~total~~ ^{7.13} as a system (a) ~~1,444,802.997~~ ^{1,444,802.997} more than it took in ~~for hire of freight cars. This expense we~~ ^{credit}

apportion to Washington ~~xxxxxxx~~ according to the relative number of freight car miles operated in Washington for 1932 or ~~1,444,802.997~~ ^{1,444,802.997} (a x b)

Had this figure been a ~~credit~~ ^{debit} instead of a ~~debit~~ ^{credit} the item would have been ~~deducted from~~ ^{added to}, instead of ~~deducted to~~ ^{added to}, state freight expense.

(2) Locomotives. With this item we have a little more difficulty ~~because~~ ^{because}, under ~~the~~ railroad accounting methods, locomotives are not ~~segregated~~ ^{segregated} as between freight and passenger, either for the state or system. ~~xxxxxxx~~

For 1932 the ~~cost~~ ^{cost} received (a) ~~1,444,802.997~~ ^{1,444,802.997} more than it paid out for hire of locomotives, both freight and passenger. This income we apportion to Washington according to the relative

Washington freight expense in 1932 is 1,444,802.997

Apply

The above figure

number of locomotives, freight and passenger, operated in Washington for 1932 or (b) 17.113939%, or (a x b):
\$2211xx (c) \$2,118.57-

What proportion of this item should be apportioned to ~~xxxxxxx~~ freight service? It is said/that relative state freight expense, ¹⁰ the relation ~~xxxxxxx~~ a reasonably accurate apportionment is/xxxx state of total/operating expenses assigned to freight/service to ~~xxxxxx~~ total state operating expenses. This we find to be (d) 62.517943%. Hence the ~~xxxxix~~ amount of credit apportioned to Washington by reason of the ~~xxxxxxx~~ G. N.'s excess of ¹⁰ \$12,379.22 of rentals received over those paid out for hire of locomotives for 1932 is (c x d):

(11) (Cr.) \$1,585.00

Here, too, the apportionment of a debit item of course would have been on the same basis.

(3) Work equipment. This system figure, like that of locomotives, is not apportioned as between freight and passenger. We therefore apportion/the ~~xxxx~~ system figure ~~xxxxxxxxxxxx~~ which is a credit

- - (a) \$15,963.10 - - ~~xxxxxxxxxxxx~~ on the basis of relative work train miles (b) 31.879,565%; i. e., (a x b): \$4,451.56. This figure we then apportion to Washington freight service ~~xxx~~ according to relative state freight expense, or (c) 62.517943%, thus apportioning to Washington a credit of (b x c):

Total hire of equipment expense apportionable to Washington ¹⁶ ~~xxxxxxx~~ ¹⁶ \$188,322.60x
Joint facility rents: (Cr.) 168,772.00-

For 1932 the ~~xx~~ N. ~~xxxxxxxxxx~~ paid out/ \$593,566.00 - ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ for joint facility rentals ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ in Washington, than it ^{more} took in. This ^{order} debit figure we apportion to freight service according to relative state freight expense, ~~xx~~ (b) 62.517,943%, or (a x b):

(17) \$371,060.00 (Cr.)

Allowance for use of property:

On interstate operations obviously ~~XXXXXXXXXX~~
each state is entitled to the same return on the

rate-making value of the property used in the

Before deducting taxes, we find that

service. / In 1932 ~~XXXXXXXXXX~~ the ~~1/2~~ as a sys-

tem ~~XXXXXXXXXX~~ earned (a) ⁽²⁰⁾ 1.41% on the cost of repro-

duction less depreciation of its ~~XXXXXXXXXX~~ operat-

ing property, to-wit: ⁽²¹⁾ \$694,608,688. ~~XXXXXXXXXX~~

~~XX~~

An equal return ~~XXX~~ - - (a) 1.41% - - on the cost

of reproduction less depreciation of its Washington

operating property, ⁽²²⁾ (b) \$121,669,284.00 - -

would yield (a x b) \$1,715,597.00. Apportioning this

figure to freight service according to relative

state freight expense, ~~XXXXXXXXXX~~ or (c) ⁽²⁴⁾ 62.517,945%

we ~~XXXXX~~ apportion ~~XXXXX~~ to Washington for use of

property in freight service the sum of (b x c)

⁽²⁴⁾ \$1,072,554.00

Total ~~XXXXXXXXXX~~ 1932 expense incident to freight service,

except taxes:
~~XXXXXXXXXXXXXXXXXX~~

From the foregoing calculations we find, then, that the ~~XXXX~~ total

~~XXXX~~ expenses/incurred ~~XXXXXXXXXXXXXXXXXXXX~~ by the ~~N.~~ in 1932 in

its ~~XXXXXX~~ freight operations in Washington were as follows:

Operating expenses applicable to freight/as reported

by Company: ⁽²⁵⁾ \$4,608,997

Hire of equipment ^(16 1/2) 166,778

Joint facility rents ⁽¹⁹⁾ 1,371,060

Allowance for use of property: ⁽²⁵⁾ 1,072,554 -

Total: ⁽²⁶⁾ \$6,416,333 -

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
System freight service expense

system
The total/operating expense applicable to freight as reported by the ~~P.~~ N. for 1932 was ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ / \$32,252,839.00, ⁽²⁹⁾ or 70.643662% of its total system operating expenses, freight and passenger.

To this ~~XXXXXXXXXXXXXXXXXXXX~~ total (a) we must, as in the case of or deduct as the case may be, the company's Washington operations, add/~~XXXXXXXXXXXXXX~~ the freight's proportion of the expense or credit incident to hire of equipment and joint facility rents, and to ~~XXX~~ the resulting figure, add the allowance for use of property.

Hire of equipment:

⁽³⁾ (1) Freight cars. This ~~XXXXXXXXXXXX~~ amounted to \$1,471,269, and was, of course, all apportionable to system freight service: ⁽²⁾ (C.Y.) \$1,471,269.00

(2) Locomotives: As previously noted, this system item of expense or income is not segregated as between freight and passenger service. ~~XXX~~ For

1932 the ~~P.~~ N. as a system/received ⁽⁶⁾ (a) \$12,379.22 more than it paid out for hire of locomotives, both freight and passenger, we apportion ~~XX~~/freight service ~~XXXX~~ ~~XXXXXXXXXXXX~~ ~~XXXXXXXXXXXX~~ according to relative system freight system ~~XXXX~~ expense, i. e., the relation of total/~~XXXX~~ operating expenses assigned to freight service, to total system operating expenses, freight and passenger, or

⁽²⁵⁾ (b) 70.643662%, or ~~XXXXXX~~ a credit of (a x b) ⁽²⁹⁾ (cr) \$8,745.00

⁽³⁰⁾ (3) Work equipment. As earlier noted, this system figure, like that of locomotives, is not apportioned as between freight and passenger. We therefore apportion the total system credit item ~~XXX~~ - - (a) \$13,963.00 - - to system freight service according to relative system freight ⁽³⁰⁾ expense - - ~~XX~~ (b) 70.643662% - - or a credit of (a x b) ~~(cr) \$63.00~~

Total hire of equipment expense apportionable to ~~XXX~~ system freight service: ⁽³¹⁾ (C.Y.) \$1,452,661.00

Joint Facility Rents:

(32) For 1932 the ~~the~~ ¹ N. ¹ as a system ~~paid-out-~~

(a) ~~\$337,475.00~~ for joint facility rents more than it took in. This debit figure we apportion to freight

service according to relative system freight expense -

(b) ~~70,643.62%~~ - - or ~~(a x b):~~ (c): ~~2866,647.00~~

Allowance for use of property:

As previously noted, ~~xxxxxxx~~ before deducting

taxes, in 1932 the ~~the~~ ² N. as a system earned (a) ~~1.41%~~

on the cost of reproduction less depreciation of its

system operation property, ~~xxxxxxx~~ (b) ~~504,608,008.-~~

or ~~xxxxxxx~~ a total of ~~xxxxxxx~~

~~77,960,000.00~~ (a x b). Apportioning this figure to

freight service according to relative system freight

expense - - (c) ~~70,643.62%~~ - - we have, for this item: ~~5,623,638.00~~

Total 1932 ~~xxxxxxx~~ system expense incident to freight service, except taxes:

From the foregoing, we find that the total expenses other than system

taxes incurred by the ~~the~~ ³ N. in 1932 in its/freight ~~operations~~ service operations were as follows:

~~xxxxxxx~~ System operating expenses applicable to freight ser-²⁷ vice as reported:

Hire of equipment ~~38,262,899~~

Joint facility rents ~~(c') 1,452,661~~

Allowance for use of property: ~~266,647~~

Total: ~~5,623,638~~

~~36~~ \$39,595,785

Division of interstate revenues on basis of

Cost.

~~G. N.'s~~ N.P.'s

Having now before us the ~~total~~ expenses ~~incident to the G. N.'s~~ for 1932 incident to freight service both for ~~the~~ Washington and the system, we are now in a position to compute ~~the~~ ^{for that year the G. N.'s N.P.'s} cost per ~~revenue~~ 1,000 revenue net ton miles ~~of~~ ^{of} hauling freight in Washington ~~as well as~~ ^{on} that part of the system outside of Washington. ~~Having like-~~ ~~wise before us~~ ~~the~~ ~~interstate~~ ~~revenue~~ ~~net~~ ~~ton~~ ~~miles~~ ~~both~~ ~~for~~ ~~Washington~~ ~~and~~ ~~the~~ ~~system,~~ ~~we~~ ~~can~~ ~~determine~~ ~~the~~ ~~relative~~ ~~cost~~ ~~of~~ ~~hauling~~ ~~interstate~~ ~~freight~~ ~~in~~ ~~Washington~~ ~~and~~ ~~that~~ ~~of~~ ~~Washington~~ and by applying this percentage to the total system interstate freight revenue for the year we ~~are~~ ^{are} able to compute the interstate freight revenue properly apportionable to Washington on the basis of relative cost of service. ~~Adding~~ ^{Adding} to this latter total ~~the~~ ~~computed~~ ~~interstate~~ ~~freight~~ ~~revenue,~~ ~~the~~ ~~reported~~ ~~intrastate~~ ~~freight~~ ~~revenue~~ reported by the Company, we then have the total freight revenue, intra and interstate, properly apportionable to Washington. Thus:

Division of Investigation of the Federal Bureau of Investigation

Washington, D. C.

Very respectfully,
[Faint, illegible text follows, likely a signature block or header information.]

[Faint, illegible text at the bottom of the page, possibly a date or reference number.]

	<u>System</u>	<u>Washington</u>	<u>All other States</u>
(a) Expenses incident to freight service *	53,029,816.00 37 \$39,595,785	38 9,866,884.00 \$6,415,333	39 23,162,952.00 \$33,180,452
Total			
(b) /Revenue net ton miles of freight, intra and interstate (in thousands)	40 3,087,625 4,324,700	41 753,722 522,337	42 2,335,913 3,803,363
(c) Cost per 1,000 revenue net ton miles*(a ÷ b)		43 13,090,880 \$12.282	44 9,924,505 \$8.726
(d) Total interstate revenue net ton miles (thousands)	45 2,529,186 3,960,359	46 427,671 402,268	47 2,101,515 3,558,091
(e) Cost of service as to interstate freight* (c x d):	48 26,455,086 \$35,988,558	49 5,378,570 \$4,940,856	50 20,856,496.00 \$31,047,902
(f) Percentage of cost of interstate freight service*	100.00	51 21.162625% 13.728	52 78.837374% 86.272
(g) Interstate freight revenue for system:	53 29,227,615.00 \$38,183,202		
system			
(h) Division of/interstate freight revenue on basis of relative cost*(f x g):	54 38,183,202	55 6,185,300 \$5,841,790	56 23,042,285.00 \$32,941,412
(i) Intrastate freight revenue in Washington <i>as reported,</i>		57 5,497,482 2,647,436	
(j) Total freight revenue upper properly apportionable to Washington (h plus j):		58 11,682,812 \$7,889,226	

* Less taxes.

Uncollectible railway operating revenue
assignable to Washington:

N.P.'s

The ~~G. N.'s~~ ⁽⁵⁸⁾ total uncollectible ~~spark~~ railway operating revenue for 1932 for the system was ~~\$14,210.00~~, all of which is, of course, assignable to freight service. This debit item is properly apportioned to Washington ~~on~~ ^{system} on the basis of relative/freight revenues earned in Washington. ~~and for the system~~ Thus:

- | | |
|---|---------------------------------|
| (a) Total freight operating revenues for system: | (59)
\$45,960,600 |
| (b) Freight operating revenues assignable to Washington as above computed: | (57)
\$7,889,226 |
| (c) Percentage of system freight operating revenues assignable to Washington: (b ÷ a) | (60)
17.165% |
| (d) Total uncollectible railway operating revenue assignable to Washington | |
| (d) Total system uncollectible railway operating revenues: | (58)
\$14,210 |
| (e) Total uncollectible ry. operating revenues assignable to Washington (c x d): | (61)
\$2,439 |



and joint facility rents
Hire of equipment/assignable to Washington, both
freight and passenger.

For the purpose of determining the expenses incidental to freight service in Washington we have already computed the expenses or credits assignable to Washington freight ^{service} ~~XXXXXXXXXXXXXXXXXXXX~~ arising from hire of equipment and joint facility rents. But in order to compute the net railway operating income, less tax-S, ~~XXXXXX~~ company's lines in Washington, we must compute the total amount of these credits assignable to Washington in both freight and passenger service. Thus:

~~xxx~~
Hire of Equipment:

(1) Freight cars. This ~~xxxxxxx~~ obviously all pertains to freight service, and, as already computed, ~~xxxxxxx~~ the following ~~xxxxxx~~ was assignable to Washington for 1932: 5
(cr) \$172,850-

(2) Passenger train cars: For 1932, the ~~is~~ ^{less} N. P. as a system received (a) \$ ~~xxxxxxx~~ ⁶² more than it ~~xxxxxxx~~

paid out for hire of passenger train cars. This ~~xxxxxxx~~ ^{debit above} income we apportion to Washington according to relative/ passenger car miles operated in ~~xx~~ Washington -- (b) ~~xxxxxxx~~ ⁶³ -- or (a x b): ~~xxxxxxx~~ ⁶⁴ (cr) \$ ~~xxxxxxx~~

(3) Locomotives. As previously noted, this was a ~~xxx~~ system credit item of (a) ~~xxxxxxx~~ ⁶⁵ \$12,379.22, and is apportionable to Washington according to ~~xx~~ the relative system locomotive miles operated in Washington -- (b) ~~xxxxxxx~~ ⁶⁶ 17.11393% -- or (a x b): 7
(cr) \$2,116.57-

(4) Work equipment. As already shown, this was a system credit item of (a) ~~xxxxxxx~~ ⁶⁷ \$13,963.10, and is apportionable to Washington according to the relative ⁶⁸ work train miles operated in Washington -- ~~xxxxxxx~~

(b) ~~xxxxxxx~~ ⁶⁹ \$1,879,565% -- or, (a x b): (cr) \$4,451.38

Total ~~xxxxxxx~~ amount ~~xxxxxxx~~ assignable to Washington for hire of equipment, both freight and passenger: 5
(cr) \$178,565.00-

Joint Facility Rents:

As heretofore noted, for 1932 the ~~G.~~ ^{to be received} N. paid ~~out~~ the following amount for joint facility rentals in Washington more than it collected: ^{paid} ¹⁷ \$595,505.00

~~XXXXXXXXXXXXXXXXXXXX~~

Percentage of system net railway operating income (less taxes) earned in Washington for 1932.

By net railway operating income is meant the total railway operating revenues less railway operating expenses, railway tax accruals, and uncollectible railway revenue, to which ~~ixx~~ are added the debit or credit items of equipment rents and joint facility rents. These ~~XXXXXX~~ being now all available, we are in a position to compute the net railway operating income, less taxes, of the lines in Washington, and thus secure ~~XXXXXXXXXXXXXXXXXXXX~~ Washington's percentage of the system

figure. ~~XXXX~~ Thus:

XXXXXXXXXX	<u>Washington:</u>
Railway operating revenues:	⁵⁷ \$2,647,456
Freight ix (intrastate)	²⁴ 5,841,790
Freight (interstate)	⁶ 2,037,565
All other: (ln 44 - ln 1, p.700 Rep DFW)	⁶⁷ \$9,926,589
Total	<u>XXXXXXXXXXXXXXX</u>

Railway operating expenses \$7,682,590

~~XXXXXXXXXXXXXXXXXXXX~~

Uncollectible Ry. Revenues ¹⁰ 2,459

Equipment rents ~~(dr)~~ ^(cr) 178,585

Joint facility rents (dr) ¹⁷ 593,506

~~Net Ry. operating income in Washington for 1932 excluding taxes~~ ¹⁷ \$3,018,529
(a) \$1,469,469

System

~~G. N.'s net system net railway operating income for 1932, including taxes as reported~~ ¹⁷ \$1,890,551

Railway tax accruals ¹⁷ 6,697,424
~~G. N.'s system net railway operating income XXXXX for 1932, less tax accruals~~ ¹⁷ \$7,987,975

Washington's proportion of ~~G. N.'s~~ system net Ry. operating income for 1932 excluding taxes (a $\frac{a}{b}$ b): ¹⁷ 16.596,0%

PLAINTIFF'S EXHIBIT 86

is a copy of the brief of certain defendants in Northern Pacific Railway Company v. Adams County, et al., and other suits. So far as material, said brief is as follows:

[1884]

IN THE
District Court of the United States
 FOR THE
 EASTERN DISTRICT OF WASHINGTON,
 NORTHERN DIVISION

NORTHERN PACIFIC RAILWAY COMPANY, <p style="text-align: center;">vs.</p> ADAMS COUNTY, et al.,	Complainant,	No. E-4300
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, <p style="text-align: center;">vs.</p> ADAMS COUNTY, et al.,	Complainant,	Nos. E-4314 and E-4338 (Consolidated for purpose of trial)
SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY, <p style="text-align: center;">vs.</p> ADAMS COUNTY, et al.,	Complainant	No. E-4305

**Brief of Defendants Benton County et al. On
 Exceptions to Master's Report
 (As to Base Valuations)**

R. G. SHARPE, Attorney for All Said Defendants,
 Except Skagit and Snohomish Counties

CHAS. L. POWELL and GEO. O. BEARDSLEY, Attorneys for Defendant, Benton County, DALE McMULLEN and JOS. E. HALL, Attorneys for Defendant, Clark County, CECIL O. HALLIN and J. E. STONE, Attorneys for Defendant, Cowlitz County, PAUL O. MANLEY and J. C. GRAHAM, Attorneys for Defendant, Grays Harbor County, SPENCER D. SHORT, Attorney for Defendant, Kittitas County, FRED A. SMITH, Attorney for Defendant, Klickitat County, R. M. WRIGHT, Attorney for Defendant, Skamania County, E. W. SCHWELLENBACH, Attorney for Defendant, Grant County,	WM. H. GRIMM and JOS. E. HALL, Attorneys for Defendant, Lewis County, HAROLD P. TROY, Attorney for Defendant, Thurston County, BERNARD J. LEHRER, Attorney for Defendant, Walla Walla County, LAWRENCE M. KEPLINGER and FRANK M. ALLYN, Attorneys for Defendant, Whatcom County, OLE SANDVIG, Attorney for Defendant, Yakima County, CHARLES R. DENNEY, Attorney for Defendant, Snohomish County, JOHN W. BRISKY and THOS. K. CHAMBERS, Attorneys for Defendant, Skagit County.
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IN THE
District Court of the United States
 FOR THE
 EASTERN DISTRICT OF WASHINGTON,
 NORTHERN DIVISION

NORTHERN PACIFIC RAILWAY COM- PANY,	Complainant,	}	No. E-4300
vs.			
ADAMS COUNTY, et al.,	Defendants.	}	
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,	Complainant,			}	Nos. E-4314 and E-4338 (Consolidated for purpose of trial)
vs.			
ADAMS COUNTY, et al.,	Defendants.	}	
SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY,	Complainant,			}	No. E-4305
vs.			
ADAMS COUNTY, et al.,	Defendants.		

**Brief of Defendants Benton County et al. On
 Exceptions to Master's Report
 (As to Base Valuations)**

* * * * *

* * * * *

APPORTIONMENT OF SYSTEM VALUE TO WASHINGTON

As heretofore pointed out, in applying the system value test to the operating property within the state, the assessing officer must, after finding the system value, apportion to the taxing state an equitable proportion of such value.

IMPORTANCE OF USING MOST EQUITABLE APPORTIONMENT FACTOR. The Master found a system value of the N. P. operating property of \$265,000,000 for 1925 (Report, p. 96), and of \$291,000,000 for 1926 (Report, p. 106); and for the Milwaukee operating property of \$334,000,000 for 1926 (Report, p. 121), and of \$346,000,000 for 1927 (Report, p. 132). Since one per cent of these figures approximates \$3,000,000, an error of one point in apportionment as to either road means a difference to Washington (using the Master's figures) of approximately \$3,000,000 in 100% value; or \$1,200,000 in equalized value (using 40% as the average equalization factor); or approximately \$60,000, per year in actual taxes collectible (assuming an average 50 mill tax rate).

It is not surprising then, to find these defendants devoting much of their briefs to a discussion of such apportionment. For this reason, in order that the court may have the same clearly in mind from the beginning, we offer the following synopsis of the several contentions of these defendants bearing on the allocation of system value of the three litigant roads:

SYNOPSIS OF DEFENDANTS' BRIEF AS TO APPORTIONMENT OF SYSTEM VALUE:

(1) It is impossible in respect to railroad property, to disintegrate the value of the portions of the line in different states; any attempt to do so must be more or less arbitrary and fictitious. Hence the choice of an equitable apportionment factor must rest within the sound discretion of the assessing board.

(2) **RELATIVE MILEAGE-OF-LINE.** The Federal and state courts have uniformly approved this method of apportioning railroad system value among states where the road is homogeneous in character, but have as often condemned it as unfair to states having valuable terminal properties and where construction costs are comparatively high. Consequently, some method must be devised for making an equitable adjustment of this method as to such states.

(3) As to both the Milwaukee and N. P. systems, Washington is a state of valuable terminal properties, and relatively high construction cost.

(4) **RELATIVE REPLACEMENT COST.** This method of apportionment should properly be adopted as to each complainant road because:

(a) Since the replacement cost of a railroad is *prima facie* its value, relative replacement cost is presumptively its relative value until the contrary is shown.

(b) The loss as well as the gain in value resulting from fusion of tangible parts must be distributed over system in proportion to value of such separate tangible parts. *Adams Express Co. v. Ohio*, 166 U. S. 185.

(c) The presumption that relative replacement cost reflects relative value has not been overcome because (1) relative net earnings has not, and cannot, be shown by states; and (2) since value depends on future prospects, relative value must depend on rela-

tive future prospects, as to which the record is silent.

(d) Replacement cost being a controlling element of value for rate-making, and the value of the carrier's property wherever located being inextricably interwoven with its rate structure, it is not illogical to conclude that relative replacement cost should be used as a criterion of relative value.

(e) It is the only logical index of the true distribution of terminal values among states.

(f) It makes due provision for differences in relative construction cost, as required by the rule announced in *Wallace v. Hines*.

(g) It is endorsed by all parties and witnesses (save only the Milwaukee and its tax commissioner), and by many others.

(h) It is generally approved by the courts even for the distribution of the income of interstate properties.

(5) METHODS OF APPORTIONMENT PROPOSED BY COMPLAINANTS. The operating statistics relied upon by complainants as overcoming the presumption that relative replacement cost evidences the most equitable apportionment of system value, are:

(a) BY N. P. AND S. P. & S. (1) relative mileage of all tracks operated; (2) relative transportation car mileage; (3) relative ton mileage plus passenger mileage (traffic units); and (4) relative gross op-

erating revenues apportioned between states on a mileage prorate.

(b) BY MILWAUKEE. (1) relative mileage of all tracks operated; (2) relative car mileage plus locomotive mileage; (3) relative ton mileage plus passenger mileage; and (4) relative gross operating revenues with revenues apportioned between states other than Minnesota on a relative ton mileage basis.

(6) RELATIVE TRACK MILEAGE OPERATED.—HOW COMPUTED. This factor is computed by comparing the mileage of all track operated within the state with the mileage operated for the system, whether such track be owned or merely used under lease or joint trackage agreements.

(7) SAME—RELATIVE CONSTRUCTION COST AND TERMINAL VALUES. Since equal weight is given to each mile of track whether it be a bridge, tunnel, or trestle, or whether it be in the desert, on a prairie, or on valuable urban lands, this method fails to reflect either relative construction cost, or the relative value of terminal facilities such as shops, docks, yards, warehouses, etc.

(8) SAME—APPORTIONS VALUE WHERE TRACK NOT OWNED. The factor is fundamentally objectionable in that it includes trackage operated but not owned, whereas in Washington the railroad is assessed in the name of the owner—not the tenant company. For instance,—applying this factor a company with all its property in Washington but operating as a tenant company over as much track outside the state as it

owned and operated within the state, would be taxed on but 50% of its property.

(8-a) SAME—STATE RAILROAD VALUES NOT DISTRIBUTED TO COUNTIES ON TRACK MILEAGE BASIS. The Master is in error in finding (Report, p. 72) that Washington apportions state railroad values among its taxing districts according to relative all track mileage or relative line mileage. In making such distribution the tax commission (Laws 1925, Ex. Sess. Ch. 130, Sec. 47, p. 257) classifies track, giving different values to different kinds of track, and apportioning no value whatever for right-of-way where a road operates over foreign lines.

(9) RELATIVE CAR MILES OR CAR PLUS LOCOMOTIVE MILES. Upon this basis each state receives such part of the total value of the system as the number of car miles or car plus locomotive miles run within the state is a part of the whole number run on the system. It neglects the nature of the traffic, the character of the haul, the utilization of car capacity, and all other equally important transportation factors except the one represented by itself. It ignores relative cost, relative terminal values, and many other equally important considerations.

(10) RELATIVE TON PLUS PASSENGER MILES. This method erroneously assumes that where traffic is most dense, values are greatest. It assumes that all traffic is of equal value from a transportation standpoint

which is palpably absurd. If, to correct this weakness, an attempt were made to reduce all traffic to terms of one particular kind, the resultant factor would be the same as relative gross revenues, and consequently adds nothing to whatever showing is made by that factor.

(11) CAR MILEAGE, TRAFFIC UNITS AND GROSS REVENUES CONSIDERED COLLECTIVELY (LINE HAUL FACTORS). As a group these three factors may be correctly referred to as "Line haul factors," since they each involve only line haul—the first, line haul of locomotives and loaded and empty cars; the second, the line haul of freight tonnage and passengers; and the third, gross revenues which are in turn apportioned to the state according to relative mileage of haul.

The Master finds that relative net earnings, if known, would reflect true relative value. It follows that since relative net earnings are not available, these "line haul factors" must be intended to reflect relative net earnings. This being true, these factors are collectively subject to certain vital objections:

(a) IGNORE FUTURE PROSPECTS. Although the value of the system is measured largely by its future prospects, these factors in no way reflect the relative future prospects of different segments of the system. One section of the road may have reached and even passed the pinnacle of its earning power, while another part of the system, in spite of its past indifferent showing, may, as Mr. Sparrow, its vice-president, said

of the western extension of the Milwaukee road be "the future hope of the St. Paul Railroad." (Milw. Rec. Def. Ex. "18," p. 82.)

(b) **IGNORE VALUE OF BRANCH LINES AS FEEDERS.** An important element of value of branch lines is that they furnish long haul business to the system. Without its branches the main line could not exist. The one therefore is as important as the other to the life of the system. More than half of the N. P. and Milwaukee lines in Washington are branch lines. In dividing interline revenue connecting carriers commonly allow branch lines far more than the mileage prorate of the total revenue, in recognition of this peculiar value. Yet by these "line haul factors" these numerous branches in Washington where the traffic is necessarily light are apportioned only such value as is represented by the comparative mileage of haul.

(c) **IGNORE TERMINAL VALUES.** The terminal facilities such as freight yards, docks, depots, warehouses, shops, and the like contribute as much to the earnings of a railroad as do the rails. (Milw. Rec. p. 950.) The system would not be susceptible to profitable operation should they suddenly disappear. (Donnelly, N. P. Rec. p. 5784.) Whatever little movement of cars, tonnage and passengers there may be within the terminals, such movement is ignored in computing these "line haul factors," since the companies' statistics are based on station to station movements only. It followed that these factors recognize only the contribution of the track, and wholly ignore

the contribution of the terminal. (Hadley, N. P. Rec. p. 413.)

(d) IGNORE RELATIVE CONSTRUCTION COST. Of course none of these factors give any consideration whatever to the comparative construction cost in the different states, and on that ground are as objectionable as the factor condemned for that reason in *Wallace v. Hines*.

(e) RELATIVE VALUE OF SEPARATE ROADS. The fact that these line haul factors fail to reflect the relative net earnings of separate roads where such relative net earnings is ascertainable, is convincing evidence that they fail to reflect the unknown relative net earnings and hence the relative value of different segments of the same road.

(f) FACTORS REFLECT VALUE WHERE NO NET EARNINGS. These "line haul factors" are intended to reflect relative net earnings. It is apparent that as to a railroad operating in a state at a loss, the application of these "line haul factors" would reveal a certain proportion of gross revenues, ton and passenger miles and car and locomotive miles, and consequently the application of these factors would, by apportioning value where it did not exist, take away from those states with true net earnings a corresponding proportion of the value to which they were justly entitled. (A. S. Dudley, Milw. Rec. p. 1059, 1063.)

(g) IGNORE RELATIVE SALVAGE VALUE. Of course relative salvage value can bear no relation whatever to either car miles, ton miles, passenger miles or gross

revenues, yet salvage value represents the minimum value apportionable to a given state.

(h) Line haul factors ignore use by tenant companies. The roadway and track is assessed in Washington to the owning company. The value of a particular segment of railroad must depend upon the profitableness of the use made of it by all carriers, including tenant companies. Thus the N. P.'s Seattle-Portland line must be both actually and relatively more valuable as a railroad because it accommodates three roads, the N. P., G. N. and Oregon-Washington, instead of the owning company alone. Yet while the two tenant companies are assessed only on their rolling stock, neither the car mileage, the ton and passenger mileage, nor gross revenues of the tenant companies are included in the computation of the Master's apportionment factors. Neither are joint facilities rentals included in any of these factors. Were they so included and accorded proper weight, the Master's N. P. apportionment factors would be increased from 27.20% to 30.72% in 1925 and from 27.81% to 30.62% in 1926.

(12) MASTER'S FALLACIOUS DEDUCTIONS FROM RELATIVE CAR MILEAGE AND TRAFFIC UNITS FACTORS. The "line haul factors" were intended to reflect relative net earnings, which in turn depend upon (1) relative gross revenues, and (2) relative operating expenses. Less relative ton and car miles must mean more relative net earnings. The fact that the relative car miles and relative ton and passenger miles factors

of both the N. P. and Milwaukee are less than the relative gross revenues factors, indicate that the relative net revenues factor is greater than the gross revenues factor. The Master, however, took the average of the three factors, thereby penalizing Washington in each case, for contributing more revenues at less cost, than the average for the system.

(13) **RELATIVE GROSS OPERATING REVENUES.**—**HOW COMPUTED.** The Milwaukee's so-called "gross revenues" factor is mis-named, since in computing the factor each state receives the relative net ton mile proportion of all interstate freight revenues except those of Minnesota. (Milw. Rec. p. 1077.) The N. P. and S. P. & S. compute the factor by apportioning to each state that proportion of the total revenues from each separate shipment which the mileage of haul within the particular state bears to the total mileage of haul, and comparing for a given period, the total gross revenues thus apportioned to the state with the total for the system. (N. P. Rec. pp. 645-7; S. P. & S. Rec. p. 271.)

(14) **SAME**—The Factor is avowedly used as a substitute for the unknown factor of relative net revenues, whereas, since net revenues depend upon relative operating expenses as well as relative gross revenues, there is no necessary relation between relative gross revenues and relative net revenues.

(15) **SAME**—Since the revenues are apportioned on a mileage of haul basis, the factor wholly ignores

(1) relative value of branch lines as feeders; (2) relative terminal values; (3) relative construction cost, and apportions value to segments of the system having no net earnings.

(16) SAME—The Mileage prorate apportionment of interstate revenues is recognized by all witnesses as unfair to a terminal state.

(17) SAME—The inequity of such division is recognized by both the Interstate Commerce Commission and the Supreme Court.

(18) SAME—Segments of roads of recognized value, such as the S. P. & S. and N. P. in Oregon, and the N. P. in Wisconsin are operating at a loss if apportioned only a mileage prorate of interstate revenues.

(19) SAME—In actual practice complainants, as well as other roads, apportion far more than a mileage prorate division of interline revenue to terminal divisions and branch lines.

(20) SAME—From data assembled since the trial it appears that if interstate revenues were apportioned to Washington on a rate prorate basis, i. e., according to relative local rates for the portion of each separate haul within and without the state, Washington would receive at least 27% more than a mileage prorate division of N. P. interstate revenues.

(21) SAME—The Master is in error in finding that the Washington taxing authorities have recognized

the propriety of apportioning interstate revenues on a mileage basis.

(22) SAME—The Milwaukee's so-called relative gross revenues factor, is in reality, only a relative ton-mile factor as to interstate freight revenues.

(23) MASTERS' FOUR FACTORS. The use of these four factors would admittedly reflect different values for identical roads in Washington.

(24) SAME—Since each of the Master's four factors ignore the distribution of terminal values, a combination of the four cannot neutralize the prejudicial effect of either.

(25) CONCLUSION—Neither the Line Haul Factors nor the relative all track mileage factor overcome the presumption that relative replacement cost reflects the relative value of the Washington properties.

(1) IT IS IMPOSSIBLE TO DISINTEGRATE THE VALUE OF THE PORTIONS OF A RAILROAD SYSTEM IN DIFFERENT STATES; ANY ATTEMPT TO DO SO MUST BE MORE OR LESS ARBITRARY AND FICTITIOUS. HENCE THE CHOICE OF AN EQUITABLE APPORTIONMENT FACTOR MUST REST WITHIN THE SOUND DISCRETION OF THE ASSESSING BODY.

After resorting to every possible guide, the determination of system value must rest largely, in the final analysis, within the sound judgment of the appraising officers. So, likewise, must the choice of the proper apportionment factor rest within the sound

discretion of the assessing board. Dr. Hadley, testifying on behalf of all of the complainants, said:

“But in allocation as distinct from valuation, you have a good deal of freedom to use any standard for dividing among the states that the people may see fit.” (N. P. Rec. p. 251; Hadley Dep. Milw. Case, p. 12.)

In *Cleveland, etc., Ry. Co. v. Backus*, 154 U. S. 439, 445-446, the court said:

“In the nature of things it is practically impossible—at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put and how much by another. Take the case before us; it is impossible to disintregate the value of that portion of the road within Indiana and determine how much of that value springs from its use in doing interstate business, and how much from its use in doing business wholly within the state. An attempt to do so would be entering upon a mere field of uncertainty and speculation. And because of this fact it is something which an assessing board is not required to attempt.”

With this Mr. A. S. Dudley, speaking for the Milwaukee, appears to agree. He says:

“Q. And it is impossible to tell the relative value of any one part as opposed to any of the other parts? A. Yes. Q. It is impossible to tell the value of that part running through the state of Montana as compared with the rest of it or the other parts? A. Yes.” (Milw. Rec. p. 915.)

In *Gorham Mfg. Co. v. Travis*, 274 Fed. 975, 978-9, the court said:

“With all deference when applied to corporations having business in several states, any effort at allocation must be more or less arbitrary and fictitious, as is indeed shown by the record at bar. The truth is that in a business which is a unity, it is impossible to break up the parts and satisfactorily to assign to any piece a corresponding part of the income.”

In *Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113, 120-121, Mr. Justice Brandeis said:

“The legislature, in attempting to put upon this business its fair share of the burden of taxation, was faced with the impossibility of allocating specifically the profits earned by the processes conducted within its borders. It therefore, adopted a method of apportionment which, for all that appears in this record, reached, and was meant to reach, only the profits earned within the state.”

In that case the court approved a statutory method of apportioning net income for taxation purposes between states, in the ratio which the value of the physical property within the state bore to the value of all of the physical property of the corporation. The two cases last cited will be considered more in detail later on in this brief.

(2) THE STATE AND FEDERAL COURTS HAVE UNIFORMLY APPROVED THE RELATIVE MILEAGE-OF-LINE METHOD OF APPORTIONING RAILROAD SYSTEM VALUE AMONG STATES WHERE THE ROAD IS HOMOGENEOUS IN CHARACTER, AND HAVE CONDEMNED SUCH METHOD AS UNFAIR ONLY AS TO STATES HAVING VALUABLE TERMINAL PROPERTIES AND WHERE CONSTRUCTION COSTS ARE RELATIVELY HIGH.

The legislative intent that in applying the system value test, physical property rather than use factors were to be considered is shown by the fact that relative mileage-of-line is the only method of apportionment specifically mentioned in the Washington statutes. Interstate railroads are required to report:

“The whole length of the railroad system operated by the company, and the length of the line in this state, whether operated as owner, lessee or otherwise. The length of line owned and the length of the line operated for the whole system in this state shall be separately reported.” (Laws Ex. Sess. 1925, Ch. 130, Sec. 39, Subdiv. 17 (1) p. 248.)

The statute further provides:

“In determining the value of the portion within the state, the commission shall take into consideration the value of the entire system, the mileage of the whole system, and of the part within this state, together with such other information, facts and circumstances as will enable the commission to make a substantially just and correct determination.” (Laws Ex. Sess. 1925, Ch. 130, Sec. 44, p. 254.)

The leading case, *State Railroad Tax Cases*, 92 U. S. 575, arose under the Illinois revenue law providing how railroad values should be apportioned among the various counties of the state. Under the statute there attacked, the right-of-way including the superstructures of the main, side, and second tracks and turnouts and the stations and improvements on the right-of-way and the rolling stock were taxed in proportion to the mileage of track in the several counties,

cities, etc., but the station houses, depots, machine shops and other buildings, as well as real estate (other than the railroad track) were assessed locally in the several counties. In upholding this method of apportionment, the Supreme Court said:

“It may well be doubted whether any better mode of determining the value of that portion of the track within any one county has been devised than to ascertain the value of the whole road, and apportion the value within the county by its relative length to the whole.” (92 U. S. 575, 608.)

In *Pittsburgh, etc., Ry. Co. v. Backus*, 154 U. S. 421, 430-432, the court said:

“It is ordinarily true that when a railroad consists of a single continuous line, the value of one part is fairly estimated by taking that part of the value of the entire road which is measured by the proportion of the length of the particular part to that of the whole road. This mode of division has been recognized by this court several times as eminently fair.” * * * (citing and quoting the above excerpt from *State Railroad Tax Cases*.)

“It is true, there may be exceptional cases, and the testimony offered on the trial of this cause in the Circuit Court tends to show that this plaintiff’s road is one of such exceptional cases, as for instance, where the terminal facilities in some large city are of enormous value, and so give to a mile or two in such city a value out of all proportion to any similar distance elsewhere along the line of the road.”

And in *Cleveland, etc. Ry. Co. v. Backus*, 154 U. S. 439, 444-446:

“Now, when a road runs into two states each state is entitled to consider as within its territorial jurisdiction and subject to the burdens of its taxes what may perhaps not inaccurately be described as the proportionate share of the value flowing from the operation of the entire mileage as a single continuous road. * * * Take the case of a railroad running from Columbus, Ohio, to Indianapolis, Indiana. Whatever of value there may be resulting from the continuous operation of that road is partly attributable to the portion of the road in Indiana and partly to that in Ohio, and each state has an equal right to reach after a just proportion of that value, and subject it to its taxing processes. The question is, how can equity be secured between the states, and to that a division of the value of the entire property upon the mileage basis is the legitimate answer. Taking a mileage share of that in Indiana is not taxing property outside of the state.

* * * * *

“In the nature of things it is practically impossible—at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put and how much by another. Take the case before us; it is impossible to disintegrate the value of that portion of the road within Indiana and determine how much of that value springs from its use in doing interstate business, and how much from its use in doing business wholly within the state. An attempt to do so would be entering upon a mere field of uncertainty and speculation. And because of this fact it is something which an assessing board is not required to attempt.”

In many other decisions the Supreme Court has approved the relative mileage-of-line method of distributing interstate railroad values among states, in

the absence of a showing that the line is not homogeneous in character.

Columbus So. Ry. v. Wright, 151 U. S. 470;
Charlotte, Columbia & Augusta R. R. v. Gibbes, 142 U. S. 386;
St. Louis & R. Co. v. Hagerman, 256 U. S. 314;
Branson v. Bush, 251 U. S. 182.

The same method has been approved in the assessment of the property of interstate telegraph companies.

Western Union Tel. Co. v. Attorney General,
 125 U. S. 530.

Likewise, the property of the Pullman Company:
Pullman's Car Co. v. Pennsylvania, 141 U. S. 18, 26-29.

Also as to the property of interstate express companies:

Adams Express Co. v. Ohio, 165 U. S. 194, 226;
Adams Express Co. v. Kentucky, 166 U. S. 171.

(3) AS TO THE MILWAUKEE AND N. P. SYSTEMS, WASHINGTON CONTAINS A PREPONDERANCE OF VALUABLE TERMINAL PROPERTIES, AND IS A STATE WHERE THE CONSTRUCTION COSTS ARE RELATIVELY HIGH. CONSEQUENTLY, SOME METHOD MUST BE DEvised FOR MAKING AN EQUITABLE ADJUSTMENT OF THE RELATIVE MILEAGE-OF-LINE FACTOR AS TO THESE ROADS.

As pointed out in *Pittsburgh etc. Co. v. Backus*, *supra*, there are special circumstances under which the application of the relative mileage-of-line method would be unfair, as for instance where a state has

terminal properties of comparatively great value. This is strikingly true of Washington with relation to the N. P. and Milwaukee roads. Being a terminal state, Washington has extensive terminal properties in such cities as Seattle, Tacoma, and Spokane, and mountain roads of relatively high construction cost.

Of course, from the standpoint of these two roads, this difference in construction cost would be no valid objection to the use of the relative mileage-of-line method of apportionment, since its application would result in Washington receiving materially less than its equitable share of the system value. However, it was unquestionably the duty of the tax commission and state board, in arriving at a proper allocation factor, to give due consideration to the fact that Washington is a terminal state.

PRINCIPAL TERMINALS OF COMPLAINANT ROADS—S. P. & S. The principal terminals of the S. P. & S. are located in Oregon. The only terminal properties in Washington are in Vancouver. The replacement cost (at prewar prices) of the Vancouver terminals is \$1,259,486. The replacement cost of the terminal properties in Oregon (at prewar prices) is \$6,953,361, which would be doubled if the Portland-Vancouver bridges are included. (S. P. & S. Rec. pp. 429-431.)

SAME—NORTHERN PACIFIC. The principal terminals of the N. P. are located in St. Paul, Minneapolis and Duluth, Minnesota; Superior, Wisconsin, and Seattle, Spokane and Tacoma, Washington. There are no terminal facilities of any consequence in North

Dakota, Montana or Idaho. (N. P. Rec. pp. 686, 5779.) The terminals in Portland, Oregon, are operated by a terminal company. (Donnelly, N. P. Rec. p. 5808.)

Thus, the reproduction cost less depreciation at prewar prices of the N. P. operating property in Seattle and Tacoma as of June 30, 1917, was as follows: In Seattle, \$16,845,987 (Stoner, N. P. Rec. p. 3691); and in Tacoma, \$14,527,720 (Crookes, N. P. Rec. pp. 3675, 3719).

NORTHERN PACIFIC—REPLACEMENT COST PER MILE OF N. P. LINES IN THE SEVERAL STATES. The following table shows by states, the average cost of reproduction new less depreciation of the N. P. per mile of single track, as of June 30, 1917, with prices of labor and material as of June 30, 1914, plus depreciated net additions to December 31, 1925 (Def. Ex. "248," p. 19, N. P. case):

TABLE NO. 1

State	Line owned including branch line (single track)	
	Miles	Average cost of reproduction less depreciation:
Minnesota	1,008.66	\$89,236.00
Washington	1,825.85	82,650.00
Wisconsin	110.73	74,770.00
Montana	1,540.20	72,015.00
Idaho	322.27	62,649.00
Oregon	85.58	56,490.00
North Dakota	1,521.08	39,983.00
Totals and Averages.....	6,414.37	\$69,524.14
Totals and averages outside of Washington	4,588.52	\$64,301.11

SAME—MILWAUKEE. The larger terminals of the Milwaukee are at Chicago, Milwaukee, St. Paul, Minneapolis, Butte, Council Bluffs, Kansas City, Tacoma, Seattle, and Spokane. There are no terminal docks, wharves, depots, and yards located in Idaho, Montana, North and South Dakota, and Minnesota, as compared with the State of Washington. (A. S. Dudley, *Milw. Rec.* p. 982.)

At Spokane, the Milwaukee uses $6\frac{1}{2}$ miles of yard tracks and sidings, of which 4 miles are solely owned. The passenger station is jointly owned with the Union Pacific and is modern, adequate and well located.

At Seattle, the Milwaukee uses 31 miles of yard tracks and sidings of which 20 miles are solely owned. It has acquired extensive property on which it has built tracks and buildings, so that it now possesses large terminal facilities including freight house and team tracks, train yards, a five-stall engine house, docks and dock houses, car ferry landings, etc. It owns three docks and two dock warehouses, one 115x500 feet, and the other 100x444 feet. Its facilities in Seattle are equal to those of its competitors.

At Tacoma, the Milwaukee owns 41 miles of yard tracks and sidings, the main shops of the lines west of Mobridge being located there. On the water front, it owns three docks and two dock warehouses, one 175x940 feet, and one 175x1000 feet; also a grain elevator of 106,000 bushels capacity. (Def. Ex. "23," pp. 38-9, *Milw. case.*)

REPLACEMENT COST PER MILE OF THE MILWAUKEE LINES IN THE SEVERAL STATES. The following table shows by states as to the Milwaukee, the average cost of reproduction new less depreciation per mile of single track as of June 30, 1918, with prices of labor and material as of June 30, 1914 (Def. Ex. "28," p. 32, Milw. Case):

TABLE NO. 2

State	Line owned including branch line (single track)	
	Miles	Average cost of reproduction less depreciation:
Illinois	409.89	\$115,672
Idaho	236.62	93,095
Washington	941.46	61,943
Missouri	140.56	58,599
Montana	1,155.63	56,625
Wisconsin	1,820.85	44,720
Minnesota	1,243.05	43,019
Iowa	1,866.49	40,751
Michigan	206.81	32,671
South Dakota	1,800.65	22,762
North Dakota	379.48	16,812
Kansas (yard tracks only)		
Nebraska (grading and bridges)		
Totals and Averages.....	10,201.49	\$45,738
Totals and averages outside of Washington	9,260.03	\$44,090

(4-e) RELATIVE REPLACEMENT COST—THIS FACTOR MAKES DUE PROVISION FOR RELATIVE CONSTRUCTION COST.

In *Wallace v. Hines*, 253 U. S. 66, we have a case where an apportionment of system value between states on a relative mileage-of-line basis, for the purpose of levying an excise tax on an interstate railroad, was sought to be upheld where it appeared that the road was not homogeneous in character, but there the court said:

“As the law is administered, the tax commissioner fixes the value of the total property of each railroad by the total value of its stocks and bonds, and assesses the proportion of this value that the main track mileage in North Dakota bears to the main track of the whole line. But on the allegations of the bill, which is all that we have before us, the circumstances are such as to make that mode of assessment indefensible. North Dakota is a state of plains, very different from the other states, and the cost of the roads there was much less than it was in mountainous regions that the roads had to traverse. The state is mainly agricultural. Its markets are outside its boundaries and most of the distributing centers from which it purchases also are outside. It naturally follows that the great and very valuable terminals of the roads are in other states. So looking only to the physical track the injustice of assuming the value to be evenly distributed according to main track mileage is plain.”

It is to be observed that the court criticizes the method of allocation used in North Dakota only because of peculiar conditions there existing, namely, that the *cost* of the roads in that state were shown to be much less than in other states. A careful examination of the numerous Supreme Court decisions touching on this question shows that this is the Courts' only criticism of the mileage-of-line method of apportionment and we agree that the objection is a valid one. Mr. Lyons, counsel for the N. P., and Mr. Field, counsel for the Milwaukee, were of counsel for the railroads in that case.

(4) **RELATIVE REPLACEMENT COST FACTOR—HOW COMPUTED.** The defendants contend that since it was admittedly impossible for the litigant railroads to determine their net earnings by states, the fairest available indication of the distribution of system value among the several states is what will be hereafter referred to as the relative replacement cost factor. This factor was computed as follows: The cost of reproduction less depreciation of the company's property other than equipment both in the state of Washington and for the system was computed from the tentative valuation report of the Interstate Commerce Commission to the valuation date (June 30, 1917, as to the N. P., June 30, 1918, as to the Milwaukee, and June 30, 1916, as to the S. P. & S.), and based upon prices of labor and material as of June 30, 1914. To this, was added the net expenditures for additions and betterments from the valuation date to the end of the calendar year last preceding the assessment date, depreciated at the same percentages used by the Interstate Commerce Commission. The equipment was apportioned to the state according to the relative number of miles the various kinds of equipment was operated within the state and over the system for the preceding calendar year. (Carey, N. P. Rec. 3048-54; Milw. Rec. pp. 1392-1400; S. P. & S. Rec. pp. 1255-7.)

In the Milwaukee case it was agreed that if the factor was a proper one, this would be the way to compute it. (Milw. Rec. pp. 1008-11.) In the N. P.

case, complainant's witness followed the same method in computing the factor. (N. P. Rec. pp. 168-169; 569-573.) And this was considered the fairest method for the purpose. (N. P. Rec. p. 570.) Likewise, the S. P. & S. statistician seems to have used the same method. (S. P. & S. Rec. pp. 271, 433-5.)

(4) SAME—REASONS FOR VARIATION IN N. P.'S AND DEFENDANT'S FIGURES. Each of the complainants stipulated that the figures shown in the I. C. C. tentative valuation reports as to these three roads were the minimum as to the cost of reproduction, and the maximum as to depreciation factors. (S. P. & S. case: Def. Ex. "35"; N. P. case: Def. Ex. "235"; Milw. case: Def. Ex. "13.") These figures were used in the computation of defendants' replacement cost factor as heretofore shown, while the N. P. used the I. C. C. preliminary engineering and land reports, which would admittedly not give as accurate a percentage as the tentative valuation report. (N. P. Rec. pp. 727-732.)

(4-a) SINCE REPLACEMENT COST OF A RAILROAD IS PRIMA FACIE ITS VALUE, RELATIVE REPLACEMENT COST MUST BE PRESUMPTIVELY ITS RELATIVE VALUE.

"It is, of course, a necessary rule that in valuing a railroad the first inquiry is as to its actual cost. That, *prima facie*, is its value, but if it appears that the actual cost was in excess of the necessary cost, the necessary cost is the proper standard." (*O. W. R. & N. Co. v. Thurston County*, 98 Wash. 218, 231-2.)

If cost, or necessary cost, is, *prima facie*, the value of the system, it must follow, of course, that relative

cost, or relative necessary cost, *prima facie* represents the relative value of different parts of the system.

To quote further from the *Thurston County* case:

“If it further appears that the net income of the road does not amount to current rates of interest on its necessary cost, and is not likely to do so, or if the business of the road is likely to be destroyed or impaired by competition or other cause, or if the utility of the road is not equal to its cost, then this value is less than its cost, and must be determined by reference to its utility alone.” (*O. W. R. & N. Co. v. Thurston County*, 98 Wash. 218, 231-2.)

Now while later developments may show that the so-called utility value of the whole system is less than its cost, or necessary cost, this does not overcome the other presumption that the relative cost or relative necessary cost, or relative replacement cost, represents the relative value of different portions of the system. This presumption can be overcome only by convincing evidence that the utility value of different portions of the road is different than that reflected by relative cost or relative replacement cost. If, as contended by complainants, earning power (not past earnings) is the measure of system value, then relative earning power must be the measure of relative value, and this presumption that relative cost, or relative replacement cost, reflects relative value, can be overcome not alone by a showing of relative past net earnings, but by a clear showing that the relative future prospects of different segments of the system

are other than reflected by relative cost, or relative replacement cost.

Relative past net earnings are admittedly not available (Report p. 64) nor does the evidence otherwise show the relative future earning power of these Washington properties as compared with the remainder of the respective systems.

(4-b) THE LOSS AS WELL AS THE GAIN IN VALUE RESULTING FROM FUSION OF THE TANGIBLE PARTS ARE DISTRIBUTED OVER THE SYSTEM IN PROPORTION TO THE VALUE OF SUCH SEPARATE TANGIBLE PARTS.

Where, by unity of use and ownership of separate articles of tangible property there is developed a property value in excess of the aggregate of the value of such separate pieces of tangible property, such intangible property value is to be found, not at its home-office, not in the state granting its owner its corporate franchise, but instead, is distributed wherever its tangible property is located and its work is done.

Adams Express Co. v. Ohio, 166 U. S. 185.

Is it not logical then to conclude that if the value of the whole, following such fusion, is found to be less than the sum of the values of the separate parts, such loss is likewise distributed "wherever its tangible property is located and its work is done?"

In this connection see the testimony of Dr. Harley L. Lutz (Milw. Rec. pp. 1229-35).

(4-c) THE PRESUMPTION THAT RELATIVE REPLACEMENT COST REFLECTS RELATIVE VALUE HAS NOT BEEN OVERCOME IN ANY OF THE PRESENT CASES.

Net earnings of these various roads by states are admittedly not available. (Report, p. 64.) It follows that relative net earnings has not, and cannot be shown. Nor, as will later be shown, does the evidence otherwise show the relative future earning power of these Washington properties.

(4-d) REPLACEMENT COST AS BASIS OF RATES. In determining the value for rate making purposes, commissions have always been compelled to give great weight to the replacement cost of the public utility. This being so rates both local and system wide bear to a very marked degree, a relation to the replacement cost of each respectively. The fixing of rates carries with it a careful consideration of the costs of service so that the property may show a fair return upon its value. Assuming, of course, that a property or any of its component parts carries a sufficient volume of business to justify its existence and operation as a carrier the net revenue that it produces should bear a direct relation to its replacement cost. Thus local rates would be fixed to show a fair return upon the replacement cost of the local portion of the system and through rates would be fixed to show a fair return upon the whole system. Therefore to determine the portion of the net revenue of the whole system which any component part earns, it is necessary to compare the replacement cost of the part to

the replacement cost of the whole. If the value of a system or a part of the system is measurable by its earning capacity then, the value of a part may be determined by calculating its portion of the value of the whole by determining its relative replacement cost and, applying that percentage to the value of the whole system, the relative value of the part will be obtained.

(4-e) **TERMINAL VALUES.—RELATIVE REPLACEMENT COST IS THE ONLY LOGICAL INDEX OF THE TRUE DISTRIBUTION AMONG STATES OF THE VALUE OF SHOPS, DOCKS, YARDS, INDUSTRIAL TRACKS, AND OTHER TERMINAL FACILITIES.**

Prof. Meyer, senior member of the I. C. C., says:

“By this method the treatment of terminals, for instance, would rest upon a definite and logical basis and not upon a more or less intelligent conjecture.” (Milw. Case, Def. Ex. “11,” p. 24.)

In *Louisville & N. R. Co. v. Bosworth*, 209 Fed. 380, 432 *et seq.*, the court could think of no way, other than construction cost of determining the amount of excess terminal value.

(4-f) **RELATIVE REPLACEMENT COST.—THIS FACTOR MAKES DUE PROVISION FOR DIFFERENCES IN RELATIVE CONSTRUCTION COST REQUIRED BY THE RULE LAID DOWN IN WALLACE V. HINES, 253 U. S. 66.**

(4-g) **THE RELATIVE REPLACEMENT COST METHOD IS GENERALLY ENDORSED BY ALL EXCEPT THE MILWAUKEE AND ITS TAX COMMISSIONER.**

BY COMPLAINANTS, N. P. AND S. P. & S.: The N. P. and S. P. & S. each advocated the use of the relative

replacement cost factor (called by them the "Physical property" factor), except that these companies suggested its use in connection with the four other factors which will be hereafter discussed, while defendants insisted that this factor alone, so far as the evidence showed, was the fairest indication of the relative value of the Washington properties. (N. P. Rec. pp. 167-8; S. P. & S. Rec. pp. 271-2.)

BY THE N. P. IN THE SEATTLE SWITCHING CASE: E. V. Peterson, the witness who computed and sponsored the five apportionment factors advocated by the N. P. (N. P. Rec. pp. 144, 167-170) and who claimed qualifications entitling him to testify as an expert on allocation (N. P. p. 749), admitted that about April, 1924, he had testified for the N. P. in the case of I. C. C. Docket No. 145,663, which was a proceeding relating to switching charges and practices in Seattle. (N. P. Rec. 737.) He further testified:

"Q. Did you not testify in that proceeding that the proportion of the taxes paid by the Northern Pacific in the whole State of Washington should be allocated to the Seattle terminals on the basis of cost of reproduction less depreciation that the Seattle terminals bore to cost of reproduction less depreciation of all operating property of the company in the State of Washington? * * *

"A. That was the basis that was used in that case as presented.

"Q. I would like you to answer yes or no to that question.

* * * * *

“A. Yes, sir.” (N. P. Rec. pp. 739-40; S. P. & S. case, Def. Ex. “39”.)

Mr. daPonte admitted that the Northern Pacific was entitled in that case to a fair return based on the value of service and the cost of switching in Seattle. (N. P. Rec. pp. 742; S. P. & S. case, Def. Ex. “39”.)

Mr. Peterson testified that in this Switching Case, the question involved was the fairness of the switching rates. (N. P. Rec. pp. 867-8.) He further testified:

“Q. I think you testified in apportioning to Seattle terminal its share of taxes properly apportionable to that terminal you apportioned to the Seattle terminal that proportion of the whole taxes paid in the State of Washington which the reproduction cost of the Seattle terminal bore to the reproduction cost in the state of Washington?”

“A. That is the method which was followed in that case.” (N. P. Rec. p. 868; S. P. & S. case, Def. Ex. “39.”)

It is apparent, therefore, that the N. P., when it sought in another proceeding to allocate the proper proportion of its tax accruals to a given portion of its system, used the very method which the defendants are contending for here. It did not use traffic units, car miles or gross revenues. It assumed, and rightfully so, that the value upon which it paid taxes was located in the Seattle switching dis-

strict in the proportion which the cost of reproduction of all of its property in the state bore to the cost of reproducing the property utilized in its switching operations in Seattle.

BY DEFENDANTS' WITNESSES. Each of defendants' witnesses in these cases who testified as to value, advocated the use of this method:

Testimony of Harley L. Lutz (S. P. & S. pp. 1458-9; N. P. Rec. pp. 3106-7; Milw. Rec. pp. 1229-1235);

Testimony of James W. Carey (S. P. & S. Rec. pp. 1248-51; Milw. Rec. pp. 1435-7; 1454-6);

Testimony of O. O. Calderhead (S. P. & S. Rec. pp. 1411-2; N. P. Rec. pp. 3388-9);

Testimony of Henry Gray (N. P. Rec. pp. 3443-4; 3531-5).

BY COMPLAINANTS' WITNESS. Robert Crosbie, secretary and comptroller of the S. P. & S. and who it was agreed was speaking for that company (S. P. & S. Rec. pp. 929, 1100), testified that he would apportion the system value of the Oregon Trunk as between Oregon and Washington according to relative cost of construction. He testified in substance as follows:

There is only a small portion of the Oregon Trunk in Washington; there is a bridge across the Columbia at Wishram, and the state boundary is between the ends of the bridge. There are no gross earnings in Washington, there being only terminals there. The car miles and traffic units in Washington mean practically nothing. In the S. P. & S. you have a line over

300 miles long, and have something to work car miles and traffic units on, but where you have only terminals in a state, you can't use the same basis, he thought. The fact that the miles of track is mostly bridge in Washington, would have to be given consideration. If he were trying to figure it out as a business man, he thought the way he would do it would be to find the cost of reconstruction in Washington, and the cost of reconstruction of the whole system, and compare the cost in Washington with the whole system. He thought that to resort to cost of reconstruction would be the proper method. (S. P. & S. Rec. pp. 1107-9.)

A. S. Dudley, tax commissioner of the Milwaukee, admitted that in apportioning the value of the system as between operating personal property and operating real property, he would determine the value of the operating personal property by finding its cost of reproduction less depreciation. (Milw. Rec. pp. 436-7, 940.)

Speaking of the five allocation factors urged by the N. P., which, as shown, included the relative replacement cost method, Dr. Arthur Twining Hadley, testified for each of the complainants as follows:

“Q. Would you say these methods are good methods? A. I say they are all reasonably good methods. Q. But that you prefer the gross earnings method? A. That I prefer the gross earnings, yes. Q. Would you say the assessing officers of the state of Washington had been guilty of arbitrary or capricious action in adopting one or more of these methods in allocating to the state of Washington its proper proportion of the system for taxation purposes? A. The allocation, assuming you have valued the property

on a proper basis, if the total value has been assessed on a basis that can be defended, no criticism would be made against— Q. The use of any one of those methods of allocation? A. Any one of the methods of allocation here given. There might be a practical objection to that if the allocation was by various states and they allocated more than was right, it might give rise to litigation; but that is small.” (N. P. Rec. pp. 348-9; Hadley Dep. Milw. Case. p. 88; S. P. & S. Rec. pp. 176-7.)

BY SPECIAL CALIFORNIA TAX COMMISSION. This special commission was appointed to investigate and report upon the matter of revenue and taxation in the state of California. (Calif. Statutes, 1927, Chap. 455.) Among other things, it found the market value of the various interstate railroad properties in California, and in so doing, solved the problem of allocation between states, by using relative historical cost. To quote:

“In the case of interstate utilities the total value of the operative property had in turn to be allocated to California.

“Mr. Lester S. Ready, consulting engineer employed by the Tax Commission, determined in the course of his studies, the historical cost of the operative properties of public utility corporations operating in California. He furnished percentages showing the amount of operating property in California in the cases of corporations operating within and without the state. Our stock and bond valuation of operative property was apportioned to California on the basis of the percentages furnished by Mr. Ready.” (Final Report of California Tax Commission, submitted to the governor, March 5, 1929, p. 220.)

BY COMMITTEE OF NATIONAL TAX ASSOCIATION. A committee of the National Tax Association reports as follows:

“Physical valuation is, of course, the very best index of property distribution.” (See Proceedings of 16th National Conference, 1923, p. 406, N. P. Ex. “624”; Def. Ex. “32,” S. P. & S. Case.)

Two of the complainants cite this report as authority for their choice of apportionment factors. (N. P. Rec. pp. 1701; 804; 565-7; S. P. & S. Rec. pp. 269-270.) The report in question did not relate to a property tax, but a combination of net earnings and gross earnings tax. (S. P. & S. Rec. p. 1374-5; N. P. Rec. p. 3209-10.)

BY PROF. MEYER. Pursuant to the Act of Congress of March 6, 1902, a survey was made by the Department of Commerce and Labor of the commercial value of the railroads of the nation. Census Bulletin 21 issued pursuant to this survey contains a discussion of the “Methods for the distribution of railway values among states.” The author was Prof. Balthaser H. Meyer concerning whom M. A. S. Dudley of the Milwaukee has this to say:

“I know he was a member of the faculty of the University of Wisconsin years ago and a member of the Wisconsin Railroad Commission for many years. I understand he is a member of the Interstate Commerce Commission now.
* * * Q. A pretty good authority? A. I should judge so. (Milw. Rec. p. 974) * * *

I want to say that in differing with Professor Meyer, it is with the greatest deference to the views of a man such as Professor Meyer. I have the greatest respect for his judgment." (Milw. Rec. p. 1010.)

Professor Meyer said in part in Census Bulletin 21:

"The distribution of railway values among states is in some respects the most difficult problem connected with this investigation, and its solution is much less satisfactory than that of ascertaining the values of systems as a whole. Every railway system is an entity. It is a whole which can not be arbitrarily separated into its constituent parts, especially when the lines of division are political rather than commercial. Every method for the assignment of values to states is vulnerable at some point; it breaks down somewhere, either in its practical application or in the reasoning by which it is established. Those methods have been selected in this investigation which best meet the requirements of logic and feasibility. A brief discussion of competing methods for the distribution of values among states follows:

* * * * *

"According to the cost of reproduction method of apportioning railway values among the states, each state receives such a part of the total value of the system as the cost of reproduction of that part of the system within its borders is a part of the cost of reproducing the whole system. It does not mean that the cost of reproduction is to be regarded as the equivalent of the commercial value of a railway, for it is not, but rather that the cost of reproduction of the whole and of the various state parts shall constitute the terms of the ratios in accordance with which total values shall be distributed.

By this method the treatment of terminals, for instance, would rest upon a definite and logical basis and not upon a more or less intelligent conjecture. Even an engineer's estimate of the cost of reproduction will have enough of conjecture in it but it will reduce the element of guesswork to a minimum. The cost of reproduction method carries with it a greater degree of demonstrable certainty and conviction than any of the others which have been proposed. The impossibility of employing it in the present valuation was pointed out in the discussion on methods for valuing railway systems as a whole. The objections to using this method as a basis for distributing values are much the same as those against the acceptance of cost of reproduction figures as an expression of the commercial value of a road. Values are not necessarily large where the cost of reproduction would be heavy, while values may be great where the cost of reproduction would be relatively small. But even assuming that the commercial value of railway property and the estimated cost of reproduction of that property are represented by lines which cross and recross each other at various points and angles, it is, on the other hand, unquestionably true that, all things considered, a line representing a theoretically accurate distribution of values and another representing the cost of reproduction will run more nearly parallel than any other line which can be drawn in the direction of values, based upon total trackage, net earnings, tonnage, or any one or more of the other methods suggested above, except gross earnings; and, because of the greater ease with which the last can be ascertained, the decision must turn in its favor for purposes of a commercial valuation." (pp. 5, 24-5, Def. Ex. "11," Milw. case.)

True, this article was written in 1905, but the problem was the same then as now, and what was said by Professor Meyer then, is just as pertinent to this inquiry as to the problem which confronted the Department of Commerce and Labor in 1905.

Why, then, it may be asked, has this method of apportionment not been more generally discussed in court decisions? The answer is plain—until the last few years, the I. C. C. had not even made a tentative determination of the cost of reproduction of the various interstate roads, either for the system or by states. Until this was done, it could hardly be expected that either the legislatures or assessing boards of the various states would adopt this method of apportioning system value, or the courts have occasion to consider its propriety.

(4-h) THE RELATIVE REPLACEMENT COST METHOD OF APPORTIONMENT IS APPROVED BY THE COURTS, EVEN AS A FACTOR FOR THE DISTRIBUTION OF INCOME OF INTERSTATE PROPERTIES.

By what other method could such differences in construction cost and terminal values be adjusted as between states? Counsel has suggested none, being at all times content with the bare assertion that terminal values are not local, and consequently may be entirely disregarded.

But in *Louisville & N. R. Co. v. Bosworth*, 209 Fed. 380, 432 *et seq.*, where this very problem was considered, the court said:

“If the excess is in the tangible property, it has to be determined wherein it lies, i. e.,

whether in terminal facilities, rolling stock, or in something else, and what the extent of it is, and then the value thereof has to be determined. Cost of construction or acquisition and extent of deterioration are no doubt considerations relevant to such determination. No other way of determining the amount of such excess value, in such case, occurs to me," etc.

Were it a valid objection to the physical property method of allocation that it ignores the use of the property, it certainly could not properly be used in allocating the income of a corporation doing an interstate business, as a basis of a state income tax. Yet the Supreme Court has held it a proper test for this purpose.

The case of *Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113, arose under the Connecticut statute which imposed upon foreign corporations doing business partly within and partly without the state an annual tax of two per cent upon the net income earned during the preceding year on business carried on within the state, ascertained by taking such proportion of the whole net income on which the corporation was required to pay a tax to the United States as the value of its real and tangible personal property within the state bore to the value of all of its real and tangible personal property. The Underwood Typewriter Company, a Delaware corporation, was engaged in manufacturing and selling typewriters and supplies. All its manufacturing was done in Connecticut, but the greater part of its sales was made from branch offices in other states. It con-

tended that the tax was violative of the Fourteenth Amendment in that it imposed, directly or indirectly, a tax on income arising from business conducted outside the state. In support of the latter objection it showed that while 47% of its real estate and tangible personal property was located in Connecticut, in fact about \$1,300,000 of its net profits were received in other states and only about \$43,000 in Connecticut. The court, however, in sustaining the validity of the tax, said (pp. 120-121):

“In support of its objection that business outside the state is taxed plaintiff rests solely upon the showing that of its net profits \$1,293,643.95 was received in other states and \$42,942.18 in Connecticut, while under the method of apportionment of net income required by the statute 47 per cent of its net income is attributable to operations in Connecticut. But this showing wholly fails to sustain the objection. The profits of the corporation were largely earned by a series of transactions beginning with manufacture in Connecticut and ending with sale in other states. In this it was typical of a large part of the manufacturing business conducted in the state. The legislature in attempting to put upon this business its fair share of the burden of taxation was faced with the impossibility of allocating specifically the profits earned by the processes conducted within its borders. It, therefore, adopted a method of apportionment which, for all that appears in this record, reached, and was meant to reach, only the profits earned within the state. ‘The plaintiff’s argument on this branch of the case,’ as stated by the Supreme Court of Errors, ‘carries the burden of showing that 47 per cent of its net income is not reasonably attributable, for purposes of tax-

ation, to the manufacture of products from the sale of which 80 per cent of its gross earnings was derived after paying manufacturing costs.' The corporation has not even attempted to show this; and for aught that appears the percentage of net profits earned in Connecticut may have been much larger than 47 per cent. There is, consequently, nothing in this record to show that the method of apportionment adopted by the state was inherently arbitrary, or that its application to this corporation produced an unreasonable result."

(Here, as there, complainants made no attempt to show their true net earnings in Washington, all conceding that this could not be done. Master's Report, p. 64; Milw. complaints, 1926, p. 8; 1927, p. 11.)

The franchise tax on corporations provided by New York Tax Law Sec. 209, is, in practical operation, a tax on that proportion of the entire net income of the corporation which the average monthly value of the real property and tangible personal property within the state bears to the aggregate of the average monthly value of all of the real and personal property of the corporation, wherever situated. (*People ex rel. Alpha P. C. Co. v. Knapp*, 230 N. Y. 48, 129 N. E. 202, 205.)

In *People ex rel. Bass, Ratcliff & Gratton v. State Tax Commission*, 232 N. Y. 42, 133 N. E. 122, it was held that such franchise tax was not invalid as a tax on property outside of the state in case of levy of a tax on a foreign corporation which had derived no income from business within the state, but had

derived income from business outside of the state, by comparison of the total assets with the assets in the state, the court saying:

“We think the question should be answered in the negative. Such a method of levying a franchise tax is not inherently arbitrary. It is based on a comparison of the total assets with the assets in New York. Nor has its application to this corporation produced an unreasonable result in the moderate sum assessed in lieu of all other taxes on its personal property, capital stock, or income.”

The case last cited was affirmed by the supreme court in *Bass, etc., Ltd. v. Tax Commission*, 266 U. S. 271, where the court, after reviewing at length its former decision in *Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113, said (pp. 282-3):

“In *Wallace v. Hines*, 253 U. S. 66, 69, it was recognized that a state, in imposing an excise tax upon foreign corporations in respect to doing business within the state, may look to the property of such corporations beyond its borders to ‘get the true value of things within it, when they are part of an organic system of wide extent,’ giving the local property a value above that which it would otherwise possess, and may therefore take into account property situated elsewhere when it ‘can be seen in some plain and fairly intelligible way that it adds to the value of the (property) and the rights exercised in the state.’ This is directly applicable to the carrying on of a unitary business of manufacture and sale partly within and partly without the state.

“Nor do we find that the method of apportioning the net income on the basis of the ratio

of the segregated assets located in New York and elsewhere, was inherently arbitrary or a mere effort to reach profits earned elsewhere under the guise of legitimate taxation. The principal factors entering into this allocation are, as in the *Underwood* case, the real and tangible personal property of the corporation.

* * * * *

“It is not shown in the present case, any more than in the *Underwood* case, that this application of the statutory method of apportionment has produced an unreasonable result. The fact that the company may not have had any net income upon which it was subject to payment of income tax to the Federal Government, obviously does not show that it received no net income from the business which it carried on in New York. There is no evidence in the record as to whether the company received any net income from its new York business, or the amount of the profit and loss on that business, if any, either considered separately or in connection with the manufacturing business carried on in Great Britain.”

In *Gorham Mfg. Co. v. Travis*, 274 Fed. 975, the validity of the New York law was again attacked, but in upholding it, the court said (pp. 978-9):

“With all deference when applied to corporations having business in several states, any effort at allocation must be more or less arbitrary and fictitious, and is indeed shown by the record at bar. The truth is that in a business which is a unity, it is impossible to break up the parts and satisfactorily to assign to any piece a corresponding part of the income. Take as an instance the record here. Much of the personal property of the plaintiff in New York consists of sample pieces of silverware kept for

display, by which goods elsewhere are sold, some of which never come into New York at all. A foreign customer may see such samples and order from them, but the goods may be shipped from Rhode Island to Pennsylvania or Connecticut. Yet it would be an obvious error not to assign any part of the resulting income to the New York samples. No one could possibly say whether the sale would have been made without them. The case in this aspect presents the not wholly unfamiliar difficulty of trying to apportion quantitatively the effect of a number of factors each of which is an absolute condition to the result. In such a case there is no rational solution which will bear scrutiny, and one must proceed by a more or less rough division not too shocking to preconceived assumptions. *Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113. * * *

“In the case of railroads an allocation of cars and other property according to mileage was supported in *State R. R. Tar Cases*, 92 U. S. 575 * * * I do not understand that *Union Tank Line Co. v. Wright*, *supra*, or *Wallace v. Hines*, *supra*, overrule those cases so far as the *prima facie* rule is concerned. They do hold that when the rule is shown in a given instance to result in the taxation of foreign assets, it is invalid. *Prima facie* it remains a sound rule, as I understand it. * * * The statute at bar allocates that income upon the basis of capital, real and personal, and of accounts receivable. * * *

“This is indeed a rough rule and may in application work unevenly, but every rule must. Even if each transaction were analyzed, the result would be, as one of the plaintiff’s own witnesses put it, ‘a series of arbitrary decisions which would not be based on the facts at all.’ The consequence is not, as the plaintiff’s argument would have it, to deprive the state of all

power to tax, but to require no more, at least as a presumptive rule, than an honest allocation which shall avoid gross inequities. Perhaps the taxpayer must have the right to show that parts of the foreign assets are not functionally connected with the local business; perhaps he must have the further right to show that though functionally a part, as were the terminals in *Wallace v. Hines*, *supra*, the formula works with gross inequity. I think he has both these rights."

In *St Louis & San Francisco Ry. v. Middlekamp*, 256 U. S. 226, a similar law of Missouri, as applied to an interstate railroad company was upheld, although the exact question, while argued, was not discussed in the opinion. The offending law there provided:

"And for the purposes of this act such corporation shall be deemed to have employed in this state that proportion of its entire outstanding capital stock and surplus that its property and assets in this state, bears to all its property and assets wherever located."

(5-a) METHOD OF APPORTIONMENT PROPOSED BY THE N. P. AND S. P. & S. These complainants propose that equal weight be given to each of the following factors: (1) relative replacement cost (called "physical property"); (2) relative mileage of all tracks operated; (3) relative transportation car mileage; (4) relative ton miles plus passenger miles ("traffic units") and (5) relative gross operating revenues apportioned between states on a mileage pro-rate. (N. P. Ex. "16," p. 8; Ex. "17," p. 7; S. P. & S. Ex. "10," p. 3.)

(5-b) THE MILWAUKEE. This complainant condemns relative replacement cost, and proposes that equal weight be given to each of the following factors: (1) relative mileage of all tracks operated; (2) relative car miles plus locomotive miles; (3) relative ton miles plus passenger miles and (4) relative gross operating revenues with revenues apportioned between states other than Minnesota on a relative ton mileage basis.

Defendants contend that the so-called "physical property" factor, so far as the record here shows, correctly reflects Washington's true proportion of the system value of each of these railroad properties involved. They do not agree that the other factors proposed by complainants either singly or collectively overcome the presumption that relative replacement cost reflects relative value.

(6) RELATIVE MILEAGE OF ALL TRACKS OPERATED—HOW COMPUTED. In computing this factor, the Milwaukee compares the mileage of all tracks operated in the state and for the system, whether such tracks be owned or are merely used under lease or joint trackage agreements. (Milw. Rec. p. 136.) Equal weight is given to all tracks, whether main or side track (Milw. Rec. p. 135), and equal weight is given to each mile of track, whether owned, leased or used jointly with other companies under joint trackage agreements. (Milw. Rec. p. 981.) No distinction is made as to tunnels, bridges, trestles or terminals. (Milw. Rec. p. 981.)

The details as to how the other complainants compute the factor do not, it seems, appear in the record, but for the purpose of this discussion, we may assume that these companies follow the same practice as the Milwaukee.

(7) SAME—RELATIVE CONSTRUCTION COST—TERMINAL PROPERTY. Since the relative all-trackage factor gives the same weight to mileage of track located on worthless land or prairie land, as to mileage of mountain road and track located on valuable urban lands, it necessarily fails to reflect either relative construction cost or terminal values. Hence it is subject to all of the objections suggested by the courts to the relative mileage-of-line factor.

O. B. Riddle, statistician of the S. P. & S., conceded that the factor in no way reflected relative value as to terminals, docks, wharves, depots and yards. (S. P. & S. Rec. p. 542.)

The criticism of defendants' witnesses appear in the record as follows: James W. Carey (S. P. & S. Rec. pp. 1240-3; Milw. Rec. pp. 1428-30); Harley L. Lutz (S. P. & S. Rec. p. 1470; Milw. Rec. pp. 1236-7); Henry Gray (N. P. Rec. pp. 3447-8).

A. S. Dudley of the Milwaukee conceded that the factor accorded equal weight to each mile of track; that it makes no distinction as to comparative cost, or as to tunnels or bridges, trestles or terminals, but gives equal weight to all, although in his opinion the average cost per mile in Washington exceeded that in Montana or the Dakotas. (Milw. Rec. p. 981.)

Of course, this factor as completely ignores the distribution of terminal values, and relative cost of construction, as does the relative mileage of line factor. It was suggested by an N. P. witness (N. P. Rec. p. 691) that this factor did reflect the distribution of terminal values since "where there are large terminals there is a multiplicity of tracks." (N. P. Rec. p. 691.) But can the court say that it is the duty of the assessing officers to measure the value of freight yards, depots, docks, shops and the like with sole reference to the amount of adjacent side tracks or storage tracks? Are they to proceed on the theory that a mile of tunnel or a mile of bridge is of the same value as a mile of prairie road?

To illustrate—the ten miles of line of the S. P. & S. between Portland and the Washington-Oregon line consists mostly of a series of bridges, costing approximately \$10,000,000 to construct at pre-war prices. (S. P. & S. Rec. p. 314.) An arbitrary charge of $2\frac{1}{2}$ cents per cwt. on lumber and 5 cents per cwt. on other commodities is exacted by the S. P. & S. road from its connections for hauling trans-continental freight over these bridges (S. P. & S. Rec. p. 315). The through rate on lumber from Portland to St. Paul, a distance of 1,882 miles, being $62\frac{1}{2}$ cents per cwt. on lumber (S. P. & S. Rec. p. 1033; N. P. Rec. p. 9119) or about 1-30th of a cent a mile, this $2\frac{1}{2}$ cent arbitrary is equivalent to the charge for hauling this commodity some 75 miles. Yet it is insisted that Oregon is to be given no

more credit for these ten miles of bridges than ten miles of ordinary roadway and track in eastern Washington. The S. P. & S. statistician frankly admitted that this apportionment factor failed to reflect the relative value as to terminals, docks, wharves, depots, yards, etc. (Riddle, S. P. & S. Rec. p. 542.)

(8) SAME—APPORTIONS VALUE TO STATE WHERE TRACK NOT OWNED. In Washington, railroad operating property is assessed in the name of the owning company. (Laws 1925, Ex. Sess. Ch. 130, Sec. 44, p. 254.) It follows that as to carriers operating in whole or in part over the tracks of other companies, the factor is clearly indefensible. For example: Let us assume a railroad company with all of its operating real property located in Washington. It operates over 100 miles of its own rails in Washington, and also operates over 100 miles of rails of another company, located in Oregon. According to the relative all tracks operated factor Washington would be apportioned but 50% of the company's property instead of the 100% to which it was entitled, since the 100 miles of track in Oregon operated under joint user rights would be included in the computation.

This factor has never been approved by the courts. It seems to be an entirely new suggestion in the present cases. It was, it is true, suggested, as a proper method along with others by a committee of the National Tax Conference, in a report made

to that body in 1923, but there the tax sought to be apportioned was a combination of gross and net tax, as to which, of course, it would not be subject to the objection suggested, since there the subject of apportionment would be income — not property values.

(8-a) SAME — NOT TRUE THAT WASHINGTON'S STATE-WIDE RAILROAD VALUE IS DISTRIBUTED AMONG COUNTIES ON TRACK MILEAGE BASIS. The Master says:

“Then, too, the legislature of Washington by directing that state value of a road should be distributed among the counties and the various taxing districts through which the road runs in proportion to the mileage located therein, has shown, it seems to me, a fondness for an allocation of this character, and an indication that it deems it a fair method of allocating value. If it is fair as between counties and the other taxing districts, I see no reason why it should not be considered fair as between Washington and the other states.” (Report, p. 72.)

Both the premise and the conclusion are unsound. It is not true that Washington distributes values among the counties according to relative mileage of tracks operated. In the first place, a distinction is made between main line, branch line, siding, etc. The Master himself finds that such classification of trackage is made. (Report, pp. 100, 110, 123, 134, 152.)

The different values given to different kinds of track as to the different roads, is shown in Schedule “C,” Table 1, Minutes of State Board of Equaliza-

tion. (N. P. Exs. "47" and "48"; S. P. & S. Ex. "37.") As an example, in 1926 the 100% value apportioned to various kinds of track of the N. P. was in part as follows (N. P. Ex. "48"):

Classification	Value Per Mile	Classification	Value Per Mile
Main Line—		Prairie Line Branch	
Main track	\$89,856.15	Main track	\$35,942.46
2nd main track	26,956.84	2nd main track	17,971.23
Sidings	17,971.23	Sidings	8,985.61

See also, testimony of Charles A. Murray in the N. P. case. (N. P. Rec. pp. 1050-53.)

When a road operates over a foreign line, there is no apportionment made of right-of-way and tracks, but only of equipment and rolling stock. For example, see apportionment as to the Milwaukee road operating over the O. W. R. & N., N. P. and Pacific Coast tracks, on pages 31-33 of the Minutes of State Board of Equalization for 1926. (N. P. Ex. "48"; S. P. & S. Ex. "37".)

State ex rel. Hellar v. Jackson, 82 Wash. 351.

But even were this not true, surely neither the tax commission, state board, nor this court would be justified, whether by formula or otherwise, in depriving Washington of its terminal and other values, simply because of its statutory method of apportioning such values among its various taxing districts. The court is concerned here only with the justness of state values, not with the inter-county distribution of such values.

(9) RELATIVE CAR AND LOCOMOTIVE MILES FACTOR. The Milwaukee statistician computed this factor by comparing the car miles and locomotive miles in revenue trains within the state with those of the system. (Milw. Rec. p. 62.) It included all the car miles in revenue trains, freight and passenger, including baggage and mail cars. Revenue car miles were added to locomotive miles both for the state and for the system and the ratio determined. (Milw. Rec. pp. 187-9.) The same weight was given to locomotive miles and car miles. No distinction was made as to the cars of different kinds, sizes, and capacities although these admittedly vary. (Milw. Rec. pp. 187-8.)

In the N. P. case the factor was computed in much the same way except that locomotive miles were not included. (N. P. Rec. pp. 698-701.)

As to this factor Dr. Harley L. Lutz testified in the Milwaukee case:

“Those are facts of physical performance of the railway, and it is obvious in a compilation of that sort that a car that is half loaded or quarter loaded has just as much weight as one that is carrying a full load of freight. The same thing is true, of course, of the locomotive mileage. There is, as I see it, no necessary connection between the physical performance over the line of the various operating units and either the net earnings of the business or the gross earnings or the value of the property. * * * A car might have a very high grade or a very low grade of freight. In other words, a car might earn a very substantial return or a very small return.” (Milw. Rec. pp. 1237-8.)

He further testified that he failed to see how the factor would reflect in any way the location or value of the terminals, and that it would not reflect the peculiar value of branch lines as feeders to the main system "because the relative mileage run over those branch lines would be, in all probability, of less value statistically than the service which they performed to the system in point of actual fact in supplying freight or other services both as to outgoing and incoming movements." (Milw. Rec. p. 1238.)

And in this connection, James W. Carey, engineer for the tax commission, testified in the Milwaukee case:

"By this method you assume all miles of track to be the same. Thus, in Montana or North Dakota, if you consider them as a bridge over which all interstate traffic passes, you would have a great many car and locomotive miles, while all the business might originate in Washington or some other state, but just by virtue of parts of this line being, you might say, a bridge, those states get a far greater value than would other states like Washington or Illinois. It does not reflect the location of the terminals, nor does it reflect the value of the use as compared with the use. You assume each car as containing the same kind of freight, and give as much weight to a car loaded with cheap freight as a car loaded with expensive freight, and you assume each car loaded to the same capacity, which would not be true. One of the principal objections which I see is that it does not give proper consideration to the location of the terminals and investment per mile of line." (Milw. Rec. p. 1430-1.)

Professor Meyer says as to this factor:

“Upon this basis each state receives such a part of the total value of the system as the number of car miles run within the state is a part of the whole number of car miles run in the system. Car mileage obviously rests upon traffic. It is a method of rounding or leveling traffic statistics by carload units. It neglects the nature of the traffic, the character of the haul, the utilization of car capacity, and all other equally important transportation factors, except the one represented by itself. * * * This method would be impracticable even though it were theoretically sound, which it is not, because sometimes total car mileage is distributed on a track-mileage basis.” (Def. Ex. “11”, Milw. Case, p. 14.)

Mr. Peterson, testifying for the N. P., agreed that there were no car miles in the terminals, and consequently the factor did not reflect the distribution of terminal values. (N. P. Rec. pp. 719-722; 725.)

Mr. A. S. Dudley of the Milwaukee admitted that the factor had no virtue which the relative gross revenues factor did not have, except that to a certain extent it weighted the average. (Milw. Rec. p. 999.)

(10) RELATIVE TON MILES PLUS PASSENGER MILES (TRAFFIC UNITS). This factor was computed by comparing the revenue tons carried one mile plus the passengers carried one mile in Washington with the same for the system. (Milw. Rec. p. 62; N. P. Rec. p. 714.)

Passenger miles were not reduced to ton miles or *vice versa*. (Milw. Rec. p. 66; N. P. Rec. pp. 714-15.)

Neither mail, expressage or baggage was included. (Milw. Rec. p. 190; N. P. Rec. p. 862.)

As to this factor Dr. Lutz testified in the Milwaukee case:

“As a statistical device, of course, it is an absurdity. They (car miles and passenger miles) have no relation to each other except as figures on paper. * * * They are quite incomparable and quite unrelated. They are quite uncommensurable things, ton miles and passenger miles. * * * Of course the same error would persist there in putting together all of the ton miles of business done on the road and assigning to it any particular importance so far as light on the value of the property is concerned, because, * * * the rates on all of these classes of commodities are widely different. So far as I can see the only denominator that all those things have would be the gross revenue, I mean what was brought in.” (Milw. Rec. pp. 1239-1240.)

He could not see that it threw any light on the distribution of terminal values or the relative value of branch lines as feeders. (Milw. Rec. p. 1240.)

Mr. Carey testified in the Milwaukee case:

“Your traffic unit method, if correctly ascertained, is the same thing as your gross revenue. * * * A carrier does not receive the same revenue for hauling a passenger one mile as it receives for hauling one ton of freight one mile. The revenue from hauling a passenger one mile might be about three cents, say, and the revenue from hauling a ton of freight one mile might be say one cent. * * * The right way, if you were to use it, would be to reduce all traffic units to what you might call the least

common denominator. For instance—take the lowest class of freight, say logs in this state, and then reduce the wheat, and the ore, and the coal to logs, and also reduce your passengers to logs; if you do that you have exactly the same thing as the gross revenue method, as it depends on the gross revenue.” (Milw. Rec. pp. 1431-2.)

Professor Meyer has this to say:

“The method * * * assumes that where traffic is most dense, values are greatest, and that values vary directly with the traffic density. * * * Where, on the other hand, the volume of the passenger and freight traffic does not show a constant ratio, a reduction of one to terms of the other would be necessary. Such a reduction of passenger miles to ton miles, or vice versa, results in a composite traffic unit, which, no matter how arrived at, is a logical absurdity, even though it may be a practical necessity. Furthermore, ton-mileage statistics do not reflect differences in the character of the traffic. In one state the predominating tonnage on a particular railway may be general merchandise; in another, coal and iron; in another, wheat; in another, fruit; in another cotton, etc. From the point of view of value, a million ton miles of high-grade freight represents something very different from the same number of ton miles of a commodity carried at the lowest rate. * * * The traffic density method, if it were to be adopted as a general rule, would involve a reduction of one kind of traffic to terms of another, especially passenger miles to terms of ton miles. * * * Irrespective of the logical difficulties in the case, this method of reduction obviously falls back upon revenue statistics, and the conclusion is inevitable that if revenue statistics are to be employed at all, they had better be used directly and not in the roundabout

method of traffic statistics.” (Def. Ex. “11”, pp. 16-20, Milw. case.)

Mr. Peterson of the N. P. conceded that this factor, like relative car miles, did not recognize the relative distribution of terminal values (N. P. Rec. pp. 719-22; 725), and that it was not a proper factor in and of itself. (N. P. Rec. p. 721-2); and further:

“Q. So, if you use one, why do you have to use the other? Isn't the gross revenue the best indication? A. Gross revenue, of the two, is the better indication. Q. Then why use them both? A. For the purpose of getting a better general average—a more weighted average. Q. Then why don't you use gross revenue twice if you are going to give it double importance, if you think it is the best indication? A. I don't think it is proper.” (N. P. Rec. 3785.)

A. S. Dudley testified for the Milwaukee that the factor would not take terminal facilities into consideration directly; (Milw. Rec. p. 948) that the factor is used to reflect the net, just as the gross is used to reflect the net; (Milw. Rec. p. 1005) that express and mail should be included; (Milw. Rec. p. 964) that if you reduced all traffic to one kind, you would have the same result as if you took gross revenues in the first place, and the use of traffic units so reduced, would simply be weighting the gross revenues factor—using it twice. (Milw. Rec. p. 978-9.) He further conceded that the traffic units factor would not commend itself to him as well as some others, as a single method of allocation. (Milw. Rec. p. 957.)

(11-12) SAME—AUTHORITIES CRITICIZING RELATIVE CAR MILES AND RELATIVE TRAFFIC UNITS METHODS OF ALLOCATION. Cases have frequently arisen where commodity and passenger rates fixed by state regulatory bodies have been attacked by carriers as confiscatory, and where it has been necessary to devise some method for apportioning the value of the carrier's property as between that used in intrastate business and that used in interstate business. In some of these cases, the courts have had occasion to consider the merits of the transportation car miles and traffic units methods of allocation. We quote from a few of them:

“The track mile, or train or car mile, does not furnish the solution, because every one agrees that neither of those methods will do, and no one of the experts or counsel on either side asks for such a solution.” *St. Louis & S. F. R. Co. v. Hadley*, 168 Fed. 317, 348.

“Moreover, it is not perceived that the ton-mile basis advocated in its place is free from similar criticism. The number of tons hauled one mile has no bearing upon the value of the property employed save as revenue is produced, and when that element is recognized we are at once at the revenue basis. The ton-mile could not be used in the necessary assignment of values as to mail, express, and miscellaneous services, nor as between passenger and freight traffic. Passengers are not transported by weight, and the passenger mile and the ton mile as units of measurement cannot be reduced to a common term.” *Missouri, K. & T. Ry. Co. v. Love*, 177 Fed. 493, 497.

“The Master divided the values of the Minnesota properties between freight business and passenger business and between interstate business and intrastate business on the basis of the respective gross earnings of these classes of business. Counsel for the defendants challenge this basis of division, and contend that the apportionment should have been made on the basis of the use made of the property by each of these classes of business, measured either (1) by the aggregate number of the ton miles and passenger miles of the respective classes, or (2) by the aggregate number of the car miles and engine miles of these classes. They say that if that proportion of the value of the property of a company which the number of ton miles hauled by it in Minnesota bears to the aggregate of its ton miles and passenger miles in Minnesota be assigned to its freight business, and that proportion which its number of passenger miles bears to the same aggregate be assigned to the passenger business, and if that proportion of the value thus assigned to the freight business which the aggregate of the car miles and engine miles appertaining to the intrastate freight business bears to the car miles and engine miles used in the freight business be assigned to the intrastate freight business, and the same method be pursued in apportioning value to the intrastate passenger business the apportionment will be more equitable and just. The issue is between apportionment by use without regard to the worth or value of the use and apportionment according to the value of the use. The latter basis seems to be more logical and rational. *Capitalization is founded on the worth of use, not on mere use. The value of property and of investment in every form is measured by the value of its use, not by its use divorced from the value thereof.* (Italics ours.) The Minnesota

Railroad Commission, the railroad companies, all rate makers, base their rates primarily on the worth of the use of the railroad machines by the various classes of freight and by the passengers, and not on the amount of that use. The rate for hauling a ton of merchandise of the first class a mile is not five times the rate for hauling a ton of merchandise of class E. a mile, because the former ton mile uses the railroad property five times as much as the latter, but because the use by the former is worth more than the use by the latter. Moreover, there is no unit of measurement of ton miles and passenger miles, of freight car miles and freight engine miles, or of passenger car miles and passenger engine miles, divorced from the values of the uses they make of the railroad property, from the classes of loads they carry and the distances these loads are hauled. Indeed, there is no proportioning or measuring relation between such varying uses of property, when no regard is given to the value of these uses.

“On the other hand, the values of the uses, the earnings of the property, unavoidably condition the value of the property used, and present a natural and equitable basis of apportioning that value to these uses. Cases may indeed be imagined in which this basis does not produce persuasive results. One of them was suggested by Mr. Justice Brewer in *Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins*, 176 U. S. 167, 176, 20 Sup. Ct. 336, 44 L. Ed. 417, and others of like character have been presented in argument by counsel.” *Shepard v. Northern Pacific Ry. Co.*, 184 Fed. 765, 810-812.

People ex rel. New York Cent. & H. R. R. Co. v. Priest, 206 N. Y. 274, 99 N. E. 547, was a certiorari proceeding to review an assessment made by the state

board of tax commissioners upon the special franchise of the N. Y. & H. R. Co. in the borough of Manhattan for the year 1900. The relator operated a line of railroad extending from 42nd St. in New York to and beyond the Harlem river. The tax commissioners assessed the franchise at \$12,192,000. One of the objections to the assessment was that the value of the special franchise lying in the city of New York, which constituted only a portion of the relator's railroad system, should have been determined by apportioning the system value to the city of New York in the proportion which the mileage in the city bore to the total mileage of the system, and in the proportion which the passenger mileage in the city bore to the total passenger mileage of the system. In affirming the action of the tax commissioners in refusing to follow this method of allocation, the court said (p. 556):

“In view of the location of Fourth avenue and the advantage to the railroad company of such location and the business done over it, and by reason of the franchise which enables the road to reach a central point in a great city, if the receipts therefrom are arbitrarily determined by the mileage thereon in proportion to the total mileage of the Harlem Company, it is obviously unfair and an inadequate means of determining a basis for its valuation. The value of such a franchise cannot be accurately determined by comparison of its mileage with the mileage of a right of way or franchise on a street of a remote village or township. A comparison of the passenger mileage on Fourth avenue with the total passenger mileage of the Harlem Company will

not result in an accurate determination of relative values, although such a comparison would be of more value in determining the value of the Fourth avenue franchise than a comparison of the track mileage alone. Any comparison of track or passenger mileage necessarily spreads the earnings over the mileage, without taking into account the value of a franchise at a particular place to increase the earnings of the system of road with which it is connected. A particular franchise is frequently of important value in connection with a railroad system as a means of obtaining and retaining business. Where a special franchise relates simply to a point or portion of a railroad system, its value to the system must be considered in connection with all the surroundings and facts which aid in the determination of such value. This thought is expressed by Mr. Justice Swayze in *West Shore R. R. Co. v. State Board of Assessors* (N. J.), 81 Atl. 351, in considering a valuation of the West Shore Railroad in New Jersey as a proportionate part of the West Shore system, in which he says: 'We are not impressed by the figures of receipts and costs of traffic presented by the prosecutor. It may well be that the earning power of the 19 miles in New Jersey may be smaller considered by itself, but that by no means measures the value of the franchise for a railroad connecting the 404 miles north of our state line with tidewater opposite New York City. We can form some idea of the value of the New Jersey franchise if we think of the difference between the value of a railroad from Buffalo to Tappan without an outlet, and the value of the same road with the outlet which the New Jersey franchise gives. * * * We know that the lessee was willing to pay a rental of \$2,000,000 per annum and agreed to pay that sum for 475 years. A property producing such a rental guaranteed for so long a period is a very valuable

property and a large part of that value is due to the franchises to run a railroad from Tappan to Weehawken.' The relator in its report made by it in 1880, referring to these franchises, says: 'If the Harlem were clearly detached from the New York & Hudson River and could put up for bids the use of its access into the city and its franchises therein by lines rival to the New York Central & Hudson River, the rent it derives from the existing lease would appear small.'

“The manner of computing the value of a special franchise is dependent upon the facts and circumstances in each case. Where the net earnings of a special franchise can be computed with reasonable certainty, as in *People ex rel. Jamaica W. S. Co. v. Tax Commissioners*, 196 N. Y. 39, 89 N. E. 581, an assessment thereof based upon a computation therefrom is approved by the courts. No hard and fast rule by which the board of tax commissioners must be controlled in valuing a special franchise for the purpose of taxation has been adopted by the legislature or laid down by the courts. The valuation of the special franchise of the Harlem Company is peculiarly difficult, arising principally from uncertainty about the amount that shall be treated as the net earnings of such special franchise. * * *

“Elaborate statements are in evidence based principally upon a proportion of the mileage included in the assessment in comparison with the total mileage of the Harlem Company and a comparison of the mileage of passengers carried upon the tracks upon that part of Fourth avenue under consideration in comparison with the total mileage of passengers carried on the Harlem road and upon the road of the relator. This evidence, although proper for consideration, is not, in our judgment, sufficient in view of all

the findings to require as a matter of law the conclusion that the assessment was erroneous by reason of overvaluation or to shift the burden of proof resting upon the relator to show that the assessment is erroneous. There is no question before us as to what further evidence can be produced to make more clear and certain the value of such special franchise."

As supporting the relative car mileage method of apportionment the Master cites *State v. Pullman Co.* (Wis.), 189 N. W. 543. (See Report, p. 68.) We agree that the Pullman Company's cars might properly be apportioned among states on this basis. Indeed, Mr. Carey used it in the present cases for apportioning various kinds of equipment to Washington. But it is apparent that a decision upholding this method of finding the average value of the Pullman Company equipment within a given state for a given year, is far from being an authority for using the same method of apportioning between states the value of the terminals and roadway and track of the company upon whose rails the Pullman cars were operated.

(11) RELATIVE CAR AND LOCOMOTIVE MILES, TRAFFIC UNITS, AND GROSS REVENUES CONSIDERED COLLECTIVELY. As a group these three proposed factors may be correctly referred to as "*line haul factors*," since they each involve only line haul—the first, line haul of locomotives and loaded and empty cars; the second, the line haul of tonnage and passengers; and the third, gross revenues which are in turn apportioned to the state according to relative mileage of haul.

NET EARNINGS BY STATES NOT AVAILABLE. The Master so found, and his finding is supported not only by the Milwaukee bills (In No. 4314, p. 8, in No. 4338, p. 11), but by the testimony of all complainants' witnesses. (S. P. & S. Rec. pp. 56-7, 278-282, 353, 516, 522-3; Milw. Rec. pp. 685, 947; N. P. Rec. pp. 3596-7.)

CONTENTION THAT NET EARNINGS BY STATES, IF AVAILABLE, WOULD BE BEST INDEX OF RELATIVE VALUE. The following is quoted from the Master's Report:

"It is without doubt true, as has been before said, that the contribution of that part of the system within the state is best measured by the net revenues resulting from state operations; but the impossibility of determining these net earnings in the several states is conceded by all parties to these suits." (Report, p. 70.)

A. S. Dudley of the Milwaukee testified that he agreed with Professor Meyer that the value of that part of a railway system lying in a particular state is such part of the total value of the system as the net earnings in the state are a part of the total earnings (Milw. Rec. p. 1011); that if they had it, the net would be the best allocation factor (Milw. Rec. p. 1019), and that the factors of allocation proposed by that company (the same as proposed by each of the companies, except that it repudiated the replacement cost factor) was intended to show the net profits or the ability of the company to produce a net income within the state, and that if such factors would not show the net he would discard them. (Milw. Rec. p. 1063.)

From an earnings standpoint, the reason of course is this:—if past net earnings be taken as the sole measure of value and net earnings by states were known, there would be no need of allocation since the net earnings of each state could be capitalized without reference to the remainder, and the state value be thus ascertained.

PURPOSE OF “LINE HAUL FACTORS” IS TO REFLECT NET EARNINGS BY STATES. If, as the Master finds, relative net earnings would, if ascertained, be the best index of system value distribution, it must follow that the sole purpose of the various apportionment factors used by the Master is to reflect the relative net earnings.

The converse, we submit, must be likewise true; namely, that if it does not appear that such factors correctly reflect relative net earnings, they cannot correctly reflect relative value. Let us, then apply this test to these line haul factors.

(11-a) LINE HAUL FACTORS IGNORE RELATIVE FUTURE PROSPECTS EXCEPT AS REFLECTED BY PAST PERFORMANCE. The value of the system is measured by future prospects. This is the Master’s avowed justification for the use of the stock and bond method in fixing system value. Yet the proposed allocation factors in no way reflect the relative future prospects of different segments of the system except as measured by past performance. Mr. Dudley testified:

“Q. You are estimating your system value on future prospects, are you not? A. Yes. Q. And you don’t pay any attention to the future pros-

pects of the road when you allocate the property? A. That is the weakness, that is true. In the stock and bonds value you are getting the property based on future prospects; but in the other you are not." (Milw. Rec. pp. 1020-1.)

The importance of this objection is well illustrated in Mr. Dudley's effort to explain why these same allocation factors would be an unreliable index of the relative value of two independent railroads. He says:

"The prospects for the future of one road may be different from the prospects of the future as to the other but the prospects of the single system apply to the entire system * * * For instance, if I had a logging road that was making good mileage and I had another road that was not a logging road that had a good future ahead of it and the logging road was assumed to have no future at all, the values of those two roads would not be in proportion to their present mileages (but) or their present miles of haul. There are many factors. The relative value of the two roads would not necessarily be in proportion to the composite factor." (Milw. Rec. pp. 1659-60.)

But if these factors are for this reason an unreliable criterion of the relative value of independent roads, why are they not equally unreliable as an index of the relative value of different portions of the same road? After all, a railroad system is, in the main, merely an amalgamation of separate lines.

Who can say but that one part of a railway system may have reached or passed its maximum earning power, while the prospects of another part, in spite of its past indifferent showing, may be far brighter than the former. Clearly future prospects

are as important a consideration in apportionment as in fixing system value.

If the property in one state were newly constructed, there would be no past performance to serve as a guide to its future prospects. Consequently its value would be shown as nil by any of these line haul factors. The unfairness of ignoring relative future prospects would be strikingly apparent as between states in the middle west with established industries, and states such as Washington, whose resources are as yet largely undeveloped.

FUTURE PROSPECTS OF MILWAUKEE LINES WEST OF MOBRIDGE. (References are to Milwaukee Record.) W. W. K. Sparrow, the Milwaukee's vice president and chief financial and accounting officer of the receivers (Rec. p. 233), could not see the future for the lines of Mobridge without a transcontinental connection. While the western line, he said, might not be any bonanza, yet to him it was the future hope of the St. Paul Railroad. If that territory did not build up and develop business, then the prospects for the St. Paul were not what he would call encouraging. (Def. Ex. "18," p. 82.)

W. W. Colpitts, at the time of the trial one of the directors of the new Milwaukee Company (Rec. p. 233), and who, as a consulting engineer, in 1925 made an extensive study of the operating properties of the Milwaukee (Def. Ex "22," pp. 280-285; Def. Ex. "23"), was of the opinion in 1925 and also 1927 that the growth of the Puget Sound territory was

likely to be more rapid than the eastern territory, and that as time passed this would tend to equalize the earnings of the lines east and west of Mobridge (Def. Ex. "22," p. 291); that the St. Paul eastern lines with 8,000 miles of railroad certainly needed one line to the Pacific Coast. (Def. Ex. "22," p. 293.) That in 1925, Mr. Byram, the president of the road, felt very optimistic about the future of the railroad (Def. Ex. "22," p. 312); that every officer of the company was optimistic; that they felt that the outlook for the property was excellent in the immediate as well as the distant future (Def. Ex. "22," p. 364); that the Puget Sound extension runs to a large extent through mountain territory unadapted to any business except agriculture, yet there are very large agricultural possibilities in the mountain territory (Def. Ex. "22," p. 390); that there were a good many reasons for his statement that the business of the Puget Sound is liable to grow more rapidly than it has grown in the past; in the first place, he said, any new country is liable to develop much more rapidly than an older and more settled country; another reason was that the whole country out there had had a very considerable set-back, and from conversations with various people familiar with the situation, he thought it was the general impression that the northwestern country was going to go ahead reasonably rapidly; that he had been studying the northwest country for some little time, in making an examination of the Denver & Rio Grande and the Minneapolis

& St. Louis, and came in contact with a great many people. (Def. Ex. "22," pp. 407-8.)

Mr. Colpitts said further: That the people who built the Puget Sound extension knew the country and built it on the same faith, as far as he knew: That up to the present time the road had not yielded a fair return on the investment. That almost every road that has been built out there has gone through receiverships, and did not justify themselves on the basis of the original promotion, but have since. That population figures show that the states traversed by the Puget Sound are growing much more rapidly than those traversed by the lines east of Mobridge. (Def. Ex. "22," p. 409.) That the population is increasing faster than it did from 1909 to 1920. That there was quite a depression from 1909 up to 1915 or 1916. People left the country. The northwest had its boom, and when that boom collapsed, of course, there was the aftermath, and it has taken some years to get over it. But now it is on the up-grade, he felt, on a sound, substantial basis. (Def. Ex. "22," p. 410.)

Clearly these matters and many others were proper to be considered by the assessing officers in choosing a method for the apportionment of system value to their particular state. How absurd to suggest that they should be tied down entirely to past operating statistics in choosing an apportionment factor!

(11-b) LINE HAUL FACTORS IGNORE VALUE OF BRANCH LINES AS FEEDERS. On December 31, 1925, the Milwaukee reported that it had 447.28 miles of

main line and 498.94 miles of branches and spurs in the state of Washington. (Milw. Ex. "1.") On the same date, the N. P. lines in Washington consisted of 702.07 miles of main lines, 593.96 miles of main line sidings, 1,128.93 miles of branch lines, and 287.58 miles of branch line sidings, or 702.07 miles of main line, and 2,010.47 miles of branch lines and sidings. (Sec. N. P. Ex. "48," pp. 47-8.)

One of the important elements of value of branch lines is that they furnish long haul business to the main line. If the Milwaukee had no branches at all it would probably be unable to pay even operating expenses. (A. S. Dudley, Milw. Rec. pp. 952-3.) Can it be doubted but that the same is true of the N. P.?

Almost every railroad has branch lines. These branch lines, in themselves, very frequently will be shown on a segregation of earnings and expenses, to be unprofitable, but when it is considered that a branch line may originate traffic that would travel for 25 miles on the branch line, say, and a thousand miles on the balance of the system, it is of course very important to know what that contribution of traffic to the rest of the system means. (W. W. Colpitts, Def. Ex. "22," Milw. Case, p. 417.)

This peculiar value of branch lines was recognized by Mr. Crosbie of the S. P. & S. when he explained why the Oregon Trunk and Oregon Electric were not abandoned since they were apparently being oper-

ated at a paper loss. There are future possibilities in that country, he said; the country is as yet undeveloped and some day it may give us profitable traffic. Moreover, he said, these lines furnish the S. P. & S. and the parent lines a lot of traffic which they make money out of. (S. P. & S. Rec., pp. 988-991.)

Can it be said that this peculiar value of these branch lines where the traffic is comparatively light, as feeders of long haul business to the main line, is adequately reflected by these line haul factors? If a branch line were in one state and none of the main line, it is conceded in the *Milwaukee* case that the car-miles factor would be unfair to use as a single ratio of distribution. (A. S. Dudley, *Milw. Rec.*, p. 956.) But how would the injustice of that factor be cured by the others? Clearly not by either relative ton and passenger miles or relative gross factors, for they are subject to the same objection. Nor would the injustice be rectified by the use of the relative all tracks operated factor except to the extent of the weight given to that factor.

On the other hand, the relative replacement cost factor reflects the conception of the builders of the road of the value of such branches to the system.

Later on, in our separate discussion of the relative gross revenues factor we will show that, in recognition of this peculiar value of branch lines as feeders to the main line, complainants, in dividing interline revenues with such of their branch lines as still retain their separate corporate entities, allow such

branch lines far more than a mileage prorated division of the through tariff.

(11-c) LINE HAUL FACTORS IGNORE TERMINAL VALUES. As heretofore shown, important terminals of the N. P. and Milwaukee are located at Seattle, Tacoma, and Spokane. The N. P. has no terminal facilities of any consequence in North Dakota, Montana or Idaho. (N. P. Rec., pp. 686, 5779.) The Milwaukee has no terminal docks, wharves, depots, and yards located in Idaho, Montana, North and South Dakota, and Minnesota, as compared with the State of Washington. (A. S. Dudley, Milw. Rec., p. 982.) Moreover, each of these roads has a large number of branch lines in Washington.

In a way, therefore, the lines of the Milwaukee and Northern Pacific in Washington may be likened to immense freight yards for the assembling and distribution of through traffic.

The N. P. would not be susceptible of profitable operation if the terminals at either end should disappear. (Donnelly, N. P. Rec., p. 5784.)

The terminals, says A. S. Dudley, "contribute to the earnings of a railroad as much as the rails." (Milw. Rec., p. 950.) The same is true, as we have shown, of the branch lines.

Neither car miles, ton miles, passenger miles, nor the apportionment of gross revenues is figured except when the train is actually making the run. The

handling and switching of cars in the terminals is not considered in computing any of these factors. (Peterson, N. P. Rec., pp. 719, 790, 794-5.)

It is apparent, therefore, that these line haul factors recognize only the contribution of the track, and wholly ignore the contribution of the terminal to the earnings of the system. This will be more fully explained later in connection with our special discussion of the relative gross revenues factor.

(11-c) SAME—FALLACY OF MASTER'S THEORY THAT VALUE OF TERMINALS, TUNNELS, BRIDGES, ETC., IS NOT LOCAL TO STATE WHERE FOUND. It is at once to be noted that the Master's conclusion is completely refuted by *Wallace v. Hines*, 253 U. S. 63, a case to which we find no reference made in the Report.

As to such items of railroad property as tunnels and bridges the Master says (Report, p. 74):

“The expense of constructing any portion of the roads, in Washington, for example, a tunnel through the Cascades was not incurred in the hope of creating value in Washington at the location of this tunnel, and it did not result in any such value.”

Where, we may ask, then was this value created,—in Montana, in the Dakotas, in Minnesota? The tunnel was constructed, say in Kittitas County; it is used in that county for the purpose intended. Its sole value consists in accommodating a railroad. Is there then, any conceivable reason why the entire value of such tunnel is not to be found in Kittitas County?

Suppose the tunnel were owned by another company who collected toll from one or more roads for its use, and the revenue therefrom, capitalized at an appropriate percentage, indicated a value of say \$1,000,000. Where then would the value of this tunnel properly appear upon the assessment rolls? In Kittitas County where located, or in some other county or state? Does any different rule apply we ask, because the tunnel or bridge, happens to be owned by the carrier which uses it?

And waving aside defendants' objections to the relative car mileage and relative ton and passenger mileage factors because not reflecting relative terminal values, the Master says as to the relative gross earnings factor (Report, pp. 70, 73):

“The same criticism is made with reference to the value of the branch lines as feeders, to the location of various and valuable terminals, and to varied costs of reproduction per mile of the road. These things, of course, are not reflected in the gross earnings factor, and it is clear that having no localized value they are not to be considered at all. * * *

“The value of the terminals which are located, say, in Seattle, is by the legislative fiat spread over the other counties of the State, and there is no good reason, it seems to me, to object to the spreading of such value, if the system is to be regarded as a whole, over the other states through which the road runs, especially inasmuch as the terminals which may be located in these other states—and I know that such exist in all these systems—have their value spread all over the system as well, and a portion of that VALUE

by the method which we have adopted, enures to the State of Washington.”

In other words, if we rob Peter to pay Paul, Paul should be content if we in turn rob Sam to pay Peter. The trouble is, we submit, Sam did not have enough to pay Peter. Since the non-terminal states share in the spoils, the terminal states must lose at least part of their share!

As in the case of the tunnel, these terminal properties were created in Seattle, and are used in Seattle for the purpose intended. Their value consequently must be located in Seattle.

Suppose, as in the case of the tunnel, a separate corporation owned the Seattle terminals for the use of which it charged the N. P. a certain equitable proportion of the earnings of the business handled. Suppose the earnings of the terminal company when properly capitalized, indicated a certain value. Where, we ask, would that value be located? In Montana, in Idaho? Certainly not. We would find these terminal properties assessed and taxed in King County where they are located. Should any different rule, we ask, apply merely because the terminals are owned by an interstate road, both owning and using them?

Again, we call attention to Article VII, Section 3, of the state constitution, requiring that corporate property must be assessed and taxed as near as may be by the same methods as individual property. Individual property is assessed and taxed in the taxing district where located, its value being measured by its

most profitable potential use. It follows that each item of railroad property found in the state, whether it be a bridge, tunnel, dock, depot, or piece of track, must be assessed and taxed in the same way: namely, with reference to its most profitable potential use, and in the taxing district where located.

(11-d) LINE HAUL FACTORS IGNORE RELATIVE CONSTRUCTION COST. It is, of course, apparent that none of these factors give any consideration whatever to comparative construction cost of the road in different states. In this respect they are even more objectionable than the factor condemned for that reason in *Wallace v. Hines, supra*.

(11-e) IF LINE HAUL FACTORS REFLECT THE RELATIVE NET EARNINGS OF DIFFERENT SEGMENTS OF A SYSTEM, SHOULD THEY NOT REFLECT RELATIVE NET EARNINGS OF SEPARATE ROADS?

Mr. Dudley answers that the operating expenses of the two roads may be different. Precisely so. But so may the operating expenses of one portion of the road be vastly different from those of some other portion. And Mr. Dudley agrees that his factors throw no light on relative operating expenses. He says:

“Operating expenses are system expenses largely. Consequently that these same factors would indicate the expenses within the particular states or particular parts of the system it seems to me would be rather far fetched. I do not know how you could say that the expenses in the state of Washington are in proportion to these four factors existing in Washington. It seems

to me that they would vary. They would not follow those factors." (Rec. p. 1664.)

It would seem that complainant's line haul factors must fall with this admission. Since relative net depends upon relative gross and relative expenses, factors which wholly ignore expenses, surely cannot reflect relative net.

To quote further from Mr. Dudley :

"Assuming that two railroads have the same amount of gross earnings, same revenue train mileage, same car miles plus locomotive miles, and same passenger miles plus ton miles, but we do not know the net, I do not think it would be safe to say they would be of the same value. (Milw. Rec. pp. 1647-8.)

* * * * *

"My conclusion is that as between two separate roads this composite factor would not accurately reflect the relative value of the two independent roads. There might be cases where it would and there might be cases where it would not, I think. * * * The relative value of the two roads would not necessarily be in proportion to the composite factor. They might not be in proportion to those factors." (Milw. Rec. pp. 1657-60.)

Mr. Dudley was asked whether, if the composite factor indicated that the relation of the value of the G. N. to the value of the Milwaukee was as 6 is to 10, he would conclude (not knowing the Milwaukee value) that the Milwaukee was worth one and two-thirds as much as the G. N. He answered :

"I do not think it would necessarily follow it would be worth 1-2/3 times as much. * * *

We are using these ratios of apportionment for the purpose of arriving at a unit value among its parts, and not for the purpose of determining the relative value between two systems whose values are independently ascertained." (Milw. Rec. p. 1667.)

* * * * *

"Q. Well, you would not make that assumption, would you, as between two independent lines, that the expenses of operation were relatively the same as the gross revenues of the two independent lines? A. The ratio of two independent lines might be very different. It might cost the same amount to make five thousand gross as to make ten thousand gross. The ratio between the cost of producing earnings of the two systems might be very different. Q. But, that would not necessarily be true as to two different portions of the same system? A. I think it would be. I think it might be. For that reason I do not tie up to that single system." (Milw. Rec. pp. 1679-80.)

(11-e) SAME—COMPARISON OF RELATIVE NET REVENUES FACTOR WITH MASTER'S FOUR FACTORS AS BETWEEN INDEPENDENT ROADS. The following table shows a comparison of the relative values indicated by relative net earnings, with those reflected by the various allocation factors used by the Master as between the Great Northern and Milwaukee, and as between the Northern Pacific and Milwaukee for the years 1923 to 1925 inclusive (Def. Ex. "32," pp. 1, 2, 5; Plff.'s Ex. "26," Milw. Case):

TABLE NO. 3

Relative value of G. N. and Milwaukee, and N. P. and Milwaukee as indicated by Master's factors and by relative net railway operating income:

Allocation Factor:	Milwaukee and Great Northern combined:		Milwaukee & Northern Pacific combined:	
	Proportion of Milwaukee:	Proportion of Great Northern	Proportion of Milwaukee:	Proportion of Northern Pacific
Miles of all track operated:	57.617%	42.383%	62.602%	37.398%
Transportation service car miles plus locomotive miles:	61.069%	38.931%	64.374%	35.626%
Revenue ton miles plus revenue passenger miles:	58.145%	41.855%	63.326%	36.674%
Operating revenues:	58.666%	41.334%	62.408%	37.592%
Straight average of above four factors:	58.874%	41.126%	63.178%	36.822%
Average giving 50% weight to all tracks operated and 1/6th weight to each of others:	58.455%	41.545%	62.986%	37.014%
Net Railway operating income:	42.044%	57.655%	48.621%	51.379%

If the use of the Master's factors does not, as it evidently does not, correctly reflect relative net earnings as between independent roads, how can it, we ask, be contended that such factors indicate relative net earnings as between different segments of the same road?

(11-f) LINE HAUL FACTORS REFLECT VALUE WHERE NO NET EARNINGS. As heretofore pointed out, the Master finds that relative net earnings, if available

would reflect the true relative value as between states, and that it must logically follow that these line haul factors must be intended to reflect relative net earnings. A. S. Dudley of the Milwaukee testified that, if it could be ascertained (which he conceded it could not be), relative net earnings would be the best allocation factor. (Dudley, Milw. Rec. p. 1019.) Therefore, he testified, he did use those things (the four factors used by the Master) which he judged best reflected relative net earnings; (Dudley, Milw. Rec. pp. 981, 1011) that the factors which he proposed were intended to show the net profits or the ability of the company to produce a net income within the state, and if such factors would not show the net he would discard them. (A. S. Dudley, Milw. Rec. p. 1063.)

It is, of course apparent, as Mr. A. S. Dudley says, that if it were possible to determine the true net earnings by states and it appeared that a given state had a deficit instead of a net, no value as a railroad could be apportioned to the state with no true net earnings. (Milw. Rec. pp. 1017-20.) In such case, 100% of the value would be actually located in other states. But in such case, to apportion some value to a state or states with no net earnings would be to take away part of this 100% of value from the other states. Yet this is exactly what would happen. If the railroad did any business at all within the state, Mr. Dudley agreed that the application of the line haul factors would reveal a certain proportion of gross

revenue, ton and passenger miles, and car and locomotive miles within that state, and consequently the application of such methods of apportionment would be bound, to that extent, to take away from those states with the 100% of net earnings a corresponding proportion of the value reflected by relative true net earnings. (A. S. Dudley, *Milw. Rec.* pp. 1059, 1063.)

Driven by the Milwaukee's own counsel to this conclusion, Mr. A. S. Dudley makes this startling but inevitable admission:

“It is evident, I think, if a road which had no net—if the words were to be taken literally, and no yield to the property, present or prospective, the property would have no value as a railroad in its present condition. I am speaking of the State of Washington. If the figures used indicated that, either the figures are misleading or else there is a value in the state that is not indicated by a showing that the property is now and always will be a source of expense to the company; because that does not represent the true situation. We try to get at the true situation, and that true situation is being gotten at by the use of the four factors, from which it appears there will never be zero that is allotted to the state.” (*Milw. Rec.* pp. 1058-9.)

But why, counsel may ask, should a state complain if it receives more of this system value than it is entitled to? Yes, but what of the other states with true net earnings whose proper proportion of the system value is being taken away by the allotment of an undue value to the states with no net earnings? More than 100% of system value cannot be allotted, and if more is allocated to one or more states than

the facts justify, the same must, of necessity, be wrongfully taken away from some other state!

(11-f) SAME—SPECIFIC INSTANCES WHERE LINE HAUL FACTORS APPORTION VALUE WHERE NO NET INCOME AND LIKEWISE FAIL TO REFLECT RELATIVE NET EARNINGS. The S. P. & S. operates between Spokane and Astoria and Seaside, Oregon. The Oregon Trunk (O. T.) extends from its junction with the S. P. & S. southerly to Bend, Oregon. The Oregon Electric (O. E.) extends from its junction with the S. P. & S. at Portland, south to Eugene, Oregon. The United Railways (U. R.) extends from its junction with the S. P. & S. at Linnton, Oregon, to Keasy, Oregon. (N. P. Rec. pp. 9080, 9084-5.) The Gales Creek and Wilson River (G. C.) joins the United Railways at Wilkesboro, Oregon, and runs to Glenwood. (S. P. & S. Rec. pp. 1000-1.) The S. P. & S. owns all of the stock of these subsidiaries except the Gales Creek (N. P. Rec. pp. 617, 5611; S. P. & S. Rec. pp. 458-9, 941), the stock of this company being owned by subsidiaries of the N. P. and G. N. (S. P. & S. Rec. pp. 967-8.) The mileage of track operated by these roads is as follows: S. P. & S. 763 miles, O. T. 190 miles, U. R. 83 miles, O. E. 203 miles, and G. C. 15 miles. (Plff. Ex. "12" S. P. & S. Case.) These subsidiaries (including the Gales Creek) are all operated by the S. P. & S. the same as branch lines, except in the matter of accounting. (S. P. & S. Rec. pp. 963-7.) Being separate corporations, however, separate accounts are kept as to each of these subsidiaries which makes it possible for us

to see exactly how these line haul factors used by the Master, in actual practice, reflect relative net earnings.

The car and locomotive miles, ton and passenger miles, gross operating revenues and net railway operating income for 1925 of the S. P. & S. and each of these subsidiaries are shown in the record (S. P. & S. Ex. "12") and on the following page we have computed the line haul factors and the average of the three, together with the relative net railway operating income factor, and have also shown the value for each such segment of the S. P. & S. system indicated by such factors.

TABLE NO. 4

Comparison of relative net railway operating income factor with other apportionment factors proposed by complainants, as to different segments of S. P. & S. system:

Portion of S. P. & S. System:	Relative car plus locomotive miles factor:	Relative ton plus passenger miles factor:	Relative gross revenues factor:	Average of three factors:	Relative net railway operating income factor:
SP&S proper	75.990%	82.890%	75.291%	78.057%	115.349% (plus)
UR.....	5.868%	5.961%	9.006%	6.945%	7.435% (plus)
OT.....	8.197%	6.105%	6.629%	6.977%	7.373% (minus)
OE.....	9.805%	4.895%	9.062%	7.921%	14.580% (minus)
GC.....	0.140%	0.149%	0.012%	0.100%	0.831% (minus)
Total.....	100.000%	100.000%	100.000%	100.000%	100.000%

TABLE NO. 5

Comparison of values of different segments of S. P. & S. System reflected by net railway operating income factor, and average of three line-haul factors, on assumption that total value is the net railway operating income of system for 1925: \$1,537,116, capitalized at 6% or \$25,618,600:

Portion of SP&S System:	Relative Net Railway Operating Income Factor:		Average of Line-Haul Factors:	
	Percentage of Value Indicated by:	Value Indicated by:	Percentage of Value Indicated by:	Value Indicated by:
SP&S proper	115.349%	\$29,550,799 (plus)	78.057%	+\$19,997,110
UR.....	7.435%	1,904,743 (plus)	6.945%	+ 1,779,212
OT.....	* 7.373%	*1,888,859 (minus)	6.977%	+ 1,787,410
OE.....	*14.580%	*3,735,192 (minus)	7.921%	+ 2,029,249
GC.....	* 0.831%	* 212,891 (minus)	0.100%	+ 25,619
Total.....	100.000%	\$25,618,600	100.000%	\$25,618,600

Note: * indicates red figure or percentage.

Is the tax commission, we ask, to be criticised for refusing to use a factor which, in actual practice, reflects a value of \$2,029,249 for a segment of road, which is shown by its net earnings to be a liability to its owners of some \$3,735,192? True the value of the United Railways reflected by the Master's line haul factors rather closely approximates that indicated by relative net earnings, yet as to four of the five sections of the road, the line haul factors have shot so wide of the mark as to demonstrate, we submit, their utter irrelevancy.

EARNING POWER AS DISTINGUISHED FROM PAST NET EARNINGS. We find a hint in Mr. Dudley's testimony that this "value" that is reflected by his four factors

where there are no true net earnings, may be a prospective earning power, but is it? These factors obviously show nothing except as to the water which has gone over the wheel. They show nothing as to future prospects. Mr. Dudley says:

“Q. You are estimating your system value on future prospects, are you not? A. Yes. Q. And you don't pay any attention to the future prospects of the road when you allocate the property? A. That is the weakness, that is true. In the stock and bonds value you are getting the property based on future prospects; but in the other you are not.” (Milw. Rec. p. 1021.)

SALVAGE VALUE. But what of junk value? Is not a state with no earnings entitled to some allotment for salvage value? Yes, but these traffic statistics are not intended to allocate salvage value. They have been confessedly chosen with the sole purpose of reflecting the distribution of the system net earnings; in other words, the *value of the use*. True, the all tracks operated factor might in a slight measure tend to reflect such distribution. But even here, it seems pertinent to ask what possible bearing can tracks “operated” as distinguished from tracks “owned” have upon the distribution of salvage value? If the company is making no money in operating tracks which it does not own, what bearing can its operations have upon the relative junk value of the property it does own?

Again, we ask, what possible relation has relative car and locomotive miles, relative ton and passenger miles, and relative gross revenues to relative salvage

value? Obviously none whatever. The junk value of the rails and ties, however difficult to ascertain, is necessarily a definite amount at a given time, and is wholly unaffected either by the amount of traffic hauled over such rails, or the gross revenue received therefrom.

Moreover,—why allocate salvage value at all? The salvage value of the property within the state, if it is to be junked, has no relation to the property in any other state.

(11-g) LINE HAUL FACTORS IGNORE RELATIVE SALVAGE VALUE. In this connection we need add nothing to what has just been said.

(11-h) LINE HAUL FACTORS IGNORE USE OF ROAD BY TENANT COMPANIES. The Master's factors are intended to reflect relative value. If relative value of use determines relative value, then the relative value of a particular segment of a railroad must depend upon the relative value of the use made of it by all carriers, not by the owning carrier only. Yet neither the car mileage, ton and passenger mileage nor revenues of, nor the rentals paid by, tenant companies are in any way reflected by these line haul factors.

Thus, the N. P. owns and operates, as part of its system, a line of railroad southerly from Seattle to Tacoma, a distance of 39.2 miles, and thence south to Vancouver, Washington, at the state boundary, a distance from Tacoma of 132.7 miles. (N. P. Rec. p. 3718.) Two lines are operated south from Tacoma

to Tenino, one known as the Prairie line, and the other known as the Point Defiance line. (N. P. Rec. p. 5798.) On January 1, 1910, the N. P. entered into contracts with the Great Northern Railway Company and the Oregon-Washington Railroad and Navigation Company for the use of the N. P. tracks between Portland and Seattle. (N. P. Rec. pp. 894, 925.) This road is double-tracked to afford the facilities for these common user rights, and the line is now ample for the three roads. (N. P. Rec. pp. 5798, 5800; see Def. Ex. "236," N. P. case.) The G. N. operates over the N. P. line between Seattle and Vancouver, using the Prairie line between Tacoma and Tenino. The O-W. operates over the N. P. line from Tacoma to Vancouver, using the Point Defiance line. (N. P. Rec. p. 5798.) The joint user agreements run for 999 years. (N. P. Rec. p. 5810.) The compensation paid by the tenant companies is arrived at in two ways: (1) the rental feature is covered by a percentage of one-third of five per cent. on the amount of the investment in the property; and (2) the operating feature is fixed by the relative use made of the tracks by the individual companies on a wheelage basis. (N. P. pp. 2975-6.)

In making its computations as to relative car miles, relative traffic units, and relative gross revenues, the statistician of the N. P. did not include either for the state or the system, either the car miles, traffic units or gross revenues of either of these tenant companies on the Seattle-Vancouver line, or of the tenants of any other part of the line upon which it had granted joint

user rights. (N. P. Rec. pp. 676, 705, 722, 875-7.) *Neither were the rentals received from the tenant companies included in the gross earnings in computing the gross earnings factor.* (N. P. p. 709.) *Such rentals were admittedly not reflected in any of the three factors of the N. P.* (Rec. p. 710.)

It is agreed by all qualified witnesses that if the line haul factors were used, they should include the car miles, traffic units and gross revenues of these tenant companies. Henry Gray testified for the defendants:

“If the line from Seattle to Vancouver was a separate entity and had no relation whatever with the Northern Pacific system or any other system, all other things being the same as they are now, and (I) was called upon to fix the value of that particular line, I would certainly take into consideration the earning capacity of the line and all the traffic that moved over it. I would not just take a third of it and attempt to value the line on that basis. I would take it all. Now, if that holds in the case that line was independent, it would certainly hold in case it was part of the entire system.” (N. P. Rec. p. 3450.)

A. S. Dudley testified for the Milwaukee:

“A. The value of the property would be judged by the—. Q. By the value of its use? A. By its total use, if it were used by several companies. In the case of the Milwaukee, however, to which this has been applied, these joint facilities, as they are called,—are about the same, give and take. * * * It is not the case of the Northern Pacific and the Great Northern, owning a

large railroad which enters into the problem with the Milwaukee at all." (Milw. Rec. p. 970.)

Dr. Hadley testified:

"Q. Assuming the Northern Pacific alone is paying the taxes on the Seattle and Portland and not the other road; should not then the gross earnings by the other two roads be taken into consideration in apportioning to the State of Washington the proper amount of taxable value, after the total value of the system has been determined? A. If that were the case, yes; but I doubt very much if it would be found to be the case." (N. P. Rec. pp. 352-3.)

But this, as the court knows, *is* the case. In Washington the roadway and track are assessed entirely to the owning company. (Laws of 1925, Ex. Sess. ch. 130, Sec. 44, p. 254.) Where one road operates over the lines of another, nothing but the rolling stock and equipment of the tenant company is assessed to that company. (See Minutes of the State Board of Equalization, 1926, pp. 37-8, 56-59; N. P. Ex. "48.")

State ex rel. Hellar v. Jackson, 82 Wash. 351.

SAME—EFFECT OF IGNORING GROSS REVENUES, ETC. OF TENANT COMPANIES. Since these statistics are not in the record we are unable to show the result of adding them. However, the prejudicial effect as to the defendant counties of their being ignored may be readily shown in another way, premised upon the Master's conclusion that relative net earnings, if known, would be the best apportionment factor, and consequently that the factors which he uses are intended to reflect relative net earnings by states.

Joint facilities rents received by an interstate carrier, it can readily be seen, can be apportioned directly to a state without resorting to any apportionment factors. These rentals are simply added to the other net revenues for the purpose of determining net railway operating income. (N. P. Ex. "16," p. 5.)

Now, joint facilities rents, as heretofore shown, are not reflected in any of the three line haul factors of the N. P. (N. P. Rec. p. 710.)

Therefore, the factors used by the Master in no way reflect the distribution of these joint facilities rents as between the state of Washington and the balance of the system. To give them effect, therefore, they must in some way be included in the Master's factors. But, these rents being net figures, they must be added to net earnings in order to accord them their proper weight. The Master's factors must therefore be first reduced to terms of relative net earnings. Now, since the Master finds that relative net is the proper allocation factor, the factors he uses must be intended as a substitute for, and to reflect the relative net earnings as between the state of Washington and the system, except as to the net item of joint facilities rents, which are in no way taken into consideration in computing the factor. In other words, if the Master's conclusions are correct, the apportionment factor which he uses reflects the relative distribution of net railway operating income of the N. P. less joint facilities rents. Therefore, to find from the Master's factor, the relative net

railway operating income of the N. P. within the state of Washington, we must apply his apportionment factor to net railway operating income for the system (less the joint facilities rents), and add to the resultant figure the actual amount of joint facilities rents earned by the N. P. in the state of Washington. If we compare this figure with the net railway operating income for the system we will have what the Master finds is the theoretically correct apportionment factor, namely, the relative net railway operating income. The resulting net revenues factors for the years 1925 and 1926 would therefore be indicated by the following computations (see N. P. Ex. "16," p. 5):

TABLE NO. 5a

Year	Total Net Railway Operating Income:	Joint Facilities Rents:	Net Railway Operating Income Less Joint Facilities Rents ("b"—"c")
(a)	(b)	(c)	(d)
1924	\$19,861,076	\$1,534,128	\$18,326,948
1925	22,227,319	1,851,721	20,375,598

Washington's proportion of net railway operating income less joint facilities rents, resulting from applying Master's allocation factors to net railway operating income less joint facilities rents (Column "d") is computed as follows:

TABLE NO. 6

Year	Net Railway Operating Income for System Less Joint Facilities Rents:	Master's Allocation Factor (Report pp. 96, 107)	Net Railway Operating Income for Washington, Less Joint Facilities Rents ("b" × "c")
(a)	(b)	(c)	(d)
1924	\$18,326,948	27.20%	\$4,984,930
1925	20,375,598	27.81%	5,666,454

The joint facilities rents earned by the N. P. in the state of Washington for 1924 and 1925 were as follows (N. P. Ex. "16," p. 5):

TABLE NO. 7

Year	Joint Facilities Rents Earned by N. P. in Washington	N. P. Ex. "16"
1924	\$1,116,688	p. 5
1925	1,140,580	p. 5

If these amounts are added to Washington's proportion of system net railway operating income other than joint facilities rents (column "d", table 6) the following net railway operating income is shown for Washington:

TABLE NO. 8

Year	Net railway operating income for Wash., less joint facilities rents:	Joint facilities rents earned in Washington:	Indicated net railway operating income in Washington ("b" + "c")
(a)	(b)	(c)	(d)
1924	\$4,984,930	\$1,116,688	\$6,101,618
1925	5,666,454	1,140,580	6,807,034

The resulting relative net railway operating income factor for Washington for the tax years 1925 and 1926 are indicated by the following table:

TABLE NO. 9

Year	Net Railway Operating Income		Ratio ("b" ÷ "c")	Tax year
	For Washington	For the System		
(a)	(b)	(c)	(d)	(e)
1924	\$6,101,618	\$19,861,076	30.72%	1925
1925	6,807,034	22,227,319	30.62%	1926

JOINT FACILITIES RENT ALLOCATION FACTOR. Viewing this in another light—since relative earnings from joint facilities rents are wholly ignored in the computation of the Master's factor, another factor must be combined with the Master's factor in order to make due allowance for the distribution of value reflected by relative joint facilities rents. Indeed Mr. Riddle of the S. P. & S. suggested the use of such an additional factor as to the S. P. & S. He testified:

“You understand of course that these joint facility rents accrue to the carrier both in Oregon and in Washington. Now, we might have added another allocation factor there by using the total joint facility rents accruing to us in Washington and not Washington and Oregon together. Had we done so it would have shown that the joint facility rents which we received in Oregon were in excess of those received in Washington. In other words, this additional factor which we might have used would have shown instead of a percentage around eighty to the state of Washington and twenty to the state of Oregon approximately sixty to the state of Oregon and only forty to the state of Washington.” (S. P. & S. Rec. p. 1177.)

This joint facilities rents factor would be computed by comparing the joint facilities rents earned in Washington with the total for the system; thus:

TABLE NO. 10

Year	Joint facilities rents earned in Washington:	Joint facilities earned for system:	Joint facilities rents factor— (“b” ÷ “c”):
(a)	(b)	(c)	(d)
1924	\$1,116,688	\$1,534,128	72.78975%
1925	1,140,580	1,851,721	61.59567%

But this joint facilities rents factor would be entitled only to such weight as compared with the factor found by the Master as the total joint facilities rents for the system bears to the total net railway operating income for the system. Thus:

TABLE NO. 11

Year	Joint facilities rents for system:	Net railway operating income for system:	Relative weight to be accorded joint facilities rents factor ("b" ÷ "c")	Relative weight to be accorded Master's Factor; (100% — "d"):
(a)	(b)	(c)	(d)	(e)
1924	\$1,534,128	\$19,861,076	7.72429%	92.27571%
1925	1,851,721	22,227,319	8.33083%	91.66917%

Therefore the proportions of system value to which Washington is entitled according to the Master's factor, plus the proportion of such value to which it is entitled by the application of the joint facilities rents factor not used by the Master, are shown by table No. 12 on the following page:

TABLE NO. 12

Year	Master's Factor:	% of weight to which entitled:	Joint facilities rents factor:	% of weight to which entitled:	Percentage of system value apportionable under each factor, and total:			Total % to which Wash. entitled: ("f + g")
					Master's factor: ("c × b")	J. F. Rents factor: ("e × d")	(h)	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	
1924	27.20%	92.27571%	72.78975%	7.72429%	25.09899%	5.62249%	30.72148%	
1925	27.81%	91.66917%	61.59567%	8.33083%	25.49319%	5.13143%	30.62462%	

As will be hereafter shown, defendants contend, even assuming the propriety of using these line haul factors, that Washington, being a terminal state, is entitled to materially more than a mileage prorata of gross revenues, and consequently that the Master's factor apportions too little value to Washington.

(12) MASTER'S ERRONEOUS DEDUCTIONS FROM RELATIVE CAR MILEAGE AND RELATIVE TON AND PASSENGER MILEAGE FACTORS. The line haul factors were intended, as we have shown, to reflect relative net earnings. Net earnings depend upon (1) gross revenues, and (2) operating expenses. If the company is making money, then the higher the operating revenues, presumably the higher the net earnings; likewise, the lower the operating expenses, the higher the net earnings. Mileage of haul whether it be of cars, locomotives, tonnage or passengers must involve operating expense. The lower the proportion of such mileage of haul, the lower the relative proportion of expense. More revenues with less mileage of haul of cars, tonnage, and passengers, means measurably more net earnings. Other things being equal, if statistics show, as to a given state, more gross revenues per car mile, per ton mile and per passenger mile, than the average for the system, it must mean that such state's proportion of net earnings is greater than such state's proportion of gross revenues. Likewise, if such statistics show as to a given state, other things being equal, less gross revenues per car mile, ton mile and passenger mile, than the average for the system,

it must mean that such state's proportion of net earnings is measurably less than the proportion of gross revenues.

A comparison of the relative car and locomotive miles, relative ton and passenger miles, and relative gross operating revenues (one year average) as found by the Master (Report, pp. 107, 109, 151, 280, 301) for the year 1926 for the three complainants, as compared with relative miles of all track operated and relative replacement cost, is shown by the following table:

TABLE NO. 13

Road:	Fractional part of system value apportioned to Washington by various apportionment factors, 1926 assessment:				
	Relative replacement cost:	Relative miles of all tracks operated:	Relative car and locomotive miles:	Relative ton miles plus passenger miles:	Relative gross operating revenues apportioned on mileage basis:
	(1)	(2)	(3)	(4)	(5)
S. P. & S.	74.04%	73.84%	85.97%	90.45%	81.43%
Milwaukee	11.75%	9.03%	4.79%	5.10%	6.02%
N. P.	33.77%	31.29%	23.14%	22.85%	27.00%

From the foregoing table it appears that in 1925 the Milwaukee received 6.02% of its gross revenues from only 5.10% of the total ton and passenger miles hauled, and from but 4.79% of the total car and locomotive miles operated. It further appears that

in the same year the N. P. received 27.00% of its operating revenues from but 22.85% of the total ton and passenger miles hauled, and from but 23.14% of the total car and locomotive miles operated. Thus each road made more gross revenues per car and per ton and passenger mile than the average for the system, thereby indicating that, other things being equal, as to each road, Washington's relative net earnings were, to a degree at least, greater than indicated by its relative gross revenues.

To illustrate.—Let us assume a railroad operating in two states only. The ton miles, passenger miles, class of commodities hauled, amount of revenues received, miles of tracks operated are the same in each state. In the one state, however, twice the number of car miles are operated as in the other. Now, other things being equal, in which state would we look for the most net revenue,—in the state of the low car-mileage or the state of the high car-mileage? Obviously, in the state of low car mileage. Again, let us assume the same road with the gross revenues received and car and locomotive miles, the same in each state, but in the one state the ton miles hauled are twice those of the other. Where, now, would we look for the greater net revenues,—in the state of the low ton mileage or the state of the high ton mileage? Of course, in the state of the low ton mileage.

The same rule, we submit, must hold good in the present case. The Master, however, added these three factors together, and divided by three, using

the resultant figure as an allocation factor to which he gave 50% weight. (Report, pp. 78-9, 96, 107, 122, 123.) *In so doing, we submit, the Master actually penalized Washington in each case for contributing more revenues at less cost, than the average for the system.*

For example,—had the N. P., in the year 1925, hauled from Spokane to Seattle, 53,985 additional freight cars containing a total of 746,983 tons of additional freight, *for hauling which it received absolutely no revenue whatever*, the car-miles factor, and ton-plus-passenger miles factor would have been the same as the gross-revenues factor: i. e., 27.00%, and the Master would have apportioned Washington 27.00% of system value according to his so-called “use” factors, instead of only 24.33% which he allowed. The following figures are taken from the Report (Report, p. 107):

Gross revenues factor	27.00%
Car miles: Total for system	557,700,041
27% of total for system	150,579,010
Actual figure for Washing- ton	129,038,766
	<hr/>
Excess over actual amount necessary to make factor of 27.00%	21,540,244
Equivalent in cars hauled from Seattle to Spokane— 21,540,244 ÷ 399 =	53,985 cars
Ton plus passenger miles: Total for system	7,177,657,311

27% of total for system...	1,937,967,471
Actual figure for Wash- ton	1,639,921,054

Excess over actual amount necessary to make factor of 27.00%	298,046,417
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Equivalent in tons from Seattle to Spokane — $298,046,417 \div 399 = \dots$	746,983 tons
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EFFECT OF MASTER'S ERRONEOUS DEDUCTIONS ON FACTORS FOUND. In the following computations it is assumed: (1) that the ratio between all operating expenses (other than maintenance of equipment expense and transportation expense) for Washington and for the system, were the same as the relative all tracks operated factor found by the Master, and (2) that the ratio between maintenance of equipment expense plus transportation expense for Washington and for the system were the same as the higher of the two factors, relative car miles and relative ton plus passenger miles, for the year preceding the assessment date.

Thus, it is assumed that the relative expenses incident to the maintenance and movement of equipment and the movement of traffic as between different parts of the line are reflected by whichever of the two factors, relative car miles and relative traffic units is the greater. And it is further assumed that the remainder of the operating expenses, to wit: expenses of maintenance of way and structures, traffic expense, miscellaneous operations ex-

pense, and general expense as between different parts of the line are reflected by the relative all tracks operated factor.

Now while these assumptions are admittedly arbitrary, yet it is apparent that the relative car miles and relative traffic units are the only two factors used by the Master which reflect relative expense incident to the movement of traffic, and that the relative track mileage factor is the only one of such factors which reflects all other operating expense. Therefore, if the car miles and traffic units factors are to be used at all, they should be used as shown in the following computations:

The ratio of maintenance of equipment and expense of transportation to total railway operating expenses for the years 1924 and 1925 as to the N. P., the year 1925 as to the S. P. & S., and the years 1925 and 1926 as to the Milwaukee is computed as follows:

TABLE NO. 14

Road	Ln. of Table	Year	Ry. Operating Expense	Maintenance of Equipment Expense:		Transportation Expense:	
				Amount	% of Ry. Operating Expense: ("d" ÷ "c")	Amount	% of Ry. Operating Expense: ("f" ÷ "e")
(a)		(b)	(c)	(d)	(e)	(f)	(g)
N. P.	(h)	1924	\$70,533,064	\$18,675,927	26.48%	\$34,190,334	48.47%
N. P.	(i)	1925	69,972,476	17,605,304	25.16%	33,538,234	47.93%
S. P. & S.	(j)	1925	5,260,765	1,197,110	22.76%	2,547,333	48.42%
Milwaukee.	(k)	1925	128,401,168	36,458,014	28.39%	59,986,505	46.72%
Milwaukee.	(l)	1926	130,449,632	39,680,380	30.42%	61,074,468	46.82%

References:

Line "h," N.P. Ex. "49," p. 22; Line "i," N.P. Ex. "50," pp. 25-26; Line "j," S.P. & S. Ex. "10," p. 4; Line "k," Milw. Ex. "1," pp. 25-26; and Line "l," Milw. Ex. "2," pp. 25-26.

*Computed net railway operating
income factor of the N. P. for
year 1925:*

Let "A" equal the total operating
expenses of the N. P. for 1924 (N. P.
Ex. "16", p. 5)\$70,533,064

Let "B" equal the total operating
revenues of the N. P. for 1924 (N. P.
Ex. "16", p. 5)..... 95,292,404

Let "C" equal the total operating
revenues of the N. P. for 1924 for
Washington (N. P. Ex. "16", p. 5) .. 25,539,837

Percentage of expenses for
maintenance of equipment
of total operating expense
(See preceding Table).....26.5%

Percentage of transporta-
tion expense of total oper-
ating expense (See preced-
ing Table)48.5%

Let "D" equal the percent-
age of maintenance of equip-
ment expense plus transporta-
tion expense, of the total oper-
ating expense for the system. .75.0%

Let "E" equal the total transporta-
tion and maintenance of equipment
expense for 1924—"D"×"A").... 52,899,798

*Since the relative transportation car miles factor
for 1924 was found to be 21.83%, therefore—*

Let "F" equal relative ton miles plus
passenger miles factor for the year 1924
(Report, p. 96) 22.03%

Let "G" equal relative all tracks operated factor for the year 1924 (Report, p. 96) 30.86%

Let "X" equal relation of net railway operating revenues in Washington to the same for the system, for year 1924.

Let "Y" equal total operating expenses in Washington for the year 1924.

Let "Z" equal the total operating expenses in Washington for maintenance of equipment and for transportation for 1924.

If we assume that the relative ton miles plus passenger miles (which is higher than relative car miles) reflects the true ratio between expenses for maintenance of equipment plus transportation expenses as between Washington and the system for the year 1924 we have:

$$\frac{\text{"Z"}}{\text{"E"}} = \text{"F"} = .2203;$$

$$\text{"Z"} = .2203 \times \$52,899,798 = \$11,653,825.$$

If we assume that the relative all-tracks-operated factor reflects the true ratio between all operating expenses except maintenance of equipment expense and transportation expense as between Washington and the system for the year 1924 we have:

$$\text{"Y"} - \text{"Z"} = \text{Operating expenses in Washington other than maintenance of equipment expense and transportation expense for 1924.}$$

$$\text{"A"} - \text{"E"} = \text{Operating expenses for system other than maintenance of equipment expense and transportation expense for 1924.}$$

$$“A”-“E” = \$70,533,064 - \$52,479,357 = \$17,633,266.$$

$$\frac{（“Y”-“Z”）}{（“A”-“E”）} = “G” = 30.86\%.$$

$$\frac{（“Y”-“Z”）}{17,633,266} = 30.86\%.$$

$$“Y”-“Z” = .3086 \times \$17,633,266 = \$5,441,626.$$

$$“Y” = \$5,441,626 + \$11,653,825 = \$17,095,451.$$

$$“X” = \frac{（“C”-“Y”）}{（“B”-“A”）} = \frac{（25,539,837 - 17,095,451）}{\frac{\$8,444,386}{24,759,340}} = 34.10\%.$$

(As compared with 23.55% computed by the Master. Report, p. 96.)

Computed net railway operating income factor of the N. P. for year 1926:

Let “A” equal the total operating expenses of the N. P. for 1925 (N. P. Ex. “16”, p. 5) \$69,972,476

Let “B” equal the total operating revenues of the N. P. for 1925 (N. P. Ex. “16,” p. 5) 97,864,554

Let “C” equal the total operating revenues of the N. P. for 1925 for Washington (N. P. Ex. “16”, p. 5) 26,425,115

Percentage of expenses for maintenance of equipment of total operating expenses (N. P. Ex. “5”) 25.2%

Percentage of transportation expense of total operating expense (N. P. Ex. "5") 47.9%

Let "D" equal the percentage of maintenance of equipment expense plus transportation expense, of the total operating expense for the system. .73.1%

Let "E" equal the total transportation and maintenance of equipment expense for 1925—"D"x"A"....\$51,149,880

Since the relative ton miles plus passenger miles factor for 1925 was found to be 22.85% therefore—

Let "F" equal relative transportation car miles factor for the year 1925 (Report, p. 107) 23.14%

Let "G" equal relative all tracks operated factor for year 1925 (Report, p. 107) 31.29%

Let "X" equal relation of net railway operating revenues in Washington to the same for the system, for year 1925.

Let "Y" equal total operating expenses in Washington for the year 1925.

Let "Z" equal the total operating expenses in Washington for maintenance of equipment and for transportation for 1925.

If we assume that the relative car miles factor (which is higher than relative ton miles plus passenger miles) reflects the true ratio between expenses for maintenance of equipment plus transportation expense as between Washington and the system for the year 1925 we have:

$$\frac{\text{"Z"}}{\text{"E"}} = \text{"F"} = .2314;$$

$$\text{"Z"} = .2314 \times \$51,149,880 = \$11,836,082.$$

If we assume that the relative all-tracks-operated factor reflects the true ratio between all operating expenses except maintenance of equipment expense and transportation expense as between Washington and the system for the year 1925 we have:

"Y"—"Z"=Operating expenses in Washington other than maintenance of equipment expense and transportation expense for 1925.

"A"—"E"=Operating expenses for system other than maintenance of equipment expense and transportation expense for 1925.

$$\text{"A"} - \text{"E"} = \$69,972,476 - \$51,149,880 = \$18,822,596.$$

$$\frac{(\text{"Y"} - \text{"Z"})}{(\text{"A"} - \text{"E"})} = \text{"G"} = 31.29\%.$$

$$\frac{(\text{"Y"} - \text{"Z"})}{18,822,596} = 31.29\%.$$

$$\text{"Y"} - \text{"Z"} = .3129 \times \$18,822,596 = \$5,889,590.$$

$$\text{"Y"} = \$5,889,590 \text{ plus } \$11,836,082 = \$17,725,672.$$

$$\text{"X"} = \frac{(\text{"C"} - \text{"Y"}) \quad 26,425,115 - 17,725,672}{(\text{"B"} - \text{"A"}) \quad 97,864,554 - 69,972,476} = \frac{8,699,443}{27,892,078} = 31.19\%.$$

(As compared with 24.33% computed by Master. Report, p. 107.)

Instead of the Master's composite factor of 23.55% for 1925 (Report, p. 96) and 24.33% for 1926 (Report, p. 107) resulting from combining the relative car miles, relative traffic units, and relative gross revenues, we have then, a factor for the N. P. of 34.10% for 1925 and 31.19% for 1926. Combining these respective factors with the track mileage factors for these years of 30.86% for 1925 and 31.29% for 1926 (Report, pp. 96, 107), we have:

For 1925 assessment factor: $34.10\% + 30.86\% = 64.96 \div 2 = 32.48\%$.

For 1926 assessment factor: $31.19\% + 31.29\% = 62.48 \div 2 = 31.24\%$.

Substituting these respective factors for the Master's factors of 27.20% for 1925 and 27.81% for 1926 (Report, pp. 96, 107), and combining them with the joint facilities rents factors for these respective years, as computed on pages 224-7 of this brief, we have the results shown in table on the following page:

TABLE NO. 15

Assessment Year:	Master's Factor as Corrected:	% of Weight to Which Entitled:	Joint Facilities Rents Factor:	% of Weight to Which Entitled:	Percentage of System Value Apportionable Under Each Factor, and Total:		
					Master's Factor ("c" × "b"):	J. F. Rents Factor ("e" × "d"):	Total % to Which Wash. Entitled ("f" + "g"):
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1925	32.48 %	92.27571 %	72.78975 %	7.72429 %	29.97115 %	5.62249 %	35.59364 %
1926	31.24 %	91.66917 %	61.59567 %	8.33083 %	28.63745 %	5.13143 %	33.76888 %

Computed net railway operating income factor of S. P. & S. road for the year 1926:

Let "A" equal the total operating expenses of the S. P. & S. for 1925 (S. P. & S. Ex. "7").....\$5,260,765

Let "B" equal the total operating revenues of the S. P. & S. for 1925 (S. P. & S. Ex. "7")..... 8,184,940

Let "C" equal the total operating revenues of the S. P. & S. for 1925 in Washington (S. P. & S. Ex. "7")..... 6,665,373

Let "D" equal the percentage of maintenance of equipment expenses plus transportation expenses, of the total expenses for year 1925 (S. P. & S. Ex. "7")71.2%

Let "E" equal the total transportation and maintenance of equipment expense for 1925 ("D"×"A")..... 3,745,665

Since the car plus locomotive miles factor is shown to be but 85.97% therefore,—

Let "F" equal the relative ton miles plus passenger miles factor for the year 1925 (Report, p. 151).....90.45%

Let "G" equal the relative all tracks operated factor for the year 1925 (Report, p. 151) .. 73.84%

Let "X" equal the relation of net railway operating income in Washington to the same for the system, for year 1925.

Let "Y" equal the total operating expenses in Washington for 1925.

Let "Z" equal the total operating expenses in Washington for maintenance of equipment and for transportation for 1925

$$"Z" \div "E" = "F" = 90.45\%$$

$$"Z" = .9045 \times \$3,745,665 = \$3,387,954.$$

$$"A" - "E" = \$1,515,100.$$

$$\frac{("Y" - "Z")}{("A" - "E")} = "G" = 73.84\% ;$$

$$("Y" - "Z") = \$1,118,750 ; "Y" = \$4,506,704.$$

$$"X" = ("C" - "Y") \div ("B" - "A") = 2,158,669 \div 2,924,175 = 73.82\%.$$

Instead of the Master's composite factor of 85.95% for 1926 (Report, p. 151) resulting from adding the relative car miles, relative traffic units, and relative gross revenues factors and dividing by three, we have, then, a factor for the S. P. & S. of 73.82% for 1926. Combining this factor with the track mileage factor found by the Master of 73.84% and dividing by two, the method followed by the Master, we have a factor of 73.83% as compared with the Master's factor of 79.90%.

(The relative replacement cost factor was 74.04%. Report, p. 151.)

SAME COMPUTATIONS AS TO MILWAUKEE. A similar computation as to the Milwaukee is meaningless since its gross freight revenues are not apportioned to Washington on a mileage of haul basis, but instead, upon a ton-mile basis, excluding Minnesota. However, assuming the gross revenues apportionment to be as shown in the Milwaukee exhibits a similar calculation for that road shows a composite factor of 7.58% for 1926 and 7.09% for 1927, as compared with

the Master's factor of 7.17% for 1926 and 7.09% for 1927 (Report, pp. 122, 133, Milw. Exs. "21," "26" and "32," and Def. Ex. "4," p. 106, Milw. Rec.)

(13) **RELATIVE GROSS OPERATING REVENUES FACTOR.** The N. P. and S. P. & S. compute the factor which they term "relative gross operating revenues" by apportioning to each state all revenues received on intra-state shipments, plus that proportion of the total revenues from each separate interstate shipment which the mileage of haul within the particular state bears to the total mileage of haul, and comparing the total gross revenues thus apportioned to the state with the total gross operating revenues for the system for the period chosen. (N. P. Rec. pp. 645-7; S. P. & S. Rec. p. 271.)

The Milwaukee's so-called "gross revenues" factor is clearly misnamed, the interstate freight revenues being apportioned on a relative ton miles basis, thus: intra-state freight and passenger revenue is apportioned entirely to the state. The revenues from interstate movements of freight are apportioned to the several states in the proportion which the ton miles of interstate traffic in each state bears to the ton miles of interstate business of the system except Minnesota. The interstate passenger revenue is apportioned to the states on a mileage prorate. Express revenues are apportioned on a car-mileage basis; mail revenue is apportioned according to one month's statistics. Revenue from switching is ap-

portioned to the state where earned. (Milw. Rec. pp. 59-61.)

SAME—SHOULD THE RELATIVE NET EARNINGS FACTOR BE SUPPLIED, EVEN THOUGH AVAILABLE? We have seen that the courts have repeatedly recognized the fairness of the mileage-of-line method of apportionment for purposes of ad valorem taxation. The supreme court, as we have noted, recognizes the futility of assessing officers attempting to determine the relative value of an interstate railroad, as between the several states. Thus:

“In the nature of things it is practically impossible—at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put and how much by another. Take the case before us; it is impossible to disintegrate the value of that portion of the road within Indiana and determine how much of that value springs from its use in doing interstate business, and how much from its use in doing business wholly within the state. An attempt to do so would be entering upon a mere field of uncertainty and speculation. And because of this fact it is something which an assessing board is not required to attempt.” *Cleveland, etc., Ry. Co. v. Backus*, 154 U. S. 439, 443-446.

Nor do complainants' witnesses fail to recognize this fact. Asked whether he would say that a mile of road costing \$100,000 had the same value as another mile including a bridge costing \$1,000,000, Dr. Hadley (speaking for all the complainants) said:

“No. But it is hard to tell what the value of either is, except as part of the whole. They

probably contribute differently to the value of the whole, but no man living can exactly tell what that contribution is." (N. P. Rec. pp. 400-401.)

Mr. A. S. Dudley testified for the Milwaukee:

"Q. And it is impossible to tell the relative value of any one part as opposed to any of the other parts? A. Yes. Q. It is impossible to tell the value of that part running through the state of Montana as compared with the rest of it or the other parts? A. Yes." (Milw. Rec. pp. 914-15.)

That neither the net earnings nor the gross earnings have any true relation to the apportionment of the tangible property of an interstate railroad was held in the case of *Louisville & N. R. Co. v. Bosworth*, 209 Fed. 380, 433-4, where the propriety of the method of allocation of the intangible value of an interstate railroad company was involved. The court said:

"The way in which the board attempted to care for it was by changing what defendants term the apportioning unit. It changed it from the mileage proportion to the average of the three proportions, to-wit: the mileage proportion, the gross receipts proportion, and the net income proportion. The only proportions available other than the mileage proportion are the gross receipts proportion, the net income proportion, the average of the two, the average of either and the mileage proportion, and the average of the three proportions. But neither the gross receipts proportion, nor the net income proportion, nor the average of the two will do, for neither has any true relation to the apportionment of the tangible property. So far

as either has any relation to the apportionment of the capital stock, it is to the intangible part thereof, and of the three it is only the gross receipts proportion or the net income proportion that can be said to have such relation thereto, of which two it seems to me the gross receipts proportion is to be preferred. Even as to intangible property no instance of an apportionment of such property on a gross receipts basis has come to my notice. * * *

“If then the excess value is in the tangible property alone, it is impossible by the use of the gross receipts proportion, or the net income proportion, or the average of the two, to determine its existence or its amount. * * *

“If then neither the use of the gross receipts proportion, nor of the net income proportion, nor of the average of the two, will yield a correct result, the use of the average of the gross receipts proportion or the net income proportion and the mileage proportion or the average of the three proportions will not do so.”

In this connection, see also:

Floyd v. M. Light & H. Co., 111 Oh. St. 57,
144 N. E. 703, 710;

Nevada-California Power Co. v. Hamilton, 235
Fed. 317, 240 Fed. 485;

And same case on appeal: *Franklin v. N-C. Power Co.*, 264 Fed. 643.

(14) RELATIVE GROSS REVENUES, EVEN IF CORRECTLY APPORTIONED AMONG STATES, WOULD NOT REFLECT NET EARNINGS. This method is avowedly used as a substitute for the unknown factor of relative net revenues. (A. S. Dudley, Milw. Rec. p. 1005.) But

since net revenues depend upon relative operating expenses as well as relative gross revenues, there is no necessary relation between relative gross revenues and relative net revenues.

In *St. L. & S. F. Ry. v. Gill*, 156 U. S. 649, 665-6, the court said:

“ * * * In this state of facts we agree with the views of the supreme court of Arkansas, as disclosed in the opinion contained in the record, and which were to the effect that the correct test was as to the effect of the act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company cannot claim the right to earn a net profit from every mile, section or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative; that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the act within the limits of the state of Arkansas.”

With respect to the propriety of the gross earnings factor as a measure of the *value of the use*, the court said in the *Minnesota Rate Cases*, 230 U. S. 352, 458-9:

“The apportionment of the value of the property, as found, between the interstate and intra-

state business was made upon the basis of the gross revenue derived from each. This is a simple method, easily applied, and for that reason has been repeatedly used. It has not, however, been approved by this court and its correctness is now challenged. Doubtless, there may be cases where the facts would show confiscation so convincingly in any event, after full allowance for possible errors in computation, as to make negligible questions arising from the use of particular methods. But this case is not of that character.

“In support of this method, it is said that a division of the value of the property according to gross earnings is a division according to the ‘value of the use,’ and therefore proper. But it would seem to be clear that the value of the use is not shown by *gross earnings*. (Italics by court.) The gross earnings may be consumed by expenses, leaving little or no profit. If, for example, the intrastate rates were so far reduced as to leave no net profits, and the only profitable business was the interstate business, it certainly could not be said that the value of the use was measured by the gross revenues.

* * * * *

“If the property is to be divided according to the value of the use, it is plain that the gross-earnings method is not an accurate measure of that value.”

In the *Missouri Rate Case*, 230 U. S. 474, 504, the court again said:

“The value of the entire property within the state, as found, was apportioned between the interstate and intrastate business, passenger and freight, according to the gross revenue derived from each.

“The reasons for disapproving this method were stated in the *Minnesota Rate Cases*, ante p. 352, and the ruling there made is controlling here.”

(15) SINCE INTERSTATE REVENUES ARE APPORTIONED ON A RELATIVE MILEAGE-OF-HAUL BASIS, THE FACTOR WHOLLY IGNORES (1) RELATIVE VALUE OF BRANCH LINES AS FEEDERS; (2) RELATIVE TERMINAL VALUES; AND (3) RELATIVE CONSTRUCTION COST, AND FURTHER, APPORTIONS VALUE TO SEGMENTS OF THE SYSTEM HAVING NO NET EARNINGS.

Although, these various objections to this factor as computed, have been already discussed at some length in connection with the other line haul factors, yet since this factor is recognized by complainants' witnesses as the best of the three line haul factors, we will consider it separately.

The relative gross revenues factor was favored above the other so-called “use” factors by Dr. Hadley testifying for all of the complainants (N. P. Rec. p. 247-8); E. V. Peterson of the N. P. (N. P. Rec. p. 3785), A. S. Dudley of the Milwaukee (Milw. Rec. p. 999), and O. B. Riddle of the S. P. & S. (S. P. & S. Rec. p. 539).

A. S. Dudley testified that in his opinion the car miles plus passenger miles factor did not reflect anything that the gross earnings method did not reflect (Milw. Rec. p. 999), and, comparing relative traffic units with relative gross revenues, he said: “I am not sure but that every factor in one is in the other.” (Milw. Rec. p. 1000.) It must follow, we submit

that the vices, if any, of the relative gross revenues factor must be common to all.

(16) UNFAIRNESS TO TERMINAL STATE OF MILEAGE PRORATE DIVISION OF GROSS REVENUES. In Census Bulletin No. 21 (Def. Ex. "11," pp. 19-21, Milw. Case), Professor Meyer says as to the relative gross revenues factor:

"Gross revenues are affected by a great number of factors running through the entire list of items in operating expenses, rates, length of the haul, etc., a variation in any one of which will necessitate a different interpretation of gross-revenue statistics for purposes of valuation. The conclusion is thus forced upon one that net rather than gross revenues constitute the logical basis for the distribution of the total value of railway systems among the states.

" * * * The interstate earnings are usually divided for each shipment on a mileage basis. Such division is, however, open to somewhat the same objections as are urged against the single-track mileage method of apportionment of values among the states, except that here the error lies in the opposite direction. The pure mileage basis of prorating receipts from interstate shipments throws too much of the earnings into the district of dense traffic and low unit cost of haulage. As is pointed out in the letter on page 44, '60 per cent of all the traffic of the whole line went to or was shipped from the branch lines. It therefore appears that if these branch lines had not existed, the whole system would have earned only 40 per cent of its previous earnings, which would have made the main line as worthless as the branches.' The pure mileage ratio basis of apportioning the gross earnings of an interstate transaction will,

in most cases, yield the branches too small a portion and the main line too great a portion. Probably good argument could be brought in support of the proposition that on an interstate shipment the branch should be allowed the local charge and the main line the remainder; but if this be thought to go too far toward increasing the earnings of the outlying parts, certainly the branch ought to receive the same proportion of the total earnings in any single shipment as its local is of the sum of the locals for the entire route covered. * * *

“For reasons like those here advanced branch lines frequently receive payments on the basis of a constructive mileage. Prorating on a constructive mileage is also done in connection with transcontinental traffic, the practice dating back to a time when the real or assumed cost of operation was greater and the tactical position of the lines was such that they could command a return on a constructive mileage basis. Only where individual interstate shipments are thus prorated, and the earnings within the state added, can the total of the gross earnings assigned to a state be as nearly correct as it should be. * * *

“The treatment of terminals by different railway companies apparently represents various degrees of accuracy. Some companies ignore terminals altogether in the apportionment of gross revenues, and others attribute an arbitrary percentage of their revenues to terminals. No attempt was made in this investigation to go back of the returns of railway companies of gross earnings by states with the view of according to all railway terminals the same kind of treatment. Uniformity in the treatment of terminals is unquestionably desirable, but nothing short of an inventory of terminal properties can afford

a satisfactory working basis. All purely gross revenue methods in handling terminals must be extremely arbitrary, and the result regarding terminals is at best a rough sort of guesswork."

(We insist that a "working basis" for the apportionment of terminal values is actually afforded in the present cases, by the relative replacement cost factor).

The unfairness to terminal states of the mileage prorated division of revenues, cannot, we submit, be better illustrated than by the following statement of F. M. Dudley, counsel for the Milwaukee, during the course of the trial:

"In an important rate case in Montana we found we were confronted with annual reports showing state net income revenues as this does. A gain in Montana was shown for the year 1920 of \$5,000,000, and a net loss on the system of \$8,000,000, although Montana was one of the poorest states as far as producing revenue was concerned. That directed our attention a short time ago to the fact that you could not correctly apportion net revenues as between states because costs are apportioned on one basis and revenues on another.

"For instance, a train of lumber originating on Puget Sound is transported to Minnesota transfer. The cost incurred in making up that train, switching and all that, is charged to Washington because that cost is incurred in Washington. Then the revenues are apportioned on ton mile prorated, so that (on) that trainload, moving unchanged across the continent, Montana would receive a large portion of the revenues because it is a state in which the main line is

very long; but it would not be charged with any of the initial or delivering costs incurred in Washington or in Minnesota. Consequently Montana would show a profit and Minnesota and Washington a loss, which is not fair.

“In order to avoid a similar situation in the future, it was decided to put in these reports a note to the effect that the company did not agree the statement of net earnings as shown by the report was a correct report in that state.

“That same note is put into the reports in any state where we are required to make such a report.” (Milw. Rec. pp. 98-99.)

Nor does this unfairness to the terminal states result alone from localizing the terminal operating expenses. The assembling and distribution of this long-haul traffic is made possible by the existence of valuable terminal facilities adapted to this very purpose. These terminals are as essential to the railroad from an earnings standpoint, as are the intervening roadway and track. Obviously, in distributing the revenues equitably among the states occupied by these properties, the terminals are entitled to the same yield on the investment which they represent, as is the naked track in the non-terminal states. Consequently, if we are to apportion the interstate revenues among the states in such a way as adequately to reflect relative net earnings, we must allow the terminal states such proportion as will not only cover the operating expenses there incurred, but will likewise yield a return upon the investment in these states where the traffic is assembled and dis-

tributed equivalent to the return on the investment in what may be called the "bridge" states, such as Montana and the Dakotas.

Under the evidence in this case, that this result is not accomplished by a mileage prorated division is not even debatable.

The division of system value according to relative gross earnings with interstate revenues divided on a mileage prorated does not take account in any proper way of terminal values. (Dr. Hadley, N. P. Rec. pp. 249, 349, 400.) This is true, because there are many cases where the land immediately adjoining the station would, if it were made locally taxable, have a very high value; that is the chief reason. Another reason is the unfairness of considering the contribution of the track and not considering the contribution of the terminal. The unfairness arises because the expense of a carrier in handling at the terminal is far in excess of the amount represented in the mile haul. (Dr. Hadley, Rec. N. P. pp. 413-4.)

In a division of a railroad containing an expensive terminal, there would be a considerable expense which would not probably be taken care of by the apportionment of revenue on a mileage prorated. (E. V. Peterson, N. P. Rec. pp. 652-3.) This does not mean that the railroad should do away with those terminals because they show a loss.

In case of a terminal division the expenses might be greatly in excess of the revenue apportioned on

a mileage basis. (Peterson, N. P. Rec. pp. 654-5.) In making divisions of interline revenue it is customary to allow a terminal arbitrary for the use of expensive terminals. (Pickard, N. P. Rec. pp. 9408.)

The terminals admittedly contribute to the earnings of a railroad as much as the rails. (A. S. Dudley, Milw. Rec. p. 950.) In case of traffic carried through five states, two with terminals and three without, the state with the terminals would admittedly get too little; that is, the earnings are made not only from the tracks but from certain auxiliary properties which are also conducive to making the earnings; and if the distribution were based solely upon track, this auxiliary property in the one state would get no allowance under the gross revenues method of distribution. In that case, to get the thing accurately, the revenues would have to be allocated on a different basis than a mileage prorate, but Mr. Dudley did not know how to do it. There would have to be some constructive weight given to the terminals as compared with the tracks, and just how that would be done Mr. Dudley did not know. (A. S. Dudley, Rec. pp. 983-4.) As a practical proposition, if railroads treated as systems were called upon to determine the net revenues as to a division embracing an extensive terminal, and in so doing allocated revenue on a mileage prorate, such division would almost invariably show an operating loss. But this would not mean that the terminals were of no value to the system. You have to have terminal facilities in order

to operate a railroad. (A. S. Dudley, Milw. Rec. pp. 984-5.) Where there is very little mileage in the state as compared with terminal property, Mr. Dudley would not use the gross revenues factor at all. (A. S. Dudley, Milw. Rec. p. 943.)

And again,—

“How much can we say is the contribution to the value of the system made by freight originating in Washington? I am sure I do not know. We have a formula that apportions the freight charges on a basis of mileage, it may be. Does that necessarily indicate how much Washington has contributed to the whole if we had the actual gross earnings allotted by the formula? I do not think that it does, necessarily. Q. If in fact you were confronted with the problem yourself of accurately determining the revenues and expenses of that portion of the Milwaukee road located in Washington you would not necessarily divide the gross revenues on a mileage pro-rate, that is, interstate gross revenues? A. Not necessarily.” (Milw. Rec. p. 1619.)

On behalf of the S. P. & S., Robert Crosbie, its secretary and comptroller (S. P. & S. Rec., p. 929), and who, it was stipulated, was speaking for the company (S. P. & S. Rec., p. 1100), testified that he did not know, and he did not know of any accounting officer who did really know, a way for dividing the traffic as between states on a perfectly proper basis. That, he said, is a very difficult proposition. (S. P. & S. Rec., p. 1104.)

O. B. Riddle, statistician of the S. P. & S. (S. P. & S. Rec., p. 243), who was examined as to the proper

method of valuing the system, and apportioning that value among states (S. P. & S. Rec., pp. 278-283) testified in substance on direct examination:

The division of interstate revenue on a mileage basis, is not a fair method. The income account of a railroad cannot be divided between states. In the case of the S. P. & S. which operates only in Washington and Oregon, the earnings in each state are indispensable to the earnings in the other state and to the whole property. If the road did not have the property in Washington it would not make anything in Oregon, and *vice versa*. The division of interstate revenue on a mileage prorate does not show the actual results. For instance, on a shipment from Spokane to Portland, with \$100 revenue, only \$3.00 would be assigned to Oregon, whereas the property in that state which cost 20% as to the total property between the points, is used in that transportation movement. Thus, although but \$3.00 of the \$100 revenue on the shipment from Spokane to Portland would be assigned to Oregon on the mileage prorate, more than 20% of the entire investment in the whole property engaged in that movement would be in Oregon. This could be compared to an interstate bridge over a river, say, 10 miles long (S. P. & S. Rec., p. 281), two miles in one state, and 8 miles in the other. The draw span might be on the two miles in the one state, and might require attention and a force all of the time. The operating expenses on the two-mile portion containing the span might be 80% of the total for the entire bridge, but if the revenues were apportioned on a mileage prorate, but 20% of the revenue would be apportioned to the two-mile section. Thus part of the bridge would have a big deficit, and part a good-sized earning. (S. P. & S. Rec. p. 282.)

And further, on cross-examination :

If the same business were handled by two lines, one corporation owning the lines in Washington, and the other owning the lines in Oregon, the expenses would show separately, but in that case the revenues certainly would not be apportioned on a mileage basis because the company in Oregon would require a larger division than that based on a mileage prorate; otherwise, it would not be able to live. The Oregon road would otherwise always be in the red because some of the terminal expenses in Oregon really apply to traffic, the earnings of which would be allocated to the State of Washington on a mileage basis. It is impossible to say just what the divisions should be as between two states, the one with terminals, and the other without. There has never been a system devised whereby the revenues can be allocated as between the states in such a case. The corporation owning the line in the terminal state would always require a higher proportion of the charge than the corporation owning the lines in the non-terminal state. (S. P. & S. Rec., pp. 353-4.) The different conditions and expenses, etc., involved in the handling of the traffic in the different states, and difference in terminal facilities in the different states, affect the allocation of gross revenue. For that reason in fairness to the different states, in fixing the gross revenue factor of allocation, there should be a somewhat different proportion of the gross revenues assigned to the particular state than that represented by mileage of line. (S. P. & S. Rec., p. 369.)

R. W. Pickard, general freight agent of the S. P. & S. and in its employ for about 20 years (S. P. & S. Rec., p. 1181), testified that it has been customary as long as he has known anything about it to make term-

inal allowance, i. e., a traffic charge to a terminal division for business terminating or originating in a particular terminal, in addition to what is represented merely by the mileage of haul within the terminal division. This allowance is part of the division of revenue just the same as if included in the percentage proportion, either as a terminal arbitrary or increase in divisions, as a fair allowance to the line for the services performed and terminal facilities afforded. (S. P. & S. Rec., pp. 350-1.)

(17) SAME—THAT TERMINAL STATES AND BRANCH LINES ARE ENTITLED TO MORE THAN A MILEAGE PRO-RATE DIVISION OF REVENUES IS RECOGNIZED BY BOTH INTERSTATE COMMERCE COMMISSION AND COURTS.

“Commission rates are usually the same for all lines, both main line and branches. It is fair that the main line should in a degree contribute to the support of the branch line for the branch-line business when it reaches the main line is surplus traffic from which a larger profit is made. It is in the public interest that rates shall be so adjusted that population and industries may freely diffuse themselves. It hardly seems proper to fix the rates upon the Cincinnati Southern, which is really a main line, without any references to the branch lines which contribute to it.” *Receivers & Shippers Asso. v. C., N. O. & T. P. Ry. Co.*, 18 I. C. C. 440, 465.

“In support of its contention that neither South Dakota nor North Dakota grain contributes its proper proportion to the payment of interest and dividends, the Milwaukee presents an exhibit of so-called ‘basic data’ and ‘apportionment of charges.’ Fundamentally, this state-

ment proceeds on what we consider to be an erroneous theory; that is, that certain portions of a system of railroad can be segregated from the whole and the expenses and earnings be charged and credited to such portions on a mileage-prorata basis. From this bare statement, without full explanation, how is it possible to even surmise what the operating expenses in South Dakota were? Probably many of them were such that no benefit accrued to South Dakota. The figures presented do not result in a deficit, it being admitted that the carrier received 'what it cost to do local business.' An analysis of this statement indicates that while ingenious it is merely a computation and hardly an actual demonstration." *Investigation of Advances in Rates on Grain*, 21 I. C. C. 22, 25-26.

"The Cumberland Valley division constitutes only 118 miles of the 4,334 miles of the Louisville & Nashville system. This system embraces practically all the territory included within the Ohio River on the north, the Gulf of Mexico on the south, the Mississippi River on the west. The coal and coke from the Cumberland Valley division furnishes tonnage not only for its 118 miles but for many miles of the system and for the other carriers north of the Ohio River. Hence whether or not the record indicates profit on the particular division is not controlling, as the incidental benefit to the other portions of the system may much more than offset any loss upon the particular division. It is to be expected that an originating division would apparently not be self-supporting any more than would the average large terminal in a city. To make them self-supporting it is necessary to assign to the originating division and to the terminal a sufficient portion of the revenues to more than offset the expenses. This would have to be an arbitrary sum. It could hardly be accomplished by the

ordinary method of prorating the revenue or dividing it under a block-mileage system. In this case the carrier, under its system of ascertaining costs and apportioning revenue, shows a paper deficit of \$60,000 for 1911 on that portion of the Cumberland Valley division lying east of Middlesboro and a profit of \$350,000 on the division as a whole. This would indicate at least \$410,000 was earned on that portion west of Middlesboro. The extraordinary difference is probably the result of the method of apportioning revenue." *Louisville & Nashville R. R. Coal and Coke Rates*, 26 I. C. C. 20, 29.

" * * * While the Grand Trunk renders separate operating reports to us, covering the operations of the line of the United States & Canada, it seems clear that the railway operating income or deficit shown in such reports is not the income or deficit of a 'carrier' within the intent of Congress, inasmuch as the carrier rendering these reports operates, as a whole, a large system, only a small portion of which is in the United States. The apportionments of revenues, expenses, and other income items between the line of the United States and Canada and the lines of the Grand Trunk in Canada are in many instances made upon bases of road mileage, car mileage, or train mileage. We have held that a portion of a railroad system can not be separated from the whole and the earnings and expenses charged and credited to such portion on a mileage prorate basis. *Investigation of Advances in Rates on Grain*, 21 I. C. C. 22, 25; *Louisville & Nashville R. R. Coal and Coke Rates*, 26 I. C. C. 20, 30. It is well known that a mileage prorate of transportation revenues or expenses will in many cases result in a showing of deficits for branch lines of light traffic density, notwithstanding the showing for the system as a whole is a substantial profit. For many years the reports of operations of the United States

and Canada have shown large operating deficits." *Deficit Status of U. S. & Canada R. R.*, 76 I. C. C. 453, 457-8.

As to what elements should properly be considered in apportioning interline revenues, we quote the following from the supreme court:

"Relative cost of service is not the only factor to be considered in determining just divisions. The Commission must consider, also, whether a particular carrier is an originating, intermediate or delivering line; the efficiency with which the several carriers are operated; the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property; the importance to the public of the transportation service of such carriers; and other facts, if any, which would ordinarily, without regard to mileage haul, entitle one carrier to a greater or less proportion than another of the joint rate. It is settled that in determining what the division should be, the Commission may, in the public interest, take into consideration the financial needs of a weaker road; and that it may be given a division larger than justice merely as between the parties would suggest 'in order to maintain it in effective operation as part of an adequate transportation system,' provided the share left to its connections is 'adequate to avoid a confiscatory result.' *Dayton-Goose Creek Ry. Co. v. United States*, 263 U. S. 456, 477; *New England Divisions Case*, 261 U. S. 184, 194, 195.

* * * * *

"The assertion is made that the Commission was guided solely by the relative financial ability of the several carriers. In support of this assertion it is pointed out that the increase ordered of the Orient's share was measured, not by a percentage of its own divisions, as in *New Eng-*

land Divisions Case, 261 U. S. 184, but by a percentage of the revenues of the several connecting carriers from the joint traffic. It does not follow that such a basis of division would necessarily be unjust to the connecting carriers. The position of the Orient as the originating carrier, or as the delivering carrier, or as an indispensable intermediate carrier, might be such that the connecting carrier could not get the traffic but for the service which the Orient renders; and that this factor, together with others ignored in the existing divisions, would require the precise change directed to render the divisions just and reasonable as between the parties." *U. S. v. Abilene & So. Ry. Co.*, 265 U. S. 274, 284-6.

“What is its just share?—It is the amount properly apportioned out of the joint rate. That amount is to be determined, not by an agreement of the parties or by mileage. It is to be fixed by the Commission; fixed at what that board finds to be just, reasonable and equitable. Cost of the service is one of the elements in rate making. It may be just to give the prosperous carrier a smaller proportion of the increased rate than of the original rate. Whether the rate is reasonable may depend largely upon the disposition which is to be made of the revenues derived therefrom.” *New England Division Case*, 261 U. S. 184, 195.

See, also:

Kansas City, Mexico & Orient Division, 73 I. C. C. 319;

Division of Joint Rates and Fares of M. & N. R. Co., 68 I. C. C. 47;

New England Divisions, 66 I. C. C. 196 (affirmed in 261 U. S. 184, 195).

In the case last cited the Commission said :

“It is impossible to avoid the conclusion that Congress intended the relative financial needs of carriers, so far as these needs are legitimate and incident to the transportation service, to be given consideration in fixing divisions; and it is just and right that this should be so. The cost of the service includes, not only expenses of operation but taxes and the proper capital charges incident to the continued functioning of the property. We recognize this when we make allowance for density of traffic in the determination of reasonable rates. The share of overhead costs fairly attributable to interchange traffic may likewise be greater, relatively, where this density is low. Moreover, the group plan of increasing rates which we followed in 1920 under the provisions of the new law necessarily results in inequality of return to the various carriers. Certain of them gain a larger reward than they would receive if it were practicable to fix rates for individual companies, while others have less. Yet all are parts of the national transportation system and must be adequately maintained if they are not to be abandoned. Due regard for public interest demands that we give these fortuitous inequalities consideration in the fixing of divisions.

“Summing up this phase of the matter, we are of the opinion that our power over divisions is founded upon the public interest; that the carriers are mutually dependent parts of the transportation system; that the public interest requires that all essential parts be maintained as far as possible, in effective working condition that the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each

carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier."

The above are quoted with approval in *Divisions of Joint Rates and Fares, etc.*, 68 I. C. C. 47, 51.

(18) SAME—SEGMENTS OF ROADS IN TERMINAL STATES OPERATE AT A LOSS IF REVENUES DIVIDED ON MILEAGE PRORATE. The use of the mileage prorate division of N. P. revenue in Wisconsin and Oregon resulted in operating deficits in those states for the years 1921 to 1925 as follows, without in either case considering state taxes: In Wisconsin: 1921, \$386,422; in 1922, \$377,564; in 1923, \$387,018, and in 1925, \$348,309.

In Oregon: in 1921, \$135,707; in 1922, \$94,870; in 1923, \$133,449, and in 1925, \$163,670. (N. P. Rec. pp. 2966-9; Def. Ex. "248," p. 18; Def. Ex. "30," p. 27¾, S. P. & S. case.)

This condition has existed for the past 15 or 20 years. (N. P. Rec. p. 2974.)

The use of the mileage prorate division of interstate revenues of the S. P. & S. for the years 1921 to 1925, inclusive, produced the following remarkable results:

Net railway operating income for the entire system, \$9,031,011;

Net railway operating income for *Washington alone*, \$11,302,904;

Net railway operating income for Oregon alone, a deficit of \$2,271,892.

(N. P. Rec. pp. 3073-4, Def. Ex. "248," p. 7, Def. Ex. "30," p. 23, S. P. & S. case.)

In the Milwaukee case the Master refused (and we believe, improperly) to permit defendants to show the above facts with respect to the S. P. & S. operations. (Milw. Rec. pp. 1413-4; Def. Ex. "28," p. 33.)

In Portland, the N. P. has some valuable terminals, and although the N. P. revenues in Oregon allocated on a mileage prorate are very much less than the gross operating expenses in that state, it has no thought of doing away with its Oregon business. (Peterson, N. P. Rec. p. 2970.) It is obvious that in a state like Oregon where the N. P. has little mileage and very little interstate revenues credited, the expenses, because of the terminal feature, will exceed the revenues allocated. This is true of all states similarly situated where the terminals are located. The same distinction applying to Oregon also applies to Wisconsin, because of the Lake Superior Terminal & Transfer Railroad Company, and because of the small mileage. Only a small proportion of the interstate revenues would be apportioned to that state. (Peterson, N. P. Rec. pp. 2263-72.)

With respect to the above showing of the N. P. in Oregon and Wisconsin Charles Donnelly, the president of the N. P., testified:

"A. You would have to determine some method of allocating gross revenues on business

moving interstate. The usual method is that of a mileage prorate. Now the use of such a method could of course produce widely variant results; and I would admit at once that there are situations in which the use of such a method would not be a fair or proper method. Q. And you would not say that in the case of the state of Wisconsin that would be one of those cases? A. I don't know whether it would or not, but, if as a matter of fact, in the use of that method you wound up with a showing that there was no net railway operating income, and therefore no value for property which you knew of course did possess a value, that would be a demonstration of the impropriety of the use of that method. Q. Particularly where you knew the property itself was a valuable adjunct of the Northern Pacific? A. Yes. Q. And that is true of the property in Wisconsin, is it not? A. Yes, our terminals at Superior and Ashland are valuable. They are not so valuable in Ashland, but they are at Superior." (Donnelly, N. P. Rec. p. 5807; Def. Ex. "40," S. P. & S. case.)

The absolute injustice of using revenue statistics based on a mileage prorate division as between states was brought out by the S. P. & S. witnesses when a suggestion was made that the value of the property in Washington be valued directly by capitalizing the company's net earnings for Washington as reported by it, in which the mileage prorate division of interstate earnings was used. (N. P. Rec. pp. 3073-4.)

O. B. Riddle, statistician of the S. P. & S. and with 20 years experience in accounting and statistical work (S. P. & S. Rec. p. 243), testified in this connection:

“Q. If you knew nothing about it and you were merely an accountant and you were trying to determine what the net railway operating income for the state of Washington was and you had page 22 and page 23 of this report turned to you as showing the correct figures, wouldn't you come to the conclusion that the figures set forth as net railway operating income in Defendants' Exhibit '2' were the correct figures for the years 1923, 1924 and 1925? * * * A. No, I would not, because if I had this report before me I would see they are in excess of the total net railway operating income for the entire line for the particular year, and I would know there could not be more net railway operating income in one state than in the whole line. * * * The reason why this is incorrect, the first item placed thereon or the railway operating revenues, as stated here, do not represent the railroad operating revenues earned by the property in the state of Washington alone. (S. P. & S. Rec. pp. 520-522.) * * * Q. It appears from your books, if that is what you made for Washington. A. On behalf of the company I would repudiate that showing on pages 22 and 23 for any practical purposes. For the purposes you are attempting to use it, it is worse than worthless, because it would give a misleading impression to anyone who was studying the case later. (S. P. & S. Rec. p. 534.) Q. * * * How can it have a value for the purpose of allocation when it has no value for the purpose of comparing net operating income as between states? A. In my judgment, it would be some indication as to how to allocate a part of the total value of a line as between states. That is all. * * * I am inclined to think gross revenues would be best of all of them for the purpose of allocating the entire value as between states.” (S. P. & S. Rec. pp. 537, 539.)

In other words, it is Mr. Riddle's conclusion that a division of revenues which yields Washington a considerably greater net railway operating income than that of the whole system, makes the best kind of a factor to use for the apportionment of system value among states!

(19) SAME—RELATIVE TERMINAL VALUES. IN ACTUAL PRACTICE COMPLAINANTS, AS WELL AS OTHER ROADS, RECOGNIZE THAT TERMINAL DIVISIONS ARE ENTITLED TO FAR MORE THAN A MILEAGE PRORATE DIVISION OF INTERLINE REVENUES.

Of course railroads do not have occasion to apportion earnings to their branch lines except in certain exceptional cases as where the branch is still treated as an independent line, such, for instance, as the extension of the S. P. & S. from Portland to Astoria. (S. P. & S. Rec. p. 1011.) However, there are many cases where branch lines are, for one reason or another, allowed to retain their separate corporate entity, although all the stock is owned by the parent company. In such cases divisions of interline revenues are required between the parent line and itself, possibly for the protection of the holders of bonds originally issued against the subsidiary.

MILWAUKEE CASE:

DIVISION OF INTERLINE REVENUES BETWEEN OLD MILWAUKEE AND ITS SUBSIDIARIES BEFORE CONSOLIDATION. Prior to April, 1906, the old Milwaukee Company operated a system of railroad extending from the Missouri River at Moberge, S. D., on the west,

easterly through the Twin Cities to Milwaukee and Chicago on the east. This system included a network of road in South Dakota, Nebraska, Iowa, Minnesota, Wisconsin and Illinois. In April, 1906, the company, through the medium of subsidiary companies commenced the construction of a line from the Missouri River to Seattle. These subsidiary companies were consolidated on December 31, 1908, in the Chicago, Milwaukee and Puget Sound Railway Company (hereafter referred to as the "Puget Sound" Company). The line was completed and in operation by September, 1909, and was operated independently from the old Milwaukee until January 1, 1913, when it was merged with the latter company. (Def. Ex. "23," p. 14; Rec. pp. 184-5, Milw. Case.)

SAME—SUBSIDIARY LINES. Prior to December 31, 1918, when the same were merged with the old Milwaukee Company (Def. Ex. "15," p. 13, Milw. Case) this company had acquired by stock control, the following five subsidiaries: (1) The Tacoma Eastern, extending from Tacoma to Ashford, Washington (Milw. Rec. p. 142, Plff. Ex. "38"); (2) Bellingham Bay and British Columbia (later the Bellingham and Northern) extending from Bellingham north to Lynden, Sumas and Glacier, Washington (Milw. Rec. pp. 143, 163-4); (3) Milwaukee Terminal, a car ferry line (Milw. Rec. pp. 145-6, 1072-3); (4) the Seattle, Port Angeles & Western extending from a point about 12 miles west of Port Townsend, Washington, westerly about 75 miles (Milw. Rec. pp. 144, 173-4) (the Port Townsend and Puget Sound operates between

Port Townsend and the eastern terminus of this road; Milw. Rec. p. 166), and (5) the Puget Sound and Willapa Harbor extending from Maytown, on the Grays Harbor branch, to Willapa Harbor about 75 miles. (Milw. Rec. pp. 144-5.)

DIVISIONS WITH SUBSIDIARIES. The following table is prepared from the divisions sheets in force as between the old Milwaukee Company, the Puget Sound Road and the Washington subsidiary companies prior to January 1, 1913, when the Puget Sound road was absorbed. (Def. Ex. "20," Milw. Case.) The divisions are on through tariffs on various commodities hauled between Chicago on the east and Seattle and various representative points on the subsidiary lines and branches on the West, which were actually made as between these lines when separately operated. There being no division of tariffs as between the Washington portion of the Puget Sound line and the portion east of Washington, the amount allowed the Washington subsidiary was added to the mileage pro-rate of the amount allowed the Puget Sound line, and thereby obtaining the amount apportionable to Washington (Milw. Rec. pp. 1125-1138):

TABLE NO. 16

DIVISIONS BETWEEN OLD MILWAUKEE AND WASHINGTON SUBSIDIARIES:

Commodity; Termini of haul and route; (for abbreviations see below)	Thru rate per cwt.	Rate in cts. per cwt. to Wash. on mileage prorate:	Rate in cts. per cwt. to Wash. under actual divi- sions:	Excess over Mile- age prorate allowed Washington:		Def. Ex. "21" p.
				Cents	Per cent	
Seattle to Chicago; Route: CM&PS and CM&St.P; Fir Lumber:	\$.55	8.21c	10.14c	1.93c	23.51%	2
Cereals:	.90	13.43c	16.41c	2.98c	22.19%	2
Port Angeles to Chicago; Route: SP&W, MT, CM&PS, and CM&St.P; Fir Lumber:	.55	9.99c	19.58c	9.59c	96.00%	5
Canned goods:	.85	15.44c	25.15c	9.71c	62.89%	5
Ashford to Chicago; Route: TE, CM&PS and CM&St.P; Fir Lumber:	.55	9.76c	13.85c	4.09c	41.91%	6
Autos:	3.00	53.10c	98.19c	45.09c	84.92%	6
Doty to Chicago; Route: PS&WH, CM& PS, and CM&St.P; Fir Lumber:	.55	10.39c	15.34c	4.95c	47.64%	7
Junk:	.60	11.33c	15.78c	4.45c	39.28%	7
Sumas to Chicago; Route: B&N, MT, CM&PS and CM&St.P; Fir Lumber:	.55	10.71c	16.23c	5.52c	51.54%	9
Apples:	1.00	19.47c	31.64c	12.17c	62.51%	9

Abbreviations:

- "B&N"—Bellingham & Northern;
"CM&PS"—Chicago, Milwaukee & Puget Sound;
"CM&St.P"—Chicago, Milwaukee & St. Paul;
"MT"—Milwaukee Terminal;
"PS&WH"—Puget Sound & Willapa Harbor;
"SP&W"—Seattle, Port Angeles & Western;
"TE"—Tacoma Eastern.

MILWAUKEE—EXAMPLES OF DIVISIONS WITH OTHER ROADS. On movements of freight between Hope, Iowa, and Chicago, the following divisions of inter-line revenues obtain between the Milwaukee and the Ft. Dodge, Des Moines & Southern—“F. D. & S.”— (Def. Ex. “23,” p. 166, Milw. Case):

TABLE NO. 17

Commodity	Railroad	Thru rate per cwt.	Miles of Haul	Division of Joint Earnings:				Percentage of actual division more or less than mileage prorate
				Mileage Prorate:		Present basis		
				Per Cent	Cents	Per Cent	Cents	
Hogs (SD)	FD&S	36.0c	40	10.6%	3.8c	40.0%	14.4c	278.95% more
	CM&StP	36.0c	337	89.4%	32.2c	60.0%	21.6c	32.92% less
Total		36.0c	377	100.0%	36.0c	100.0%	36.0c	.....
Corn	FD&S	19.0c	40	10.6%	2.0c	40.0%	7.6c	280.00% more
Corn	CM&StP	19.0c	337	89.4%	17.0c	60.0%	11.4c	32.94% less
Total		19.0c	377	100.0%	19.0c	100.0%	19.0c	.....

In their report, Messrs. Coverdale & Colpitts give the following as illustrative of the difference between the present divisions and divisions based on a mileage prorate on traffic interchanged by the old Milwaukee Company with lines west of the Missouri River (Def. Ex. "23," p. 166, Milw. Case) :

TABLE NO. 18

From Chicago to:	Present C.M.&St.P. per cents:	Approximate mileage prorate percentage basis via C.M.& St.P.	Percentage of actual division less than mileage prorate:
Dallas, Texas	30.0%	40.0%	25.00% less
Topeka, Kansas	70.0%	75.0%	6.67% less
Wichita, Kansas	46.0%	65.0%	29.23% less
Independence, Kansas	52.0%	70.0%	25.71% less
Lincoln, Nebraska	63.5%	75.0%	15.33% less
Denver, Colorado	35.5%	45.0%	21.11% less
Salt Lake City, Utah	20.0%	30.0%	33.33% less

As between the lines east and west of the Missouri River and the Minnesota Transfer, on transcontinental traffic, the divisions are on a basis of 15% to the lines east of the Missouri River and Minnesota Transfer after first deducting an arbitrary of five cents per cwt. for the lines west of those crossings.

These divisions were illustrated in the Coverdale & Colpitts Report thus as to deciduous fruit, moving from California points to Chicago (Def. Ex. "23," p. 167, Milw. Rec.) :

Roads	Present division Lines west: 85% of 1.68 plus 5c; Lines east: 15% of 1.68, equals:	Approximate mileage prorate percentage basis:	Percentage of actual division more or less than mileage prorate:
Lines west of Missouri River:	85.43%	78.50%	8.83% more
Lines east of Missouri River:	14.57%	21.50%	32.23% less

If the N. P. and Milwaukee, in making divisions with other western carriers operating west of the Missouri River, allow such western carriers more than a mileage prorate, is there any reason, we ask, why, in apportioning their revenue to the states west of the Missouri River (Montana and Washington), a corresponding additional allowance should not be made?

NORTHERN PACIFIC AND S. P. & S.:

LINES OF S. P. & S. AND SUBSIDIARIES. The S. P. & S. operates from Spokane, its eastern terminus, southwesterly through Pasco, and along the north bank of the Columbia River to Vancouver, Washington, Portland, Oregon, and thence to Astoria and Seaside, Oregon. As subsidiary lines the S. P. & S. owns the Oregon Trunk (O. T.) extending (in 1926) from its junction with the S. P. & S. at Wishram, Washington, southerly across the Columbia River, 15.5 miles (N. P. Rec., p. 9084) to Bend, Oregon; the Oregon Electric (O. E.) running from Portland south to Eugene,

Oregon, 122.7 miles (N. P. Rec., pp. 9084-5) and the United Railways (U. R.) extending from Linnton, Oregon, on the S. P. & S., to Keasy, Oregon, 49.7 miles (N. P. Rec., p. 9086). Its Goldendale branch extends from Lyle to Goldendale, Washington, 41.5 miles (N. P. Rec., p. 9080). The Gales Creek and Wilson River (G. C.) extends from Wilkesboro, on the United Railways, 19.2 miles from Linnton to Glenwood, Oregon, a distance of 12.8 miles. (S. P. & S. Rec., p. 1000-1.)

The N. P. and Great Northern (G. N.) each own one-half of the stock of the S. P. & S. (N. P. Rec., pp. 616-8; S. P. & S. Rec., p. 483). The S. P. & S. in turn controls by stock ownership the Oregon Trunk, the Oregon Electric and United Railways. (N. P. Rec., pp. 617, 5611; S. P. & S. Rec., pp. 458-9, 941.) The stock of the Gales Creek & Wilson River is owned by N. P. and Great Northern subsidiaries (S. P. & S. Rec., pp. 967-8). These subsidiaries are all operated the same as branch lines except in the matter of accounting. (S. P. & S. Rec., pp. 963-7.)

COMPARISON OF N. P. WEST OF SPOKANE, WITH S. P. & S. AND SUBSIDIARIES. Upon reaching Spokane, the N. P. proceeds southwesterly to Pasco and thence through Yakima, and Ellensburg to Puget Sound, and thence north to Sumas and south to Portland, with numerous branch lines. As above explained, the S. P. & S. proceeds southwesterly from Spokane along the Columbia River to Portland and Astoria with numerous branch lines but mostly still retaining their separate corporate entities.

The distance from Spokane to Seattle via the N. P. is 399 miles; the distance from Spokane to Portland via the S. P. & S. is 378 miles. (S. P. & S. Rec., p. 1016; N. P. Rec., p. 9102.)

Can it be doubted but that the divisions of revenue on interline shipments voluntarily made between the N. P. and the S. P. & S. and its subsidiaries reflect the divisions which would equitably be made as between the lines of the N. P. east and west of Spokane were they separately operated? Indeed, the witnesses so testified. Thus:

Mr. Pickard testified that as between the N. P. lines east and west of Spokane, if the lines west of Spokane were acquired and operated as an independent line, they would be treated the same as the lines from Spokane to Portland. 25% is the division, and something additional is allowed on account of terminal expense. If the rates were made to points on branch lines somewhat higher than the terminal rate, which is customary in connection with certain commodity rates, then the N. P. line west of Spokane would get 25% of the west of Missouri River proportion, plus whatever such arbitrary might be over the terminal rate. (Pickard, S. P. & S. Rec., p. 1597; N. P. Rec., p. 9413.)

This was recognized by Charles Donnelly, president of the N. P. (N. P. Rec., p. 5759), who testified:

“Q. Take Spokane, then, which does have considerable terminal facilities. In that event it would be perfectly possible to assume the situa-

tion where one line owned the railroad east of Spokane and the other line owned the railroad west of Spokane? A. It would be possible to assume such a case, yes. Q. In that event a fair division of the revenues as between interline shipments between those two companies would be to pay first the operating expenses of both roads and divide the balance on the rate of reproduction cost less depreciation of the roads, would it not? A. I suppose the best evidence of what would be fair between them would be to consider what has actually been done. In the case you are supposing, there is a case that is actually realizable on the railroad map as it stands. The Northern Pacific serves the City of Spokane and then goes on to Puget Sound. But there is another railroad extending from Spokane, the S. P. & S., extending down the Columbia River to the City of Portland. We agree on a division with the Spokane, Portland & Seattle; we give them a certain percentage of the through rate. That percentage, of course, is expected to be sufficient, under normal conditions with all other traffic, to yield operating expenses and a return. To date it has not yielded such return on that property. * * * Q. Let us assume that is all the traffic the two roads have, this interline traffic. In that event would it be fair to divide the revenue in such way that each road would first pay operating expenses and then each road would return the same percentage of profit upon the investment cost? A. Yes, I think that would be fair." (Donnelly, N. P. Rec., pp. 5787-5789; Def. Ex. "40," S. P. & S. case.)

DIVISIONS OF REVENUES BETWEEN N. P. AND S. P. & S. AND SUBSIDIARIES. In its divisions of interline revenues on transcontinental traffic to and from points south and west of Portland the S. P. & S. is in general allowed a deduction of 5c per 100 lbs. from the

through rate for terminal expense, if such through rate exceeds 75¢ per 100 lbs., but otherwise 21½¢ per 100 lbs. which includes lumber. (N. P. Rec., p. 9090-1; Def. Ex. "7," S. P. & S. case.) This terminal arbitrary is the equivalent of the average revenue received on lumber between Portland and St. Paul for 75 miles of haul. Thus: the distance from St. Paul to Portland is 1883 miles (S. P. & S. Rec., pp. 996, 1033); the rate on lumber, 62½¢ per 100 lbs. (S. P. & S. Rec., p. 1147; N. P. Rec., p. 9131); the average rate per mile is $62\frac{1}{2}\text{¢} \div 1883$ or about 1/30th of a cent per mile, or 21½¢ for 75 miles.

On traffic hauled via the S. P. & S. to or from points on complainant's road, north of Vancouver, Washington, a deduction of 5¢ per 100 lbs. is in general made from the through rate for terminal expense, and added to complainant's proportion. (Def. Ex. "7," p. 3, item 65; S. P. & S. case.)

In considering divisions between the N. P. and the S. P. & S. and its subsidiaries, points on the G. N. and N. P. east of the Montana state line are called "transcontinental territory." (N. P. Rec., pp. 9087-8.) As between Portland and transcontinental territory, where the transfer is made at Spokane, the division is 25% to the S. P. & S., the terminal arbitrary being first allowed to the S. P. & S. (N. P. Rec., pp. 9098-9.) Where the transfer is made at Pasco, the division is 15% to the S. P. & S., the terminal arbitrary being first allowed to the S. P. & S. (N. P.

Rec., p. 9105.) The same divisions are made on eastbound and westbound business. (N. P. Rec., p. 9106.)

As to business originating on, or destined to, points on the Oregon Trunk, Oregon Electric, United Railways, the Gales Creek, or the branch extending from Portland to Seaside, an arbitrary allowance with the local rate as the maximum is first set aside to the subsidiary or branch; the terminal arbitrary of 5c or 2½c is next set aside to the S. P. & S. and the latter is then allowed 25% of the balance of earnings on transcontinental traffic, where the transfer is made at Spokane (N. P. Rec., p. 9100), and 15% where the transfer is made at Pasco. (N. P. Rec., p. 9105-6.)

On shipments of wheat from Snake River points on the N. P. via Pasco and the S. P. & S., the S. P. & S. is allowed, as we have seen, considerably less than a mileage prorate, and out of this it is, besides, required to absorb any switching charge at Portland. (N. P. Rec., pp. 9128-9.)

The following table shows the divisions both in percentages and in cents per cwt. allowed to the S. P. & S. and its subsidiaries as compared with the mileage prorate division, on shipments of various representative commodities via the N. P., the transfer being made at Spokane unless otherwise noted (N. P. Rec., pp. 9079-96; 9101-2, 9113, 9117-8, 9124-8, 9131):

TABLE NO. 19

Divisions on interline shipments between N. P. and S. P. & S. and its subsidiaries:

Commodity; termini of haul and route: (for abbreviations see below)	Thru rate per cwt.	Miles haul on S. P. & S. and sub.	Division on mileage prorate:		As actually divided:		Excess over mileage prorate allowed SP&S and Sub.
			Cents	Per Cent	Cents	Per Cent	
Lbr., Portland, Ore., to St. Paul, via SP&S and NP:	62.5	377.5	12.53c	20.05%	17.50c	28.00%	39.66%
Lbr., Bend, Ore., to St. Paul, via OT, SP&S and NP:	62.5	422.9	13.71c	21.94%	22.38c	35.81%	63.24%
—Same (transfer at Pasco):	62.5	276.1	8.96c	14.33%	17.03c	27.25%	90.07%
Lbr., Keasy, Ore., to St. Paul, via GC, UR, SP&S and NP:	62.5	434.5	14.00c	22.40%	24.25c	38.80%	73.21%
Hops, Salem, Ore., to Chicago, via OE, SP&S, NP and CB&Q:	108.75	428.5	19.65c	18.06%	47.40c	43.56%	141.22%
Lbr., Holliday, Ore., to St. Paul, via AE, SP&S and NP:	62.5	486.6	15.51c	24.81%	22.38c	35.80%	44.29%
Lbr., Winlock, Wn., to St. Paul, via NP, SP&S and NP (NP terminal carrier both ends):	62.5	367.5	11.86c	18.97%	10.00c	16.00%	—15.68%**
Wheat, Lewiston, Ida., to Portland, via NP to Pasco and SP&S to Portland:	*23.30	230.7	14.53c	62.35%	10.30c	44.21%	—29.11%**
Wheat, Dayton, Wn., to Portland, via NP to Pasco and SP&S to Portland:	*18.30	230.7	12.77c	69.76%	10.30c	57.89%	—19.34%**

Note: * 24.00c less average switching charge borne by S. P. & S. —0.70c.

** Percentage less than mileage prorate.

Abbreviations:

"NP"—Northern Pacific;
 "UR"—United Railways;
 "GC"—Gales Creek & W. R.;
 "OE"—Oregon Electric;

"SP&S"—Spokane, Portland & Seattle;
 "OT"—Oregon Trunk;
 "AE"—Portland-Astoria branch;
 "CB&Q"—Chicago, Burlington & Quincy.

BASIS OF DIVISIONS BETWEEN UNION PACIFIC AND ITS SUBSIDIARIES. The Union Pacific system consists of four corporate units: The Union Pacific Railroad (U. P.), the Oregon Short-line (O. S. L.), the Oregon-Washington Railroad and Navigation Company (O.-W.), and the Los Angeles & Centralia & Salt Lake (L. C. & S.). The U. P. is the parent line with its principal termini at Omaha, Kansas City, Denver and Ogden. It has no tracks between Chicago and Kansas City, Council Bluffs across the Missouri River from Omaha being its eastern terminus. (S. P. & S. Rec., p. 837.)

The O. S. L. owns the line running northwesterly from Granger, Wyoming, at which point it joins the U. P. Its western terminus is Huntington, which is approximately on the Oregon-Idaho state line. (S. P. & S. Rec., p. 838.) Butte is the northern terminus. (S. P. & S. Rec., p. 838.) West of Huntington the system is in the corporate entity of the O.-W. which extends to Portland, Oregon, and Seattle as its western termini. Between Portland and Tacoma the O.-W. has joint trackage rights over the N. P., and between Tacoma and Seattle operates partly over its own rails and partly over the Milwaukee tracks. From Centralia, Washington, the O.-W. and Milwaukee jointly own a branch to Grays Harbor. The line does not extend south of Portland. (S. P. & S. Rec., p. 839.)

The U. P. owns all of the stock of the O. S. L., which latter road owns all of the stock of the O.-W. (S. P. & S. Rec., pp. 841-2.) The U. P., O. S. L. and

O.-W., are operated as a transcontinental system from Portland east to Omaha. (S. P. & S. Rec., p. 843.) Shipments from Omaha to Portland would go through Granger. (S. P. & S. Rec., p. 891.)

There have been divisions in force between the U. P., O. S. L. and O.-W. for several years. On traffic interchanged between the U. P. units, the O. S. L. delivers traffic to the U. P. at Granger. The distance between various points are as follows: Seattle to Huntington, 572 miles; Portland to Huntington, 389 miles; Huntington to Granger, 541 miles; Granger to Omaha, 844 miles; Omaha to Chicago, 489 miles; St. Paul to Chicago, via the Burlington, 431 miles. (S. P. & S. Rec., pp. 893, 896.)

Since the distance from Omaha to Chicago is but 58 miles less than the distance from St. Paul to Chicago, and the distance from Portland to Huntington but ten miles less than the distance from Seattle to Spokane via the N. P. it is at once apparent that the divisions voluntarily made between these three units of the U. P. system are convincing evidence of what divisions of interstate revenues would be equitable as between that portion of the N. P. road in Washington and the balance of the system, since it is undisputed that the above divisions are made on a fair basis. (Edmonds, S. P. & S. Rec., p. 908.)

The division of interline revenue on traffic between Omaha and all points on the O.-W. west of Huntington (which, of course, includes Seattle and Portland),

is 35% to the O.-W., 27% to the O. S. L. and 38% to the U. P. (Edmonds, S. P. & S. Rec., pp. 893-4). If the traffic originates or is destined to points on connections of the O.-W., say south of Portland, and is hauled to or from Omaha via the U. P. system, the proportion allowed such connection would be first deducted from the through rate, and the balance divided on the above percentages among the U. P. system units. An exception to this rule exists in the case of traffic destined to or originating on the Camas Prairie Railroad operating between Riparia, Washington, and Grangeville, in Idaho, as to which the O.-W. absorbs the Camas Prairie proportion out of its 35%. (S. P. & S. Rec., p. 893-5.)

On both eastbound and westbound business moving to or from Omaha, Huntington to Portland would be about the average haul on the O.-W. (Edmonds, S. P. & S. Rec., pp. 904, 906.)

The following table shows the percentage of tariffs actually received by the different U. P. system units on shipments between Omaha and Seattle and Portland, as compared with what those units would receive on a mileage pro-rate:

TABLE NO. 20

Divisions of interline revenue as between three units of Union Pacific:

Road and Termini:	Miles of Haul:	Percentage of interline tariff:			Percentage of difference between actual division and mileage prorate:
		Actually received	Mileage Prorate:	Difference	
Shipment between Portland and Omaha					
Union Pacific, Omaha to Granger:	844	38.00%	47.56%	9.56%	20.10% less
Oregon Shortline, Granger to Huntington:	541	27.00%	30.51%	3.51%	11.50% less
Oregon-Washington, Huntington to Portland:	389	35.00%	21.93%	13.07%	59.60% more
TOTALS	1774	100.00%	100.00%	0.00%	.....
Shipment between Seattle and Omaha					
Union Pacific, Omaha to Granger:	844	38.00%	43.13%	5.13%	11.89% less
Oregon Shortline, Granger to Huntington:	541	27.00%	27.64%	0.64%	2.52% less
Oregon-Washington, Huntington to Seattle:	572	35.00%	29.23%	5.77%	19.74% more
TOTALS	1957	100.00%	100.00%	0.00%	.....

(19) SAME—VALUE OF BRANCH LINES AS FEEDERS.
IN RECOGNITION OF THIS PECULIAR VALUE, COMPLAIN-

ANTS, IN DIVIDING INTERLINE REVENUES WITH SUCH OF THEIR BRANCH LINES AS ARE STILL OPERATED AS SEPARATE CORPORATIONS, ALLOW SUCH BRANCH LINES FAR MORE THAN A MILEAGE PRORATE DIVISION OF THE THROUGH TARIFF.

Charles Donnelly, president of the N. P., testified in substance as follows:

The N. P. has applied to the I. C. C. for leave to abandon this or that branch because it was not earning operating expense, it could not be providently operated. In the last four or five years the N. P. has made two or three of such applications. In determining whether a given branch line was a paying piece of road, and whether it should be abandoned or retained Mr. Donnelly certainly thought that the branch should be entitled to an allowance of something more than a mileage proportion of the revenues accruing on business originating at or destined to points on that branch. He thought that it was customary to allow them something known as constructive mileage in determining whether or not they are a paying integral part of the system. (N. P. Rec., pp. 5782-4.)

MILWAUKEE CASE:

The following table shows the divisions in percentage and cents per cwt., allowed by the Old Milwaukee Company to its subsidiaries, prior to their merger with the parent line, as compared with the mileage prorated division, on shipments of various representative commodities via the Puget Sound and the Old Milwaukee Road (Milw. Case, Def. Ex. "21;" Wiggins Test., Rec., pp. 1126-39, 1203-5):

TABLE NO. 21
Division on interline shipments between branch lines of Old Milwaukee Road and parent lines:

Commodity, termini of haul, route and thru rate; (for abbreviations see below)	Miles of Haul:		Divisions on mileage prorate:		As actually divided:		Excess over mileage prorate allowed branch
	On Branch	Total	Cents	Per Cent	Cents	Per Cent	
Seattle to Chicago, via CM&PS and CM&St.P.; Lbr. Rate: 55c	(CM&PS) 1372.7	2169.2	34.80c	63.28%	43.00c	78.18%	23.56%
Same—Cereals & cereal products; Rate: 90c	(CM&PS) 1372.7	2169.2	56.95c	63.28%	69.60c	77.33%	22.21%
Sumas to Chicago, via B&N, CM&PS and CM&St.P.; Lbr. Rate: 55c	(B&N) 25.1	2291.6	0.602c	1.095%	5.00c	9.09%	730.56%
Same—Apples; Rate: \$1.00	(B&N) 25.1	2291.6	1.095c	1.095%	6.25c	6.25%	470.78%
Pt. Angeles to Chicago, via (SPA&W, PT&PS, and MT), CM&PS and CM&St.P.; Lbr. Rate: 55c	(Lines in brackets) 85.9	2255.1	2.096c	3.81%	11.50c	20.91%	448.66%
Same—Canned goods; Rate: 85c	(Same) 85.9	2255.1	3.240c	3.81%	12.60c	14.82%	288.89%
Ashford to Chicago, via TE, CM&PS and CM&St.P.; Lbr. Rate: 55c	(TE) 55.1	2243.6	1.35c	2.45%	4.00c	7.27%	196.30%
Same—Autos; Rate: \$3.00	55.1	2243.6	7.35c	2.45%	55.75c	25.00%	658.50%
Doty to Chicago, via PS&WH, CM&PS and CM&St.P.; Lbr. Rate: 55c	(PS&WH) 37.6	2275.4	0.908c	1.65%	5.00c	9.09%	450.66%
Same—Junk; Rate: 60c	(PS&WH) 37.6	2275.4	0.990c	1.65%	4.18c	6.97%	322.22%

ABBREVIATIONS: "CM&PS"—Chicago, Milwaukee & Puget Sound; "CM&St.P."—Chicago, Milwaukee & St. Paul; "B&N"—Bellingham and Northern; "SPA&W"—Seattle, Port Angeles and Western; "PT&PS"—Port Townsend and Puget Sound; "MT"—Milwaukee Terminal; "TE"—Tacoma Eastern; "PS&WH"—Puget Sound and Willapa Harbor.

N. P. AND S. P. & S. CASES :

The following table shows the divisions in percentages and cents per cwt., allowed to subsidiaries of the S. P. & S., and its Astoria Extension, as compared with the mileage prorate division, on shipments of various representative commodities via the S. P. & S. and N. P., and also shipments over branch lines of the N. P. in Eastern Washington to Portland via the S. P. & S. (S. P. & S. Rec., pp. 993, 996, 998, 1003-4, 1010, 1015-6, 1027, 1032, 1147) :

TABLE NO. 22

Divisions on interline shipments between branch lines of N. P. and S. P. & S. and parent lines:

Commodity; termini of haul, route and thru rate; (for abbreviations see below)	Miles of Haul:		Divisions on mileage prorate:		As actually divided:		Excess over mileage prorate allowed branch
	On Branch	Total	Cents	Per Cent	Cents	Per Cent	
Lbr., Bend, Ore., to St. Paul, via OT, SP&S and NP; Rate: 62.5c	(OT) 151.5	1927.9	4.91c	7.86%	9.00c	14.40%	83.30%
Lbr., Keasey, Ore., to St. Paul, via GC, UR, SP&S and NP; Rate: 62.50c	(GC & UR) 49.7	1939.5	1.60c	2.56%	9.00c	14.40%	462.50%
Hops, Salem, Ore., to Chicago, via OE, SP&S, NP and CB&Q; Rate: 108.75c	(OE) 51.0	2372.5	2.34c	2.15%	29.50c	27.11%	1160.68%
Lbr., Holliday, Ore., to St. Paul, via AE to Portland, thence SP&S and NP; Rate: 62.5c	(AE) 119.1	2001.6	3.73c	5.95%	6.50c	10.40%	74.26%
Wheat, Lewiston, Ida., to Portland, via NP to Pasco SP&S to Portland; Rate: 23.30c*	(SP&S) 230.7	370.0	14.53c	62.35%	10.30c	44.21%	-29.11%**
Wheat, Dayton, Wn., to Portland, via NP to Pasco, and SP&S to Portland; Rate: 18.30c*	(SP&S) 230.7	330.7	12.77c	69.76%	10.30c	57.89%	-19.34%**

ABBREVIATIONS: "NP"—Northern Pacific; "SP&S"—Spokane, Portland & Seattle; "OT"—Oregon Trunk; "OE"—Oregon Electric; "UR"—United Railways;

"GC"—Gales Creek and Wilson River; "CB&Q"—Chicago, Burlington & Quincy; "AE"—Portland-Astoria branch or extension of the S. P. & S.

NOTE: * Rate less average switching charge borne by S. P. & S.—0.70c.

** Percentage less than mileage prorate.

The reason why the N. P. branches in Eastern Washington were properly allowed more than a mileage prorate on wheat shipments to Portland via the S. P. & S. is thus explained by R. W. Pickard, general freight agent of the S. P. & S. (S. P. & S. Rec., p. 1181):

This wheat business comes in large volume. The S. P. & S. runs 75-car and 85-car trains down the river with an average load of 40 tons, or, in the case of a 75-car train, a trainload of 3,000 tons for which it receives \$6,000 for a haul of 231 miles handled with one locomotive and one crew. Obviously that is a profit-bearing, and an exceedingly attractive traffic. When the wheat is not moving in such volume as to require straight train loads, and is included in trains with other westbound traffic, the traffic is usually such as would pay a greater profit per car mileage; so that in the long run the train usually earns more money. Contrasted with this, the N. P. assembles this grain traffic on many branch lines and delivers it to the S. P. & S. at Pasco. The essential reason why a strictly mileage prorate is unfair from the standpoint of the N. P. is the expense which that company has in assembling the traffic on many branch lines and bringing it in several small lots to Pasco. In October, 1925, the S. P. & S. handled 1091 cars of grain from Pasco to Portland, received from the N. P. originating at 122 different stations on the N. P. in Oregon, Washington and Idaho. Over 90% of those stations are located on branch lines, since that is where a large portion of its grain traffic originates. Obviously the expense of sending empty cars up onto the branch lines, one, two, three or four cars, to individual warehouses at different stations, and picking these cars up on branch lines and bringing them to

the main line, and making them into trains and bringing them to Pasco, is more expensive than handling the grain in train-loads after being assembled and the N. P. is consequently entitled to earn more per mile than the S. P. & S. handling it in volume as it does between Pasco and Portland. The regulatory bodies of Washington and Oregon, and many other bodies recognize that rates should be higher from branch line points than from main line points because of this. The N. P. is entitled to a greater division than that based on a purely mileage prorate because it gathers the traffic on its branch lines. That is universally true in the making of divisions under such conditions. (S. P. & S. Rec., pp. 1532-35, 1586; N. P. Rec., pp. 9141, 9343-51, 9402.)

O. O. Calderhead, a traffic expert testifying for the defendants, said in this connection:

“Q. How about the branch lines in this? A. Well, now, I am not going to pretend to be absolutely mathematically correct, but I would say that with some branch lines the operating expenses exceed the revenue when prorated on a mileage basis of five to one. Q. Nevertheless the railroads retain those branch lines? A. Absolutely. Q. That does not mean that branch line is not a profitable one? A. No.” (N. P. Rec., p. 3293.)

It certainly must follow that since these branches are entitled to so much more than the mileage prorate of interline revenue, their value to the system cannot, in fairness be measured either by the mileage prorate of the revenue to which they contribute, or by relative line haul of cars, locomotives, tonnage, or passengers.

SAME — MOBRIDGE EXTENSION OF MILWAUKEE AS FEEDER FOR SYSTEM. W. W. K. Sparrow, the Mil-

waukee's vice-president, and chief financial and accounting officer of the receivers (Milw. Rec., p. 233), by making certain studies found that the gross revenues of the lines east of Mobridge on business originating west of the Missouri River approximated roughly between \$7,000,000 and \$8,000,000, while the revenue received by the western lines from business originating on the eastern lines ran on an average of about \$4,000,000, or maybe \$100,000 or so more. (Def. Ex. "18," p. 78, Milw. Case.) This means that the lines east make somewhat more than \$3,000,000 per year gross out of business furnished by the western lines, more than the western lines make out of business furnished by the eastern lines.

(20) RATE-PRORATE DIVISION OF GROSS EARNINGS AMONG STATES. As already pointed out, the cost of assembling and distributing traffic at the terminals and on branch lines is a large part of the carrier's total expense. (N. P. Rec., pp. 3292-3.) This cost, of course, properly includes a proper return on the investment in such terminal facilities and branches. Now, it will obviously not do for our purpose, to say: "prorate the interstate revenues on a mileage basis, and apportion the terminal costs equitably among the terminal and non-terminal states," for it must be remembered that the gross revenues factor entirely ignores expenses.

Therefore, if this factor is to be used at all, obviously the interstate revenues must be distributed among states with due regard to relative cost of service. Now, what yard-stick can we use for measuring

this relative cost of service? Not relative mileage of haul, for this, as we have shown, ignores both relative operating costs and relative investment.

Why not, then, use the carrier's own estimate of this relative cost of service, as reflected by the local rates within and without the state? For example, as to a shipment involving two states only, it is plain that the local rate from the shipping point to the state line and the local rate from the state line to the point of destination, each represents the carrier's estimate of the cost of service in each state; and consequently the carrier's conception of the relative cost of service in the two states. Hence, if the carrier fixes a through rate less than the sum of the two locals, the total revenue should logically be allocated as between the two states in the proportion which each local rate bears to the sum of the two local rates.

But if a shipment begins in one state, passes through a second, and is delivered in a third, what then is the carrier's estimate of the relative cost of service as between the three states? As to the states of origin and destination obviously the local rate still represents the carrier's estimate of the cost of service, including the terminal expense, return on investment, etc. Not so, however, as to the middle state, where there is no terminal expense involved. The shipment reaches this state already assembled in train-load lots and simply passes over the rails to be delivered in the state beyond. Hence the local rate from border to border of the middle state does not

reflect the carrier's conception of the cost of service, since all terminal costs are incurred in the first and third states. It may be fairly assumed, then, that a fair allotment to the intervening state would be the balance of the through rate after deducting the proper share of each terminal state. Thus each terminal state would receive that proportion of the through rate which the local rate on the haul within such state bears to the sum of such local rate and the local rate on the portion of the haul beyond its borders, the middle state or states taking the balance.

We quote again what Professor Meyer has to say as to this method of apportionment of gross:

“Probably good argument could be brought in support of the proposition that on an interstate shipment the branch should be allowed the local charge and the main line the remainder; but if this be thought to go too far toward increasing the earnings of the outlying parts, certainly the branch ought to receive the same proportion of the total earnings in any single shipment as its local is of the sum of the locals for the entire route covered.” (Def. Ex. “11,” p. 20, Milw. Case.)

True, Professor Meyer considers this method of apportionment of revenue only in connection with branch lines, but it would obviously apply as well to the distribution of terminal values.

(20) SAME—COMPARISON OF RESULTS OF RATE-PRORATE AND MILEAGE PRORATE APPORTIONMENT. At the time of the trial no evidence had been assembled by either complainants or defendants as to the dif-

ference in the proportion of gross revenue apportionable to Washington on a rate prorata basis and on a mileage prorata basis. In October, 1929, such a study was begun by these defendants and was completed in the spring of 1930, a short time after the Master made his report. The study covered all interstate car-load freight traffic of the Northern Pacific (other than shipments to and from transit stations) touching the State of Washington for the months of January, April, July and October, 1928. As has been shown herein by affidavit, it appeared from this analysis that as to the traffic covered by the study, a rate-prorate apportionment gave Washington approximately 25% more than a mileage prorata apportionment. As a result of subsequent corrections the difference is found to be in fact something over 27%. This difference, however, applies only to interstate revenues which are shown to be only approximately 50% of the total apportionable to the state. (Peterson, N. P. Rec., p. 659.) The increase would consequently be 50% of 27% or about 13.5% increase of all freight revenues apportioned to the state. The gross operating revenues factor for 1925 on the mileage prorata basis was 27.00%. (Report, page 107.) Were the rate prorata division used, this would be increased as follows: 27.00×113.5 equals 30.65%.

The gross operating revenue factor for 1924 on the mileage prorata basis was 26.80% (Report, p. 96). Were the rate prorata division used, this would be increased as follows: 26.80×113.5 equals 30.42%. If

these factors be combined in turn with the joint facilities rents factors by the process heretofore outlined on pages 224-7 of this brief, the results would be as shown in the following table:

TABLE NO. 23

Year	Gross revenues factor (rate prorata)	% of weight to which entitled:	Joint facilities rents factor:	% of weight to which entitled:	Percentage of system value apportionable under each factor, and total:			Total % to which Wash. entitled ("f" + "g")
					Gross revenues ("c" × "b")	J. F. Rents factor ("e" × "d")	(f)		(g)	(h)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	
1924	30.42 %	92.27571 %	72.78975 %	7.72429 %	28.07027 %	5.62249 %	33.69276 %	
1925	30.65 %	91.66917 %	61.59567 %	8.33083 %	28.09660 %	5.13143 %	33.22803 %	

It is interesting to compare these factors with the relative replacement cost factors for the N. P. as found by the Master to-wit: for 1924, 34.05% ; and 33.77% for 1925. (Report, pp. 99, 109.)

On April 19, 1930, a motion was made by these defendants for an order re-referring the N. P. suit to the Special Master to take the testimony above referred to, showing the relation between a rate prorate and mileage prorate division of Northern Pacific revenues as to Washington for the period named. An affidavit accompanied the motion briefly outlining the new evidence to be offered. On May 19, 1930, this motion was tentatively denied with leave to renew the motion on argument of the exceptions to the Master's Report. These defendants now ask that the re-reference be made. The evidence is all in tabular form and its introduction would require but an hour or so at most.

(21) SAME—MILEAGE PRORATE DIVISION OF INTERSTATE REVENUES—MASTER IN ERROR IN FINDING THAT MILEAGE PRORATE DIVISION IS COUNTENANCED BY WASHINGTON TAXING AUTHORITIES. On page 71 of the Report, the Master says:

“The value of interstate and intrastate business done in Washington has been allocated on this mileage basis by all the tribunals, including Washington tax authorities.”

There is, we submit, not a syllable of evidence that either the tax commission or state board has ever apportioned interstate gross revenues on a mileage

basis. True, the department of public works, a rate-making body, asked the carriers to make such an apportionment for simplicity's sake, but there was no showing that it was ever intended that such an apportionment should be made for the purpose of apportioning system value either for taxation or rate-making purposes. Moreover, the purpose of the adoption of this rule was thus explained by Mr. O. O. Calderhead, with the Department when the rule was made, his testimony being in no wise controverted:

“We found that the amount of expense involved in making an accurate division of either operating revenue or expenses would be out of proportion to the results obtained if it was done accurately. So we said in order that everyone might understand this alike, we will have these revenues and expenses divided on mileage prorate. Whatever expenses are incurred within the state will be state expenses. We will divide revenues on mileage prorate. Now, if it ever comes to a question involving rates, and we want to ascertain accurately the expenses and revenues, we can make a study at that time; it will be cheaper to do that in the few cases where it will be required than to require it each year, as it will vary each year. In the meantime, whatever computations are made, we know will be made on exactly the same basis. That was the reason for the promulgation of the little pamphlet showing the method of allocating the revenues and expenses of interstate carriers and other carriers. Q. Taxing officers were not a party to that in any way? (Mr. daPonte: We object to that—) A. No, no, this was merely— (The Master: I am pretty well satisfied without

the assurance of the witness).” (N. P. Rec. pp. 3314-5.)

In the S. P. & S. Case it was not even contended that the rule applied to reports made to the tax commission. O. B. Riddle, the company’s statistician, testified:

“Q. That relates only to rate making? A. No, it relates to the reports we shall make to the department of public works. Q. It doesn’t relate to reports to the tax commission or taxing authorities? A. I think not; I don’t know just what instructions the tax commission issues; naturally that being the only basis for apportioning the revenues, it would be used in making the report to another arm of the state government, unless other instructions were issued.” (S. P. & S. Rec. p. 357.)

So far as the Milwaukee is concerned, that company made no attempt to follow even the rule of the department of public works, since in its reports, it apportioned its interstate freight revenues to Washington on a net ton-mile basis. (Milw. Rec. pp. 58-9.)

Be that as it may, how, we ask, could the action of some board or commission of Washington increase the value of this factor as an index of the true distribution of system value? If the factor as computed is not a true criterion of relative value, the action,

we submit, of a dozen state boards could not make it so.

(22) SAME—MILWAUKEE'S INTERSTATE FREIGHT REVENUES APPORTIONED ON A TON-MILE PRORATE (OMITTING MINNESOTA). We have heretofore discussed the Milwaukee relative gross revenues factor on the theory that, as in the case of the other complainants, interstate revenues were apportioned to the state on a mileage prorate basis. But, as we have already shown, in the case of the Milwaukee, it appears that Washington was apportioned that part of the total interstate freight revenues (excluding Minnesota) which the ton miles hauled in Washington bore to the ton miles hauled for the system, excluding Minnesota (Milw. Rec. pp. 58-9). A. S. Dudley thus apologizes for this method:

“Q. How would you allocate the earnings? A. They might be allocated as they were—as I understand they were allocated by the Milwaukee, which was by force of circumstances not entirely consistent, yet which in my judgment would not vitiate the use.” (Milw, Rec. p. 755.)

Mr. Dudley, however, overlooks the fact that what he calls a gross revenues factor is in fact merely a hybrid—a gross revenues factor as to intrastate business, crossed with a ton-mile or traffic units factor as to interstate business. To quote from Dr. Lutz:

“If I understood this witness correctly, his description was to the effect that instead of actually assigning to the state of Washington or any other state that part of the revenue collected, that the revenue allocation was made on the basis

of another allocation which involves certain statistical procedure. So that when we speak of a gross revenue allocation, we are speaking of a gross revenue allocation once removed, as we might call it, from the state of actuality. We are allocating freight revenues on a basis of ton miles hauled. * * * It seems to me that we have introduced a still further element of artificiality into the so-called gross earnings ratio. And therefore to my way of thinking, we have made it even less dependable than a mileage prorate of the gross revenues directly would have been for the purpose of discovering the value of that part of the system property located within the state." (Milw. Rec. pp. 1242-3.)

When it is remembered that it is interstate revenues which causes the property in one state to contribute to the value of the property in other states, it would seem that the Milwaukee, by wholly ignoring revenue factors, has ventured much farther into the field of mere speculation than have even the other complainants.

(23) USE OF THE MASTER'S FACTORS WOULD GIVE DIFFERENT VALUES TO IDENTICAL ROADS. A. S. Dudley testified for the Milwaukee:

"Q. We will assume two lines of railway beginning on Puget Sound and terminating at the Idaho border, * * *. Assume those two lines to be identical in every respect, that they cost the same, that they produce the same amount of traffic, that the same number of cars pass over it carrying the identically same commodities, produce exactly the same revenue, and one has an eastern connection which, by finding the market value of the stocks and bonds and allocating on the factors which you have named here

would have a value of \$1,000 and the other by the same method would have a value of \$2,000. What would you say was the market value of those two respective roads? * * * Would you say that the market value of those two roads was exactly the same? A. The two roads might represent different fractions of the systems of which they were parts. The two roads are identical, but the systems of which they were a part being different, there would be a different allocation to the two roads, due to the fact that one road was not the same fraction of that which it was a part that the other was; and inasmuch as we are regarding the system as the thing to be divided, I think one road in the state would have a different value allotted to it than the other. * * * I would not say in either case, either road would have a value; but in the allocation of system value they would have different values. Q. And that would be the figure at which the assessor should assess it? A. Yes. Q. And that is the figure at which we are arriving? A. Yes." (Milw. Rec. pp. 1050-3.)

In short, Mr. Dudley concludes that although two railroads located in Washington, when viewed as independent lines, might have the same value, yet, because of their connections with railroads in other states, one might have but one-half the assessable value of the other!

Under the Master's factors, then, not only can local property values be whisked away to Idaho and points east, but even when such transported values reach a resting place, they may be buried deep beneath a veritable mountain of local deficits and beyond the reach of the local assessing officers.

Never could there be pictured, we submit, a more flagrant violation of the express mandates of our constitution, that "all property in the state" shall be taxed "according to its value in money."

If, as the supreme court has often said, one state cannot tax property located in other states, it must follow, we submit, that one state cannot surrender to other states the right to tax its local property.

(24) COMBINING THE MASTER'S FOUR FACTORS DOES NOT NEUTRALIZE THE PREJUDICIAL EFFECT OF EITHER. When complainants' witnesses sponsoring these factors were asked to explain just how each such factor reflected relative terminal values, they were ready with such an answer as this:

"None of these factors is free from criticism but when combined they give the least objectionable result." (E. V. Peterson, N. P., Rec. p. 744; A. S. Dudley, Milw. Rec. pp. 946-7, 979, 998, 1008; O. B. Riddle, S. P. & S. Rec. pp. 369-72.)

But how, we ask, can the use of the four correct the inaccuracy of either, when they are all subject to the same fundamental defect? An important reason why *each factor* is unfair to Washington is that it ignores relative terminal values. It follows that an average of the four, whatever may be the relative weight accorded each, leaves these terminal values still ignored.

Dr. Lutz says in this connection:

"I have never heard any argument to show that such sources of the unsatisfactory character

of these factors cancelled themselves out; that every one is unsatisfactory in one direction is cancelled by another, I have never heard argued; I have never seen how cancelling error against error can be arrived at. If you have four factors each one of which is unsatisfactory in itself, I don't see how you can arrive at a satisfactory result by averaging the four." (Milw. Rec. pp. 1245-6.)

As the court in *Louisville & N. R. Co. v. Bosworth*, 209 Fed. 380, 434, well said:

"If then neither the use of the gross receipts proportion, nor of the net income proportion, nor of the average of the two, will yield a correct result, the use of the average of the gross receipts proportion or the net income proportion and the mileage proportion or the average of the three proportions will not do so."

(25) CONCLUSION AS TO APPORTIONMENT. As we have shown, the presumption is that relative replacement cost represents relative value. The purpose of these line-haul factors therefore, must be to overcome this presumption, by showing the relative *value of the use* of the property. Since none of these factors show directly the relative future prospects of the property, but only past performance, their sole function must be to indicate the relative net earnings of the property. In this they have been shown to fall down completely for the reasons:

(a) They utterly fail, when used as an index of relative value of either independent roads, or different parts of the same road where net earnings are separately shown.

- (b) They reflect use value where none exists.
- (c) They wholly ignore the distribution of terminal values.
- (d) They ignore the value of branch lines as feeders.
- (e) They ignore relative construction cost.
- (f) They ignore relative salvage value.
- (g) In the case of the Northern Pacific, they ignore the use made of the property by tenant companies.

In concluding our consideration of allocation, may we again quote Dr. Hadley, A. S. Dudley, and Professor Meyer as to the inadequacy of the relative gross revenues factor as an index of terminal and construction cost distributions.

Dr. Hadley on behalf of all complainants:

“Q. We will say we have two miles of track;
 A. Yes. Q. One mile costs roughly \$100,000 graded and built, and the other has a bridge across a river that cost \$1,000,000 to construct?
 A. Yes. Q. Would you say those two miles of track were of equal value? A. No. But it is hard to tell what the value of either is, except as part of the whole. They probably contribute differently to the value of the whole, but no man living can exactly tell what that contribution is.”
 (Hadley, N. P. Rec. pp. 400-1.)

“The gross earnings method does not take account in any proper way of terminal values in apportioning it. The gross earnings method, I think, could be changed at Washington to make it more fair (Hadley, N. P. Rec. p. 249) * * *
 It does not take into proper account the ter-

minals. It doesn't quite do justice. (Hadley, N. P. Rec. p. 400) * * * Q. You said to allocate value to the State of Washington, according to the gross earnings method would be somewhat unfair by reason of valuable terminals being located in Washington; explain briefly why that is true. A. Because there are many cases where the land immediately adjoining the station would, if it were made locally taxable, have a very high value. That is the chief reason why I make exception. Another reason I make it is that the adjustment of accounts between different parts of the railroad, to be fair, if they allowed more to the road at initial point of loading or terminal destination—it is that second thing that constituted the ground—the unfairness to consider the contribution of the track and not consider the contribution of the terminal. * * * Q. The expense of a carrier in handling at the terminal, is far in excess of the amount represented in the mile haul? A. Yes, that is where the real unfairness is.” (Hadley, pp. 413-4.)

A. S. Dudley on behalf of the Milwaukee:

“The earnings are made from not only the tracks but certain auxiliary properties which are also conducive to making the earnings; and if the distribution was based solely upon track, this auxiliary property in the one state would get no allowance under that method of distribution (relative gross earnings).” (Milw. Rec. p. 983.)

Professor Meyer:

“The treatment of terminals by different railway companies apparently represents various degrees of accuracy. Some companies ignore terminals altogether in the apportionment of gross revenues, and others attribute an arbitrary percentage of their revenues to terminals. * * * Uniformity in the treatment of terminals is un-

questionably desirable, but nothing short of an inventory of terminal properties can afford a satisfactory working basis." (Def. Ex. "11", p. 21, Milw. Rec.)

Consider again the problem of the assessing officer in apportioning system value—he knows that the railroad could not be operated without its repair shops; that its traffic could not be assembled or distributed without its depots, yards, docks, warehouses, etc., nor hauled over the line without its tunnels, bridges, etc. But how is he to find the value of such items of property to the system of which they are a part? He finds this relative value reflected neither in relative track mileage, relative car miles, relative traffic units, nor relative gross revenues apportioned on a mileage of haul basis. Relative net revenues are not available. He does have before him, however, the relative replacement cost of such items.

Is such assessing officer to be condemned, as the Master finds, for refusing to use factors which admittedly wholly ignore the distribution of terminals, bridges, tunnels, etc., and, instead, turning to that factor which reflects the railroad builder's own conception of the relative value of these items, namely, relative replacement cost?

Plaintiff's Exhibit 87:

NORTHERN PACIFIC RAILWAY COMPANY

**TRANSACTIONS OF LAND DEPARTMENT COMPILED FROM
DATA IN ANNUAL REPORTS TO STOCKHOLDERS**

Year ended	June	30,	1910	NET CASH	NET PROCEEDS
"	"	"	1911	RECEIPTS	CREDITED TO PROPERTY
"	"	"	1912		AND PROFIT AND LOSS
"	"	"	1913		ACCOUNTS
"	"	"	1914		
"	"	"	1915		
"	"	"	1916		
Six mo. ended	Dec.	31,	1916		
Year ended	Dec.	31,	1917		
"	"	31,	1918		
"	"	31,	1919		
"	"	31,	1920		
"	"	31,	1921		
"	"	31,	1922		
"	"	31,	1923		
"	"	31,	1924		
"	"	31,	1925		
"	"	31,	1926		
"	"	31,	1927		
"	"	31,	1928		
"	"	31,	1929		
"	"	31,	1930		
"	"	31,	1931		
"	"	31,	1932		
"	"	31,	1933		
"	"	31,	1934		
"	"	31,	1935		
July 1, 1909 to Jan. 1, 1936			\$ 31,267,301.43	\$	36,968,618.75
Jan. 1, 1917 to Jan. 1, 1935			18,727,229.13		12,932,002.80
Jan. 1, 1917 to Jan. 1, 1936			18,926,294.10		12,646,476.96
Jan. 1, 1930 to Jan. 1, 1935			*28,347.07		*2,441,957.58
Jan. 1, 1931 to Jan 1, 1936.			*260,611.75		*2,780,803.77

* Indicates red figure.

PLAINTIFF'S EXHIBIT 89

Before the Tax Commission of the
State of Washington

In the Matter of reassessment of the operating property of the Northern Pacific Railway Company situated in the State of Washington for the years 1935 and 1936.

DEMAND FOR INFORMATION AS TO THE
ERROR OR ERRORS IN THE ABOVE
ASSESSMENTS.

To the State Tax Commission:

The Northern Pacific Railway Company hereby demands that the Tax Commission advise it of the error or errors which occurred in the assessments for the years 1935 and 1936 heretofore made, for the correction of which the Tax Commission proposes to proceed to make a reassessment for said years.

Dated this 16th day of August, 1937.

NORTHERN PACIFIC
RAILWAY COMPANY,
By L. B. daPONTE,
ROBERT S. MACFARLANE,
Its Attorneys. [2076]

(Plaintiff's Exhibit 89—Continued)

Before the Tax Commission of the
State of Washington

In the Matter of reassessment of the operating property of the Northern Pacific Railway Company situated in the State of Washington for the years 1935 and 1936.

OBJECTION TO THIS PROCEEDING AND
OBJECTION TO JURISDICTION

To the State Tax Commission :

The Northern Pacific Railway Company objects to this proceeding and states that the Tax Commission has no jurisdiction thereof for the reason that its only power is to proceed to a reassessment for the correction of errors which it believes have occurred in the assessment heretofore made, and unless and until the Northern Pacific Railway Company is advised of the errors which the Tax Commission believes have occurred and which it proposes to correct by this assessment, it is wholly without power to proceed further with the proposed reassessment.

The Northern Pacific Railway Company further protests against this proceeding and states that the Tax Commission has no jurisdiction to proceed to make an assessment de novo, but only has power and authority to correct the valuation heretofore made herein due to the errors which the Tax Commission believes occurred in the assessments heretofore made.

(Plaintiff's Exhibit 89—Continued)

Dated this 16th day of August, 1937.

NORTHERN PACIFIC

RAILWAY COMPANY,

By L. B. daPONTE,

ROBERT S. MACFARLANE,

Its Attorneys. [2077]

Before the Tax Commission of the
State of Washington

In the Matter of reassessment of the operating property of the Northern Pacific Railway Company situated in the State of Washington for the years 1935 and 1936.

OBJECTION TO NOTICE AND TESTIMONY,
DATA AND EXHIBITS THEREIN RE-
FERRED TO.

To the State Tax Commission:

On August 9, 1937, you caused to be served upon the Northern Pacific Railway Company a certain "Notice of Matters to be Considered by Tax Commission", and a series of unnumbered exhibits attached thereto.

(1) The Northern Pacific Railway Company objects to the statements delivered by the State Tax Commission to its representatives on July 15, 1937, and objects to the documents consisting of 41 sheets of indiscriminate statistics which were left with the Western Counsel of the Northern Pacific Railway Company by R. G. Sharpe purporting to

(Plaintiff's Exhibit 89—Continued)

be the attorney for the State Tax Commission on the 9th day of August, 1937; and objects to the documents consisting of 18 sheets of indiscriminate statistics which were left with the Western Counsel of the Northern Pacific Railway Company by the State Tax Commission on the 13th day of August, 1937; and objects to the use by the State Tax Commission of said documents or the figures and data therein contained because the same do not prove or tend to prove what error or errors the Tax Commission believes occurred in the assessments for 1935 and 1936 heretofore made, and because the said documents and the figures and data therein contained have no bearing whatsoever upon the correction of any error or errors which have heretofore occurred, and because the said documents and data therein contained have no bearing whatsoever upon the fair market value of the operating property of the Northern Pacific Railway Company for reassessment and taxation for the years 1935 and 1936, other than such data contained in said docu- [2078] ments which is also contained in the testimony and exhibits submitted by the Northern Pacific Railway Company to the State Tax Commission at the regular hearings heretofore had for determination of the assessed value of said operating property for said years.

(2) The Northern Pacific Railway Company objects to the relevancy, materiality or competency of the exhibits and testimony in the four cases speci-

(Plaintiff's Exhibit 89—Continued)

cally referred to in said notice, except as the same may agree with or conform to the exhibits heretofore filed with the Board of Equalization of the State of Washington on September 5, 1935, with respect to the 1935 valuation of the Northern Pacific, and the exhibits filed with the Tax Commission of the State of Washington on August 26, 1936, with respect to the 1936 valuation of the Northern Pacific, and Exhibits 1 to 46, inclusive, with respect to the 1935 and 1936 valuations of the Northern Pacific, attached to and made a part of the depositions of plaintiff's witnesses, which said depositions and exhibits are now on file with the Clerk of the United States District Court for the Eastern District of Washington, Northern Division, Northern Pacific Railway Company v. Adams County, et al., No. E-4476, copy of which you have.

(3) The Northern Pacific Railway Company objects to the relevancy, materiality or competency of the 41 exhibits attached to said notice, and the 6 exhibits delivered to it on July 15, 1937, except as the same may agree with or conform to the exhibits heretofore filed with the Board of Equalization of the State of Washington on September 5, 1935, with respect to the 1935 valuation of the Northern Pacific, and the exhibits filed with the Tax Commission of the State of Washington on August 26, 1936, with respect to the 1936 valuation of the Northern Pacific, and Exhibits 1 to 46, inclusive, with respect to the 1935 and 1936 valuations

(Plaintiff's Exhibit 89—Continued)

of the Northern Pacific, attached to and made a part of the depositions of plaintiff's witnesses, which said depositions and exhibits are now on file with the Clerk of the United States District Court for the Eastern District of Washington, Northern Divi- [2079] sion, Northern Pacific Railway Company v. Adams County, et al., No. E-4476, copy of which you have.

(4) The Northern Pacific Railway Company objects to the relevancy, materiality or competency of the 18 exhibits delivered to it on August 13, 1937, except as the same may agree with or conform to the exhibits heretofore filed with the Board of Equalization of the State of Washington on September 5, 1935, with respect to the 1935 valuation of the Northern Pacific, and the exhibits filed with the Tax Commission of the State of Washington on August 26, 1936, with respect to the 1936 valuation of the Northern Pacific, and Exhibits 1 to 46, inclusive, with respect to the 1935 and 1936 valuations of the Northern Pacific, attached to and made a part of the depositions of plaintiff's witnesses, which said depositions and exhibits are now on file with the Clerk of the United States District Court for the Eastern District of Washington, Northern Division, Northern Pacific Railway Company v. Adams County, et al., No. E-4476, copy of which you have.

(5) The Northern Pacific Railway Company objects to the first sheet of said exhibits attached to

(Plaintiff's Exhibit 89—Continued)

said notice as the same is not correct. The correct figures are to be found on page 6 of the exhibits presented to the Board of Equalization of the State of Washington on September 5, 1935, and page 5 of the exhibits presented to the Tax Commission of the State of Washington on August 26, 1936.

(6) The Northern Pacific Railway Company objects to the materiality and relevancy of the second sheet of said exhibits attached to said notice.

(7) The Northern Pacific Railway Company objects to the materiality and relevancy of the third sheet of said exhibits attached to said notice, and further states that use of any alleged averages in excess of two, three or five years is improper.

(8) The Northern Pacific Railway Company objects to the materiality and relevancy of the fourth sheet of said exhibits attached to said notice, and further states that the inclusion of the B. & C. bonds [2080] and the figures reflecting the average market value of stock plus par value of funded debt is improper. The continuous practice of the Tax Commission for many years last past has been to exclude B. & C. bonds and such exclusion is correct. The figures representing the average market value of stock plus par value of funded debt are meaningless and useless.

(9) The Northern Pacific Railway Company objects to the materiality and relevancy of the fifth and sixth sheets of said exhibits attached to said notice, and further states that the inclusion of B. & C. bonds is incorrect.

(Plaintiff's Exhibit 89—Continued)

(10) The Northern Pacific Railway Company objects to the materiality and relevancy of the seventh sheet of said exhibits attached to said notice, and further states that the weighting of the averages and the inclusion therein of B. & C. bonds is arbitrary, capricious, unreasonable and incorrect.

(11) The Northern Pacific Railway Company objects to the materiality and relevancy of the eighth and ninth sheets of said exhibits attached to said notice, and further states that the inclusion of B. & C. bonds is improper.

(12) The Northern Pacific Railway Company objects to the materiality and relevancy of the tenth sheet of said exhibits attached to said notice, and further states that the inclusion of B. & C. bonds and the weighting of market value, is incorrect, arbitrary and unreasonable.

(13) The Northern Pacific Railway Company objects to the materiality and relevancy of the twelfth sheet of said exhibits attached to said notice.

(14) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of the thirteenth sheet of said exhibits attached to said notice.

(15) The Northern Pacific Railway Company objects to the materiality and relevancy of the fourteenth sheet of said exhibits attached [2081] to said notice, and states that the same is not true or correct in fact.

(Plaintiff's Exhibit 89—Continued)

(16) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of the eighteenth and nineteenth sheets of said exhibit attached to said notice.

(17) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of the twentieth and twenty-first sheets of said exhibit attached to said notice, and challenges the correctness of the computed results.

(18) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of the twenty-second sheet of said exhibits attached to said notice, and especially calls attention to the ridiculous result computed as compared with the valuation of the S. P. & S. fixed by this Tax Commission and the Tax Commission of the State of Oregon.

(19) The Northern Pacific Railway Company objects to the materiality and relevancy of the twenty-third sheet of said exhibits attached to said notice, and states that the manner in which the figures are used is improper and incorrect.

(20) The Northern Pacific Railway Company objects to the materiality and relevancy of the twenty-fourth sheet of said exhibits attached to said notice, and further states that the capitalization at the rate of 12% is improper and incorrect.

(21) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of the twenty-sixth sheet of said exhibits

(Plaintiff's Exhibit 89—Continued)

attached to said notice, and further states that the same is incorrect and incomplete. Full particulars and detail as to the non-operating property deductions have been furnished the Tax Commission at hearings held on September 5, 1935, as to the 1935 valuation, and August 26, 1936, as to the 1936 valuation. You will also note the exhibits attached to and made a part of the depositions of plaintiff's witnesses, which said depositions and exhibits are now on file with the clerk of the United States District Court for the East- [2082] ern District of Washington, Northern Division, Northern Pacific Railway Company v. Adams County, et al., No. E-4476, copy of which you have. The correct deduction for non-operating property, exclusive of Burlington stock, for the year 1935 was not less than \$93,734,129, (p. 1, 1935 exhibit). The correct deduction for non-operating property, exclusive of Burlington stock, for the year 1936 was not less than \$96,012,242, (p. 2, 1936 exhibit).

(22) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of the twenty-ninth to thirty-seventh sheets, inclusive, of said exhibits attached to said notice.

(23) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of the thirty-eighth sheet of said exhibits attached to said notice, and states that said exhibit does not correctly or truly state the relative net earnings of Washington operating property, and

(Plaintiff's Exhibit 89—Continued)

that the results attempted to be shown are incorrect and misleading.

(24) The Northern Pacific Railway Company objects to the materiality and relevancy of the thirty-ninth and fortieth sheets of said exhibits attached to said notice.

(25) The Northern Pacific Railway Company objects to the materiality and relevancy of the forty-first sheet of said exhibits attached to said notice, and states that the same is incorrect, misleading and does not correctly allocate system value to the State of Washington. The correct allocation factors are as shown in the exhibits furnished the State Tax Commission on September 5, 1935, August 26, 1936, and as further shown in the exhibits and testimony found in the depositions of plaintiff's witnesses, which said depositions and exhibits are now on file with the clerk of the United States District Court for the Eastern District of Washington, Northern Division, Northern Pacific Railway Company v. Adams County, et al., No. E-4476, copy of which you have.

(26) The Northern Pacific Railway Company objects to the ma- [2083] teriality and relevancy of sheet one furnished it as an exhibit on July 15, 1937, and states that the same is not correct. The correct figures for the years under consideration are to be found on page six of the exhibits presented to the Board of Equalization of the State of Washington on September 5, 1935, and on page

(Plaintiff's Exhibit 89—Continued)

five of the exhibits presented to the Tax Commission of the State of Washington on August 26, 1936.

(27) The Northern Pacific Railway Company objects to the materiality and relevancy of sheet two furnished it as an exhibit on July 15, 1937, and further states that the inclusion of B. & C. bonds and the inclusion of a period in excess of five years from the assessment years is improper and incorrect.

(28) The Northern Pacific Railway Company objects to the materiality and relevancy of sheet three furnished it as an exhibit on July 15, 1937, and further states that the inclusion of B. & C. bonds and the inclusion of a period in excess of five years from the assessment years is improper and incorrect.

(29) The Northern Pacific Railway Company objects to the materiality and relevancy of sheets 4-a, 4-b and 4-c and further states that the inclusion of any period in excess of five years from the assessment years is improper.

(30) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of sheet six furnished it as an exhibit on July 15, 1937.

(31) The Northern Pacific Railway Company objects to the materiality and relevancy of sheet 20-a furnished it as an exhibit on August 13, 1937, and further states that the method in which the figures are used is improper and incorrect.

(Plaintiff's Exhibit 89—Continued)

(32) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of sheet 20-b furnished as an exhibit on August 13, 1937. [2084]

(33) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of sheet 20-c furnished it as an exhibit on August 13, 1937, and further states that it is improper to obtain the value of Burlington stock by capitalization of net corporate income after fixed charges, and further states that capitalization at the rate of 8% is improper and incorrect.

(34) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of sheet 22-a furnished it as an exhibit on August 13, 1937, and further states that the incorrectness of the method used is demonstrated by the ridiculous result reached.

(35) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of sheet 31-a furnished it as an exhibit on August 13, 1937, and further states that said figures are meaningless and useless so far as this proceeding is concerned.

(36) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of sheet 38-a furnished it as an exhibit on August 13, 1937, and further states that said exhibit does not correctly or truly state the operating expenses of Washington operating property and that

(Plaintiff's Exhibit 89—Continued)

the results attempted to be shown are incorrect and misleading.

(37) The Northern Pacific Railway Company objects to the materiality and relevancy of sheet 42 furnished it as an exhibit on August 13, 1937, and further states that the apportionment attempted to be shown is meaningless and useless.

(38) The Northern Pacific Railway Company objects to the materiality and relevancy of sheets 43, 44, and 45 furnished it as an exhibit on August 13, 1937.

(39) The Northern Pacific Railway Company objects to the materiality and relevancy of sheet 46 furnished it as an exhibit on August 13, 1937, and further states that the results computed do not correctly show the total for the system or the state. [2085]

(40) The Northern Pacific Railway Company objects to the materiality, relevancy and competency of sheet 47 furnished it as an exhibit on August 13, 1937.

(41) The Northern Pacific Railway Company objects to the materiality and relevancy of sheet 48 furnished it as an exhibit on August 13, 1937, and further states that the division of interstate freight revenue on the basis of cost is improper and incorrect, and further states that the assignment of uncollectible railroad revenue to Washington is incorrect.

(42) The Northern Pacific Railway Company objects to the materiality and relevancy of sheet

(Plaintiff's Exhibit 89—Continued)

49 furnished it as an exhibit on August 13, 1937, and further states that the cost of reproduction stated is incorrect, and further states that the elimination of taxes before computing rate of return is incorrect and improper.

(43) The Northern Pacific Railway Company objects to the materiality and relevancy of sheets 50, 51, 52 and 53 furnished it as exhibits on August 13, 1937.

Finally—The Northern Pacific Railway Company calls the attention of this Tax Commission to its notice, in which it merely advises the Northern Pacific that it “proposes to take into consideration” the said testimony, exhibits and data referred to in said notice, and that “the same will be used by the Commission if by it deemed pertinent”. The Northern Pacific expects this Commission when it “considers” the testimony, exhibits and data referred to in said notice or subsequently served upon it to reject and refuse to give any weight to said testimony, exhibits and data, except as the same agrees with or conforms to the exhibits heretofore filed with the Board of Equalization of the State of Washington on September 5, 1935, with respect to the 1935 valuation of the Northern Pacific, and the exhibits filed with the Tax Commission of the State of Washington on August 26, 1936, with respect to the 1936 valuation of the Northern Pacific, and exhibits 1 [2086] to 46, inclusive, with respect to the 1935 and 1936 valuations of the Northern Pacific

(Plaintiff's Exhibit 89—Continued)

attached to and made a part of the depositions of plaintiff's witnesses which said depositions and exhibits are now on file with the clerk of the United States District Court for the Eastern District of Washington, Northern Division, Northern Pacific Railway Company v. Adams County, et al., No. E-4476, copy of which you have. Except as stated, any legal and proper "consideration" of the testimony, exhibits and data referred to, will result in the rejection thereof by the Commission. Legally and properly, said testimony, exhibits and data cannot be "deemed pertinent" by the Commission.

Dated this 16th day of August, 1937.

NORTHERN PACIFIC

RAILWAY COMPANY,

By L. B. daPONTE,

ROBERT S. MACFARLANE,

Its Attorneys. [2087]

DEFENDANTS' EXHIBIT 1

is identical with Schedule 1 shown on page 85 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 2

is identical with Schedule 2 shown on page 85 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 2-A

purports to show both the weekly and monthly number of sales of plaintiff's stock for the years 1927 and 1928.

DEFENDANTS' EXHIBIT 2-B

purports to show both the weekly and monthly sales of plaintiff's stock for the years 1929 and 1930.

DEFENDANTS' EXHIBIT 2-C

purports to show both the weekly and monthly sales of plaintiff's stock for the years 1931 to 1935 inclusive.

DEFENDANTS' EXHIBIT 3

is identical with Schedule 3 shown on page 86 of Defendants' Exhibit 53. [2088]

(Continued) EXHIBIT A
NORTHERN PACIFIC RAILWAY COMPANY

TOTAL PAR VALUE AND TOTAL AVERAGE MARKET VALUE OF STOCK AND FUNDED DEBT (B & C BONDS INCLUDED) SUM OF AVERAGE MARKET VALUE OF STOCK AND PAR VALUE OF FUNDED DEBT (B & C BONDS INCLUDED)

Year	Par Value			Average Market Value			Average Market Value Stock	Par Value		Avg. Mkt. Value of Stock Plus Par Value of Funded Debt
	Stock	Funded Debt	Total	Stock	Funded Debt	Total		Funded Debt		
1915	\$ 248,000,000	\$ 314,086,500	\$ 562,086,500	\$ 286,000,000	\$ 280,923,847	\$ 566,923,847	\$ 286,000,000	\$ 314,086,500	\$ 600,086,500	
1916	248,000,000	313,564,500	561,564,500	280,860,000	281,548,655	562,408,655	280,860,000	313,564,500	594,424,500	
1917	248,000,000	311,087,500	559,087,500	265,460,000	277,340,114	542,800,114	265,460,000	311,087,500	576,547,500	
1918	248,000,000	310,326,500	558,326,500	255,750,000	273,824,470	529,574,470	255,750,000	310,326,500	566,076,500	
1919	248,000,000	309,721,500	557,721,500	247,070,000	267,999,385	515,069,385	247,070,000	309,721,500	556,791,500	
1920	248,000,000	315,065,000	563,065,000	252,500,000	270,139,000	522,639,000	252,500,000	315,065,000	567,565,000	
1921	248,000,000	314,539,500	562,539,500	214,830,000	267,292,350	482,122,350	214,830,000	314,539,500	529,369,500	
1922	248,000,000	319,282,400	567,282,400	204,600,000	276,412,600	481,012,600	204,600,000	319,282,400	523,882,400	
1923	248,000,000	319,849,500	567,849,500	193,440,000	275,958,316	469,398,316	193,440,000	319,849,500	513,289,500	
1924	248,000,000	318,649,000	566,649,000	177,630,000	276,217,223	453,847,223	177,630,000	318,649,000	496,279,000	
1925	248,000,000	320,818,000	568,818,000	168,743,333	285,255,512	453,998,845	168,743,333	320,818,000	489,561,333	
1926	248,000,000	319,481,000	567,481,000	165,173,333	300,720,845	465,894,178	165,173,333	319,481,000	504,654,333	
1927	248,000,000	318,232,000	566,232,000	224,737,063	313,064,916	537,801,999	224,737,063	318,232,000	542,969,063	
1928	248,000,000	316,759,500	564,759,500	247,625,416	309,901,104	557,526,520	247,625,416	316,759,500	564,384,916	
1929	248,000,000	315,424,500	563,424,500	254,471,250	294,748,114	549,219,364	254,471,250	315,424,500	569,895,750	
1930	248,000,000	314,137,000	562,137,000	184,824,563	303,362,569	488,187,172	184,824,563	314,137,000	498,961,563	
1931	248,000,000	310,142,500	558,142,500	94,524,166	283,149,270	377,673,436	94,524,166	310,142,500	404,666,666	
1932	248,000,000	309,457,500	557,457,500	36,954,583	223,085,259	260,039,842	36,954,583	309,457,500	346,412,083	
1933	248,000,000	309,222,500	557,222,500	50,633,333	231,239,959	281,873,292	50,633,333	309,222,500	359,865,833	
1934	248,000,000	310,207,500	558,207,500	60,088,333	278,433,315	338,521,648	60,088,333	310,207,500	370,295,833	
1935	248,000,000	309,788,500	557,788,500	45,001,667	292,496,119	337,497,786	45,001,667	309,788,500	354,790,167	
Total of 2 years 1933 & 1934	496,000,000	619,430,000	1,115,430,000	110,721,666	509,673,274	620,394,940	110,721,666	619,430,000	730,151,666	
Total of 3 years 1932 - 1934	744,000,000	923,887,500	1,672,887,500	147,676,249	732,756,533	880,434,782	147,676,249	923,887,500	1,076,563,749	
Total of 5 years 1930 - 1934	1,240,000,000	1,553,167,000	2,793,167,000	427,024,998	1,319,870,392	1,746,295,390	427,024,998	1,553,167,000	1,980,191,998	
Total of 2 years 1934 & 1935	496,000,000	619,996,000	1,115,996,000	105,090,000	570,929,454	676,019,454	105,090,000	619,996,000	725,086,000	
Total of 3 years 1933 - 1935	744,000,000	929,218,500	1,673,218,500	155,723,333	802,169,593	957,892,786	155,723,333	929,218,500	1,084,841,833	
Total of 5 years 1931 - 1935	1,240,000,000	1,548,818,500	2,788,818,500	287,802,082	1,308,403,922	1,596,206,004	287,802,082	1,548,818,500	1,836,020,882	
Average of 2 years 1933 & 1934	248,000,000	309,715,000	557,715,000	55,360,833	254,836,637	310,197,470	55,360,833	309,715,000	365,075,833	
Average of 3 years 1932 - 1934	248,000,000	309,629,167	557,629,167	49,225,416	244,252,844	293,478,260	49,225,416	309,629,167	358,854,583	
Average of 5 years 1930 - 1934	248,000,000	310,633,400	558,633,400	85,405,000	263,854,078	349,259,078	85,405,000	310,633,400	396,038,400	
Average of 2 years 1934 & 1935	248,000,000	309,998,000	557,998,000	52,545,000	285,444,717	338,009,717	52,545,000	309,998,000	362,543,000	
Average of 3 years 1933 - 1935	248,000,000	309,739,500	557,739,500	51,907,778	267,389,797	319,297,575	51,907,778	309,739,500	361,647,278	
Average of 5 years 1931 - 1935	248,000,000	309,763,700	557,763,700	57,440,416	261,680,784	319,121,200	57,440,416	309,763,700	367,204,116	

DEFENDANTS' EXHIBIT 5

is identical with Schedule 5 shown on page 88 of Defendants' Exhibit 53.

[2090]

(Continued from Page 2623)

NORTHERN PACIFIC RAILWAY

TOTAL MONTHLY HIGH AND LOW QUOTATIONS OF STOCKS AND BONDS, INCLUDING "B" & "C" SERIES, AS SHOWN BY "THE COMMERCIAL AND FINANCIAL CHRONICLE"

<u>Year</u>	<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>Total</u>	<u>Yearly Average</u>
1928	\$558,419,504	\$551,609,243	\$560,617,635	\$564,242,753	\$567,259,644	\$552,103,185	\$541,969,552	\$541,970,824	\$550,748,948	\$554,986,828	\$574,636,404	\$571,755,740	\$6,690,318,260	\$567,526,622
1929	575,355,626	570,688,869	562,136,214	552,450,416	545,087,718	552,087,752	571,540,140	559,230,725	552,446,280	527,530,958	504,046,342	522,031,346	6,590,682,361	549,219,364
1930	515,015,561	524,665,989	536,289,791	523,544,524	502,569,185	486,798,030	489,848,139	485,892,037	481,436,064	456,335,605	438,407,176	419,645,976	5,808,246,077	488,187,173
1931	439,509,568	447,499,753	439,122,125	417,865,206	396,191,718	399,809,517	398,779,671	366,835,710	346,378,031	314,898,339	301,518,516	265,672,884	4,532,061,238	377,673,436
1932	282,575,247	289,032,370	284,119,342	246,630,408	210,832,062	204,639,155	228,996,390	223,136,707	204,190,892	224,082,896	222,314,590	249,628,047	3,120,478,105	260,039,642
1933	263,227,735	256,022,793	246,523,106	242,965,667	279,364,171	300,566,661	322,595,206	321,560,328	302,751,759	285,296,743	271,631,679	290,984,635	3,362,479,465	281,673,290
1934	321,728,832	325,218,066	361,187,258	371,235,606	351,365,084	342,169,510	333,382,164	314,347,074	310,798,526	327,327,655	332,413,954	343,081,061	4,062,269,790	336,521,649
1935	345,688,252	338,889,324	321,749,737	320,672,948	331,500,063	343,576,788	348,406,837	336,392,254	331,060,688	327,248,461	344,294,397	360,695,684	4,049,673,433	337,497,786

DEFENDANTS' EXHIBIT 5-B

contains no data different from, or in addition to, that set forth on Defendants' Exhibit 4.

DEFENDANTS' EXHIBIT 6

is identical with Schedule 4 shown on page 87 of Defendants' Exhibits 53.

DEFENDANTS' EXHIBIT 7

is identical with Schedule 6 shown on page 89 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 8

is identical with Schedule 7 shown on page 89 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 9

is identical with Schedule 8 shown on page 90 of Defendants' Exhibit 53.

[2092]

(DEPENDENT ACCOUNTS)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

INCOME ACCOUNT

	1930	1931	1932	1933	1934	1935
1. I. OPERATING INCOME						
2. a. Railway operating income:						
3. Railway operating revenues	\$141,379,422	\$111,218,960	\$ 79,543,829	\$ 78,496,975	\$ 80,288,159	\$ 82,925,209
4. Railway operating expenses	90,877,814	77,465,569	58,517,604	54,351,599	58,007,983	55,844,584
5. Net revenue from railway operations	42,501,608	33,752,991	21,026,225	24,135,376	22,280,176	20,380,625
6. Railway tax accruals:						
7. United States Government taxes	2,447,340	1,511,001	29,268*	149,533	162,283	130,339
8. Other than United States Government taxes	8,744,536	8,444,502	8,177,454	8,769,163	5,621,314	5,883,681
9. Total railway tax accruals	11,191,876	9,955,503	8,148,156	6,918,696	5,783,597	5,985,920
10. Noncollectible railway revenues	30,200	23,739	31,176	20,465	25,123	23,230
11. Railway operating income	31,279,532	23,773,749	12,846,693	17,196,225	16,471,456	14,373,875
12. B. Rent income						
13. Hire of freight cars - credit balance						
14. Rent from locomotives	250,047	246,033	135,809	100,610	90,591	143,631
15. Rent from passenger train cars	65,018	90,989	99,582	79,348	86,067	100,678
16. Rent from floating equipment	0	0	0	0	0	0
17. Rent from work equipment	150,661	113,254	67,690	63,351	53,988	90,523
18. Joint facility rent income	600,212	500,315	667,924	497,489	522,541	584,563
19. Total Rent Income	1,065,938	1,000,661	971,285	740,698	755,187	889,395
20. C. Rents payable						
21. Hire of freight cars - debit balance	1,161,659	1,098,877	1,236,738	1,338,331	1,591,846	1,686,899
22. Rent for locomotives	136,360	144,118	99,362	81,835	89,646	115,471
23. Rent for passenger-train cars	202,765	166,195	165,699	177,195	211,154	469,192
24. Rent for floating equipment	15,840	14,600	15,354	11,712	11,688	11,672
25. Rent for work equipment	16,434	13,920	11,917	10,024	8,054	6,732
26. Joint facility rent	4,636,358	2,829,961	2,698,361	2,826,600	2,663,349	2,745,749
27. Total rents payable	4,389,406	4,267,692	4,225,481	4,445,598	4,576,707	5,034,915
28. Net rents	3,323,468*	3,266,831*	3,254,196*	3,708,000*	3,820,520*	4,148,380*
29. Net railway operating income	27,956,054	20,506,918	9,592,497	13,491,225	12,680,936	10,288,385
30. II. OTHER INCOME						
31. Income from lease of road	7,518	7,568	7,436	7,363	7,301	7,168
32. Miscellaneous rent income	608,253	703,197	720,090	725,612	694,090	697,662
33. Miscellaneous nonoperating physical property	15,843	1,749	11,150	30,942	15,856	10,095
36. Dividend income	1,554,066	738,339	255,456	509,143	223,176	164,999
37. Income from funded securities	405,270	540,965	183,613	180,177	266,901	171,120
38. Income from unfunded securities and accounts	887,799	260,964	160,898	113,104	47,267	27,709
42. Miscellaneous income	45,380	46,372	24,266	14,287	1,877	2,740
43. Total other income	3,525,099	2,299,074	1,362,919	1,561,828	1,264,168	1,080,893
44. Total income	31,481,163	22,805,992	10,955,416	15,053,053	15,905,104	11,309,248
45. III. MISCELLANEOUS DEDUCTIONS FROM INCOME						
46. Miscellaneous rents	24,510	25,796	29,493	27,570	19,329	20,991
49. Miscellaneous tax accruals	27,743	17,199	13,510	9,049	9,058	11,411
53. Miscellaneous income charges	0	0	8,847	7,735	5,843	5,843
54. Total miscellaneous deductions	54,253	42,995	43,003	44,465	38,222	38,245
55. Income available for fixed charges	31,426,910	22,762,997	10,912,413	15,008,587	15,866,882	11,271,003
56. IV. FIXED CHARGES						
57. Rent for leased roads	170,337	170,582	148,843	148,303	150,542	152,692
58. Interest on funded debt:						
59. (a) Fixed Interest	9,084,635	9,084,635	9,084,635	9,084,635	9,084,635	9,084,635
60. Interest on unfunded debt	46,807	42,774	30,848	32,356	34,274	45,961
61. Amortization of discount on funded debt	145,271	145,271	145,271	145,271	145,271	145,271
62. Total fixed charges	9,447,050	9,444,862	9,409,597	9,410,567	9,414,722	9,458,159
63. Income after fixed charges	21,979,860	13,319,735	1,502,816	5,598,024	4,454,760	1,842,844
67. Net income	\$ 21,979,860	\$ 13,319,735	\$ 1,502,816	\$ 5,598,024	\$ 4,454,760	\$ 1,842,844

* Indicates Red Figures

2026

2026

DEFENDANTS' EXHIBIT 10

is identical with Schedule 9 shown on page 91 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 11

is identical with Schedule 10 shown on page 92 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 12

is identical with Schedule 11 shown on page 92 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 13

is identical with Schedule 12 shown on page 93 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 13-A

is a photographic copy of Amended Articles of Incorporation of the Northwestern Improvement Company (Reducing capital to \$12,400,000.00) of Jersey City, N. J., filed for record in the office of the Secretary of State May 8, 1937, at 9:50 o'clock A. M., recorded in Book 47, page 460-462, Foreign Corporations. Filed at request of Northern Pacific Railway Company.

It consists of instrument designated "Certificate of Decrease of Capital Stock of Northwestern Improvement Company" 4 pages in length, and acknowledgment of E. A. Gay, secretary to N. W. I. Co, dated October 28, 1936. Also cross certificate of

Albert Marinelli, clerk of New York county, N. Y., that F. G. Hollider who took said acknowledgment is duly qualified.

Also certificate of Secretary of State of New Jersey, that foregoing is true copy of certificate of decrease of capital stock of N W I Co, dated April 21, 1937.

DEFENDANTS' EXHIBIT 14

is identical with Schedule 13 shown on page 93 of Defendants' Exhibit 53. [2094]

DEFENDANTS' EXHIBIT 14-A

is a copy of Plaintiff's Annual Report to its stockholders for the year 1930.

On page 3, Charles Donnelly is listed as plaintiff's president, one of its directors, and also president of its executive committee.

The Report begins as follows:

"Office of the
Northern Pacific Railway Company,
St. Paul, Minnesota, April 17, 1931.

To the Stockholders of the
Northern Pacific Railway Company:

The following, being the thirty-fourth annual report, shows the result of the operation of your property for the year ended December 31, 1930." (p. 5)

Then follows a statement of Plaintiff's Income Account for the years 1929 and 1930 (p. 5), and

statements respecting its earnings, expenses, property, and other matters. (pp. 6-16) The following statement is made respecting the Land Department (pp. 13-14):

“Land Department.

The operations of the Land Department for the year are summarized on pages 38 and 39.

During the year 112,277.44 acres were sold as compared with 249,492.31 acres sold in 1929, a decrease of 55%. The total of land, town lot, timber, and miscellaneous sales in 1930 amounted to \$1,484,628.62, as compared with \$2,246,935.32 in 1929, a decrease of 33.9%. The market for all classes of land was greatly depressed throughout the year, the timber industry and the various branches of agriculture being affected to a marked degree by the adverse business conditions generally prevailing. Contract cancellations during the year amounted to 76,899.88 acres, representing \$381,456.30, as compared with 49,016.98 acres, representing \$211,026.90 cancelled in 1929, an increase of 56.9% in acres, and 80.8% in amount.

The outstanding deferred payments on land contracts on December 31, 1930, amounted to \$4,673,610.72, as compared with \$5,051,620.02 on December 31, 1929, a decrease of 7.5%.

The net cash receipts for the year amounted to \$431,329.65, as compared with \$621,017.86 in 1929, a decrease of 30.5%. This is largely

caused by fewer down payments as the result of the falling off in sales of lands and timber, and slower collections of deferred payments and interest on outstanding contracts, but receipts from cultivation leases and coal mining leases were also much below similar receipts in 1929. On the other hand, receipts from iron ore leases amounted to \$450,121.79, as compared with \$241,015.42 in 1929, and the receipts from oil and gas leases amounted to \$42,847.98, as compared with \$22,761.10 in 1929." [2095]

The Report concludes (p. 16):

“Subsidiary Companies.

The operating results of the Spokane, Portland & Seattle Railway Company, together with its subsidiaries, the Oregon Trunk, Oregon Electric, and United Railways, will be found on page 40, and those of the Minnesota & International Railway Company on page 41.

By order of the Board of Directors,

CHARLES DONNELLY,

President.”

The Profit and Loss Account is set forth on page 20, which shows, among other items, a charge for “Loss on Land Department operations” of \$14,949.24.

On page 23 is a statement of “Investments in Affiliated companies, December 31, 1930.” Under this head is listed stock of the par value of \$20,000,000, and bonds of the par value of \$36,855,000

of the Spokane, Portland and Seattle Railway Company.

On page 40 is set forth the "Income Account" of the "Spokane, Portland and Seattle Railway Company including Oregon Trunk Railway, Oregon Electric Railway and United Railways Companies," showing, among other things, the railway operating revenues, net operating revenue and net railway operating income of said companies for the years 1929 and 1930. On page 40 it is stated, further, that plaintiff owns one-half of the entire issue of 400,000 shares of the stock of the Spokane, Portland and Seattle Railway Company, and that the latter company owns the entire issue of stock of the Oregon Trunk Railway and stock and bonds of the United Railways Company, and also 98% of the stock of the Oregon Electric Railway Company.

On page 39 it is shown that for 1930 the new contracts for sale of land amounted to \$433,745, the collections on outstanding contracts were \$444,818, and that outstanding contracts were cancelled by default to the extent of \$366,936.

The following is a copy of page 38 of said Report:

[2096]

NORTHERN PACIFIC RAILWAY COMPANY.

LAND DEPARTMENT.

The transactions for the year ended December 31, 1930, were as follows:

	Cash payment	Contracts for deferred payments	Total
New sales.....	112,277.44	\$433,744.79	\$1,484,628.62
Cancellation of prior sales.....	76,899.88	366,935.81	381,456.30
Net sales.....	35,377.56	66,808.98	1,103,172.32
The cash transactions of the Department were as follows:			
Received from sales as above.....			1,036,363.34
Received from payments on contracts.....			444,818.28
Interest collected on deferred payments.....			141,732.85
Total.....			1,622,914.47
Less for expenses.....	475,636.11		
Less for taxes.....	715,948.71		
Net cash receipts for the year.....			1,191,584.82
			431,329.65

The net proceeds credited to property and profit and loss accounts were made up as follows:

Total net sales as above.....	1,103,172.32
Interest collected.....	141,732.85
Expenses and taxes.....	1,244,905.17
Surplus.....	1,191,584.82
	53,320.35
Credited to—Miscellaneous Physical property.....	53,159.34
Profit and loss.....	161.01

BALANCE OF LAND DEPARTMENT CURRENT ASSETS.

	1930	1929	Increase— Decrease—
Contracts for sale of lands.....	\$4,673,610.72	D \$5,051,620.02	D \$378,009.30
Bills receivable.....	15.00	15.00	
Accounts receivable.....	47,876.08	D 98,513.38	D 50,637.30
	4,721,501.80	D 5,150,148.40	D 428,646.60
Less, accounts payable.....	97,381.68	D 133,384.75	D 36,003.07
Less, suspense account (collections not taken to account by land agents).....	24,405.92	D 30,361.58	D 5,955.66
	121,787.60	D 163,746.33	D 41,958.73
Balance Land Department current assets.....	4,599,714.20	D 4,986,402.07	D 386,687.87

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DEFENDANTS' EXHIBIT 14-B

is a copy of Plaintiff's Annual Report to its stockholders for the year 1931.

On page 3, Charles Donnelly is listed as plaintiff's president, one of its directors, and also president of its executive committee.

The Report begins as follows:

"Office of the
Northern Pacific Railway Company,
St. Paul, Minnesota, April 28, 1932.

To the Stockholders of the
Northern Pacific Railway Company:

The following, being the thirty-fifth annual report, shows the result of the operation of your property for the year ended December 31, 1931." (p. 5)

Then follows a statement of Plaintiff's Income Account for the years 1930 and 1931 (p. 5), and statements respecting its earnings, expenses, property, and other matters. (pp. 6-16) The following statement is made respecting the Land Department (p. 13):

"Land Department.

The operations of the Land Department for the year are summarized on pages 38 and 39.

The results reflect clearly the unfavorable conditions which continued from the previous year in the fields of agriculture, stock growing, timber production and mining in the territory

where the Company's land holdings are located. With the single exception of oil and gas properties, all the major sources from which land revenues are usually derived, were greatly restricted because of the general business depression.

During the year 56,255.89 acres were sold, as compared with 112,277.44 acres sold in 1930, a decrease of 49.9%. The total of land, town lot, timber and miscellaneous sales in 1931 amounted to \$1,109,619.38 as compared with \$1,484,628.62 in 1930, a decrease of 25.3%. Contract cancellations during the year amounted to 54,758.83 acres, representing \$348,909.49, as compared with 76,899.88 acres, representing \$381,456.30, canceled in 1930, a decrease in acres of 28.8%, and in amount of 8.5%. The outstanding deferred payments on land contracts on December 31, 1931, amounted to \$4,347,957.47 as compared with \$4,673,610.72 on December 31, 1930, a decrease of 7%.

The net cash receipts for the year amounted to \$56,862.86 as compared with \$431,329.65 in 1930, a decrease of 86.8%. This [2098] large decrease was caused principally by the heavy falling-off in sales of lands and timber, resulting in smaller down payments, and the strained financial circumstances of contract holders and lessees retarded the collection of principal, interest and rentals. The receipts from coal mining leases and iron ore leases were also very

much less than the receipts from these sources in 1930. On the other hand, receipts from oil and gas leases in 1931 amounted to \$83,588.07 as compared with \$42,883.76 in 1930.”

The Report concludes (p. 16):

“Subsidiary Companies.

The operating results of the Spokane, Portland & Seattle Railway Company, together with its subsidiaries, the Oregon Trunk, Oregon Electric, and United Railways, will be found on page 40, and those of the Minnesota & International Railway Company on page 41.

By order of the Board of Directors

CHARLES DONNELLY,

President.”

The Profit and Loss Account is set forth on page 20, which shows, among other items, a charge for “Loss on Land Department Operations” of \$271,154.94.

On page 23 is a statement of “Investments in Affiliated companies, December 31, 1931.” Under this head is listed stock of the par value of \$20,000,000, and bonds of the par value of \$36,855,000 of the Spokane, Portland and Seattle Railway Company.

On page 40 is set forth the “Income Account” of the Spokane, Portland and Seattle Railway Company including Oregon Trunk Railway, Oregon Electric Railway and United Railways Companies,

showing, among other things, the railway operating revenues, net operating revenue and net railway operating income of said companies for the years 1930 and 1931.

On page 40 it is stated, further, that plaintiff owns one-half [2099] of the entire issue of 400,000 shares of the stock of the Spokane, Portland and Seattle Railway Company, and that the latter company owns the entire issue of stock of the Oregon Trunk Railway and stock and bonds of the United Railways Company, and also 98% of the stock of the Oregon Electric Railway Company.

On page 39 it is shown that for 1931 the new contracts for sale of land amounted to \$294,189, the collections on outstanding contracts were \$276,925, and that outstanding contracts were cancelled by default to the extent of \$342,917.

The following is a copy of page 38 of said Report:

[2100]

NORTHERN PACIFIC RAILWAY COMPANY.

LAND DEPARTMENT.

The transactions for the year ended December 31, 1931, were as follows:

	Acres	Cash payment	Contracts for deferred payments	Total
New sales	56,255.89	\$815,430.25	\$294,189.13	\$1,109,619.38
Cancellation of prior sales	54,758.83	5,992.01	342,917.48	348,909.49
Net sales	1,497.06	809,438.24	48,728.55	760,709.89

The cash transactions of the Department were as follows:

Received from sales as above	809,438.24
Received from payments on contracts	270,924.90
Interest collected on deferred payments	71,418.32
Total	1,157,781.46
Less for expenses	443,733.56
Less for taxes	657,185.04
Net cash receipts for the year	1,100,918.60
	56,862.86

The net deficit included in property and profit and loss accounts was made up as follows:

Total net sales as above	760,709.89
Interest collected	71,418.32
Expenses and taxes	832,128.21
Deficit	1,100,918.60
	268,790.39
Credited to—Miscellaneous Physical property	2,364.55
Charged to—Profit and loss	271,154.94

BALANCE OF LAND DEPARTMENT CURRENT ASSETS.

	1931	1930	Increase— Decrease—D
Contracts for sale of lands	\$4,673,010.72	D	\$325,653.25
Bills receivable	15.00	D	15.00
Accounts receivable	47,876.08	I	28,603.89
Less, accounts payable	4,424,437.44	D	297,064.36
Less, suspense account (collections not taken to account by land agents)	96,106.82	D	1,274.86
	15,908.37	D	24,405.92
	112,015.19	D	9,772.41
Balance Land Department current assets	4,312,422.25	D	287,291.95

DEFENDANTS' EXHIBIT 14-C

is a copy of Plaintiff's Annual Report to its stockholders for the year 1932.

On page 3, Charles Donnelly is listed as plaintiff's president, one of its directors, and also president of its executive committee.

The Report begins as follows:

"Office of the
Northern Pacific Railway Company
St. Paul, Minnesota, April 29, 1933.

To the Stockholders of the
Northern Pacific Railway Company:

The following, being the thirty-sixth annual report, shows the result of the operation of your property for the year ended December 31, 1932." (p. 5)

Then follows a statement of Plaintiff's Income Account for the years 1931 and 1932 (p. 5), and statements respecting its earnings, expenses, property, and other matters. (pp. 6-16) The following statement is made respecting the Land Department (p. 13):

"Land Department.

The operations of the Land Department for the year are summarized on pages 38 and 39.

Without exception the main sources from which land revenues are derived were less productive than in any previous year in the Com-

pany's history, due to continued unfavorable business conditions.

During the year 78,888.17 acres were sold, as compared with 56,255.89 acres sold in 1931, an increase of 40.2%, but the increase is accounted for by the sale of one large tract of extremely low priced land. Land, town lot, and timber and miscellaneous sales in 1932 amounted to \$774,155.46, as compared with \$1,109,619.38 in 1931, a decrease of 30.2%. During 1932 contracts were cancelled to the extent of 167,419.53 acres, representing \$586,080.59, as compared with 54,758.83 acres, representing \$348,909.49 in 1931, an increase in acres of 206% and in dollars of 68%. The outstanding deferred payments on land contracts on December 31, 1932, amounted to \$3,835,455.90, as compared with \$4,347,957.47 on December 31, 1931, a decrease of 11.8%.

Expenses and taxes exceeded gross cash receipts by \$296,253.79, as compared with net cash receipts in 1931 of \$56,862.86. The heavy falling off in sales of land and timber, resulting in smaller down payments, and the straitened financial circumstances of contract holders and lessees, referred to in the 1931 report, were more pronounced in 1932. Except for the sale of one large tract [2102] of cheap land above referred to, very little land and practically no timber was sold, and collections on deferred accounts due from contract holders and

on rentals due from lessees were very much restricted. The market for coal was slack, and the Company's iron mines in Minnesota were all idle. The oil and gas revenues which had been increasing in previous years decreased to some extent in 1932."

The Report concludes (p. 16) :

“Subsidiary Companies.

The operating results of the Spokane, Portland & Seattle Railway Company, together with its subsidiaries, the Oregon Trunk, Oregon Electric, and United Railways, will be found on page 40, and those of the Minnesota & International Railway Company on page 41.

By order of the Board of Directors,

CHARLES DONNELLY,

President.”

The Profit and Loss Account is set forth on page 20, which shows, among other items, a charge for “Loss on Land Department operations” of \$673,-741.48.

On page 23 is a statement of “Investments in Affiliated companies, December 31, 1932.” Under this head is listed stock of the par value of \$20,-000,000, and bonds of the par value of \$36,855,000 of the Spokane, Portland and Seattle Railway Company.

On page 40 is set forth the “Income Account” of the “Spokane, Portland and Seattle Railway Com-

pany including Oregon Trunk Railway, Oregon Electric Railway and United Railways Companies," showing, among other things, the railway operating revenues, net operating revenue and net railway operating income of said companies for the years 1931 and 1932. On page 40 it is stated, further, that plaintiff owns one-half of the entire issue of 400,000 shares of the stock of the Spokane, Portland and Seattle Railway Company, and that the latter company owns the entire issue of stock of the Oregon Trunk Railway and stock and bonds of the United Railways Company, and also 98% of the stock of the Oregon Electric Railway Company.

[2103]

On page 39 it is shown that for 1932 the new contracts for sale of land amounted to \$139,893, the collections on outstanding contracts were \$80,245, and that outstanding contracts were cancelled by default to the extent of \$572,149.

The following is a copy of page 38 of said Report:

[2104]

NORTHERN PACIFIC RAILWAY COMPANY.

LAND DEPARTMENT.

The transactions for the year ended December 31, 1932, were as follows:

	Acres	Cash payment	Contracts for deferred payments	Total
New sales.....	78,888.17	\$ 634,262.31	\$ 139,893.15	\$ 774,155.46
Cancellation of prior sales.....	167,419.53	13,931.17	572,149.42	586,080.59
Net sales.....	<u>88,531.36</u>	<u>620,331.14</u>	<u>432,256.27</u>	<u>188,074.87</u>

The cash transactions of the Department were as follows:

	Northern Pacific R. R. land grants	St. Paul and Duluth R. R., land grant	Total
Received from sales as above.....	\$277,586.91	\$342,744.23	\$620,331.14
Received from payments on contracts.....	79,916.22	329.08	80,245.30
Interest collected on deferred payments.....	15,081.33	60.05	15,141.38
Total.....	<u>372,584.46</u>	<u>343,133.36</u>	<u>715,717.82</u>
Less for expenses.....	371,262.79	8,044.58	379,307.37
Less for taxes.....	623,169.54	9,494.70	632,664.24
Total.....	<u>994,432.33</u>	<u>17,539.28</u>	<u>1,011,971.61</u>
Net cash receipts for the year.....	<u>621,847.87</u>	<u>335,594.08</u>	<u>296,253.79</u>

The net deficit included in property and profit and loss accounts was made up as follows:

Net sales.....	154,949.35	343,024.22	188,074.87
Interest collected.....	15,081.33	60.05	15,141.38
Total.....	<u>139,868.02</u>	<u>343,084.27</u>	<u>203,216.25</u>
Expenses and taxes.....	994,432.33	17,539.28	1,011,971.61
Net income.....	<u>1,134,900.35</u>	<u>335,544.99</u>	<u>808,755.36</u>
Charged to—Miscellaneous Physical property.....	135,013.88	.....	135,013.88
Charged to—Profit and loss.....	999,286.47	325,544.99	673,741.48

BALANCE OF LAND DEPARTMENT CURRENT ASSETS.

	1932	1931	Increase— Decrease—D
Contracts for sale of lands.....	\$3,835,455.90	\$4,347,937.47	D \$512,501.57
Loans, bills receivable, and notes.....	150,000.00	.....	I 150,000.00
Accounts receivable.....	110,732.36	76,479.97	I 34,252.39
Total.....	<u>4,096,188.26</u>	<u>4,424,437.44</u>	D 328,249.18
Less, accounts payable.....	81,038.16	96,106.82	D 15,068.66
Less, suspense account (collections not taken to account by land agents).....	8,688.52	15,908.37	D 7,219.85
Total.....	<u>89,726.68</u>	<u>112,015.19</u>	D 22,288.51
Balance Land Department current assets.....	<u>4,006,461.58</u>	<u>4,312,422.25</u>	D 305,960.67

DEFENDANTS' EXHIBIT 14-D

is a copy of Plaintiff's Annual Report to its stockholders for the year 1933.

On page 3, Charles Donnelly is listed as Plaintiff's president, one of its directors, and also president of its executive committee.

The Report begins as follows:

"Office of the
Northern Pacific Railway Company,
St. Paul, Minnesota, April 16, 1934.

To the Stockholders of the
Northern Pacific Railway Company:

The following, being the thirty-seventh annual report, shows the result of the operation of your property for the year ended December 31, 1933." (p. 5)

Then follows a statement of Plaintiff's Income Account for the years 1932 and 1933 (p. 5), and statements respecting its earnings, expenses, property, and other matters. (Pp. 5-16) The following statement is made respecting the Land Department (p. 13):

"Land Department.

The operations of the Land Department for the year are summarized on pages 38 and 39.

Land revenues continued to be affected adversely by the prevailing disturbed business conditions.

During the year 23,472.30 acres were sold, as compared with 78,888.17 acres sold in 1932, a decrease of 70.2%. Land, town lot, timber, and miscellaneous sales in 1933 amounted to \$755,306.90, as compared with \$774,155.46 in 1932, a decrease of 2.4%. In 1932, there was a sale of a large tract of extremely low-priced land. If this sale is eliminated, the comparison shows some improvement in general sales in 1933. Contracts were cancelled in 1933 to the extent of 87,666.46 acres, representing \$699,783.24 in deferred payments, as compared with 167,419.53 acres in 1932, representing \$572,149.42. The outstanding deferred payments on land contracts as of December 31, 1933, amounted to \$3,279,019.67, as compared with \$3,835,455.90 on December 31, 1932, a decrease of 14.5%. Expenses and taxes exceeded gross cash receipts by \$223,794.03. The corresponding deficit in 1932 was \$296,253.79. This somewhat better showing reflects economies in operation and reduction in taxes. [2106]

The main factor in the relatively poor showing in 1933 was the falling off in receipts from iron ore leases in Minnesota. Receipts from this source in 1932 amounted to \$342,100, while in 1933 they amounted to \$121,752.06, the decrease being occasioned by curtailed operations on the iron ranges. Collections in 1933 from contract holders were somewhat better, and

from lessees collections were decidedly better than in 1932. Revenues from timber sales improved, but coal, oil and gas revenues were slightly less."

The Report concludes (p. 16):

"Subsidiary Companies.

The operating results of the Spokane, Portland and Seattle Railway Company, together with its subsidiaries, the Oregon Trunk, Oregon Electric, and United Railways, will be found on page 40, and those of the Minnesota and International Railway Company on page 41.

By order of the Board of Directors,

CHARLES DONNELLY,

President."

The Profit and Loss Account is set forth on page 20, which shows among other items a charge for "Loss on Land Department operations" of \$682,256.12.

On page 23 is a statement of "Investments in Affiliated Companies, December 31, 1933." Under this head is listed stock of the par value of \$20,000,000, and bonds of the par value of \$36,855,000 of the Spokane, Portland, and Seattle Railway Company.

On page 40 is set forth the "Income Account" of the "Spokane, Portland and Seattle Railway Company, including Oregon Trunk Railway, Oregon Electric Railway and United Railways Companies,"

showing, among other things, the railway operating revenues, net operating revenue and net railway operating income of said companies for 1932 and 1933. [2107]

On page 40 it is stated, further, that plaintiff owns one-half of the entire issue of 400,000 shares of the stock of the Spokane, Portland and Seattle Railway Company, and that the latter company owns the entire issue of the stock of the Oregon Trunk Railway and stock and bonds of the United Railways Company, and 98% of the stock of the Oregon Electric Railway Company.

On page 39 it is shown that for 1933 the new contracts for sale of land amounted to \$249,986, the collections on outstanding contracts were \$106,639, and that outstanding contracts were cancelled by default to the extent of \$699,783.

The following is a copy of page 38 of said Report:

[2108]

NORTHERN PACIFIC RAILWAY COMPANY.

LAND DEPARTMENT.

The transactions for the year ended December 31, 1933, were as follows:

	Acre	Cash payment	Contracts for deferred payments	Total
New sales.....	23,472.30	\$505,321.18	\$249,985.72	\$755,306.90
Cancellation of prior sales.....	87,666.46	4,834.02	699,783.24	704,617.26
Net sales.....	<u>64,194.16</u>	<u>500,487.16</u>	<u>449,797.52</u>	<u>50,689.64</u>

The cash transactions of the Department were as follows:

	Northern, Pacifie R. R. land grants	St. Paul and Duluth R. R. land grant	Total
Received from sales as above.....	\$375,291.93	\$122,195.23	\$500,487.16
Received from payments on contracts.....	106,449.96	188.75	106,638.71
Interest collected on deferred payments.....	39,573.45	3,122.56	42,696.01
Total.....	<u>524,315.34</u>	<u>125,506.54</u>	<u>649,821.88</u>
Less for expenses.....	305,730.40	5,662.21	311,392.61
Less for taxes.....	554,178.52	8,044.78	562,223.30
Total.....	<u>859,908.92</u>	<u>13,706.99</u>	<u>873,615.91</u>
Net cash receipts for the year.....	<u>335,593.58</u>	<u>111,799.55</u>	<u>223,794.03</u>

The net deficit included in property and profit and loss accounts was made up as follows:

Net sales.....	74,406.90	122,096.54	50,689.64
Interest collected.....	39,573.45	3,122.56	42,696.01
Total.....	<u>31,833.45</u>	<u>125,219.10</u>	<u>93,385.65</u>
Expenses and taxes.....	859,908.92	13,706.99	873,615.91
Net income.....	<u>897,742.37</u>	<u>111,512.11</u>	<u>780,230.26</u>
Charged to—Miscellaneous Physical property.....	97,974.14	.....	97,974.14
Charged to—Profit and loss.....	793,768.23	111,512.11	682,256.12

BALANCE OF LAND DEPARTMENT CURRENT ASSETS.

	1933	1932	Increase— Decrease—D
Contracts for sale of lands.....	\$3,279,019.67	\$3,835,455.90	D \$556,436.23
Loans, bills receivable, and notes.....	175,000.00	150,000.00	I 25,000.00
Accounts receivable.....	163,035.26	110,732.36	I 52,302.90
Less, accounts payable.....	3,617,054.93	4,096,188.26	D 479,133.33
Less, suspense account (collections not taken to account by land agents).....	86,370.37	81,038.16	I 5,332.21
	11,857.13	8,688.52	I 3,168.61
	98,227.50	89,726.68	I 8,500.82
Balance Land Department current assets.....	<u>3,518,827.43</u>	<u>4,006,461.58</u>	D 487,634.15

DEFENDANTS' EXHIBIT 14-E

is a copy of Plaintiff's Annual Report to its stockholders for the year 1934.

On page 3, Charles Donnelly is listed as Plaintiff's president, one of its directors, and also president of its executive committee.

The Report begins as follows:

"Office of the
Northern Pacific Railway Company,
St. Paul, Minnesota, April 18, 1935.

To the Stockholders of the
Northern Pacific Railway Company:

The following, being the thirty-eighth annual report, shows the result of the operation of your property for the year ended December 31, 1934." (p. 5)

Then follows a statement of Plaintiff's Income Account for the year 1932 and 1933 (p. 5), and statements respecting its earnings, expenses, property, and other matters. (pp. 6-16) The following statement is made respecting the Land Department (pp. 13-14):

"Land Department.

The operations of the Land Department for the year are summarized on pages 40 and 41.

Revenues were considerably larger than for the previous year in nearly all branches of land, timber, and mineral activities, excepting Minne-

sota iron ore properties, where operations were of a minor nature, with correspondingly low revenues.

During the year 108,367.55 acres were sold, as compared with 23,472.30 acres sold in 1933, an increase of 361.7%. Land, town lot, timber, and miscellaneous sales in 1934 amounted to \$766,612.88, as compared with \$755,306.90 in 1933, an increase of 1.5%. Contracts were cancelled in 1934 to the extent of 85,645.25 acres, representing \$576,503.51 in deferred payments, as compared with 87,666.46 acres in 1933, representing \$699,783.24. The outstanding deferred payments on December 31, 1934, amounted to \$2,638,009.51, as compared with \$3,279,019.67 on December 31, 1933, a decrease of 19.5%. Total cash receipts amounted to \$888,475.51, as compared with \$649,821.88 in 1933, an increase of 36.7%. Total expenses and taxes amounted to \$884,967.27, as compared with \$873,615.91 during 1933, an increase of 1.3%. Net cash receipts amounted to \$3,508.24, as compared with a deficit in 1933 of \$223,794.03.

The principal factors in this improved showing were increase in land sales, with corresponding increase in cash payments, and an improvement in collection of principal and interest. Undoubtedly the larger collections reflect to a considerable extent the payments to farmers under the agricultural recovery programs of the Federal government." [2110]

The Report concludes (p. 16):

“Subsidiary Companies.

The operating results of the Spokane, Portland and Seattle Railway Company, together with its subsidiaries, the Oregon Trunk, Oregon Electric, and United Railways, will be found on page 42, and those of the Minnesota and International Railway Company on page 43.

By Order of the Board of Directors,
CHARLES DONNELLY,
President.”

On pages 20 and 21 is set forth Plaintiff's General Balance Sheet, December 31, 1934, wherein the book value of road and equipment is stated to be \$603,233,298.40, and in separate items the book value of “Miscellaneous Physical Property” is stated to be \$11,789,251, and that of “Contracts for sale of land grant lands” is stated to be \$2,638,010, there being no other item of real property listed as an asset.

The Profit and Loss Account is set forth on page 22, which shows, among other items, a charge for “Loss on Land Department operations” of \$671,722.17.

On page 25 is a statement of “Investments in Affiliated Companies, December 31, 1934.” Under this head is listed stock of the par value of \$20,000,000, and bonds of the par value of \$36,855,000 of the Spokane, Portland and Seattle Railway Company, and stock of the par value of \$24,800,000 and

book value of \$6,775,000 of the Northwestern Improvement Company.

On page 42 is set forth the "Income Account" of the "Spokane, Portland and Seattle Railway Company, including Oregon Trunk Railway, Oregon Electric Railway and United Railways Companies, showing, among other things, the railway operating revenues, net operating revenue and net railway operating income of said companies for 1933 and 1934. [2111] On page 42 it is stated, further, that Plaintiff owns one-half of the entire issue of 400,000 shares of stock of the Spokane, Portland and Seattle Railway Company, and that the latter company owns the entire issue of stock of the Oregon Trunk Railway and stock and bonds of the United Railways Company, and 98% of the stock of the Oregon Electric Railway Company. The operated mileage of said roads is shown to be:

Spokane, Portland and Seattle	552.87 miles
Oregon Trunk	151.92 miles
Oregon Electric	192.04 miles
United Railways	50.14 miles
	<hr/>
Total	946.97 miles.

On page 41 it is shown that for 1934 the new contracts for sale of land amounted to \$182,520, the collections on outstanding contracts were \$247,026, and that outstanding contracts were cancelled by default to the extent of \$576,504.

The following is a copy of page 40 of said Report: [2112]

NORTHERN PACIFIC RAILWAY COMPANY.

LAND DEPARTMENT.

The transactions for the year ended December 31, 1934, were as follows:

	Acres	Cash payment	Contracts for deferred payments	Total
New sales.....	108,367.55	\$584,093.27	\$182,519.61	\$766,612.88
Cancellation of prior sales.....	85,645.25	4,245.36	576,503.51	580,748.87
Net sales.....	22,722.30	579,847.91	393,983.90	185,864.01

The cash transactions of the Department were as follows:

	Northern Pacific R. R. land grants	St. Paul and Duluth R. R. land grant	Total
Received from sales as above.....	\$532,019.16	\$17,828.75	\$549,847.91
Received from payments on contracts.....	246,675.21	351.05	247,026.26
Interest collected on deferred payments.....	53,920.90	7,680.44	61,601.34
Total.....	832,615.27	55,860.24	888,475.51
Less for expenses.....	308,638.14	5,211.96	313,850.10
Less for taxes.....	563,080.12	8,037.05	571,117.17
Total.....	871,718.26	13,249.01	884,967.27
Net cash receipts for the year.....	39,102.99	42,611.23	3,508.24

The net deficit included in property and profit and loss accounts was made up as follows:

Net sales.....	137,065.43	48,798.58	185,864.01
Interest collected.....	53,920.90	7,680.44	61,601.34
Total.....	190,986.33	56,479.02	247,465.35
Expenses and taxes.....	871,718.26	13,249.01	884,967.27
Net income.....	680,731.93	43,230.01	637,501.92
Charged to—Miscellaneous Physical property.....	31,220.25		31,220.25
Charged to—Profit and loss.....	714,952.18	43,230.01	671,722.17

BALANCE OF LAND DEPARTMENT CURRENT ASSETS.

	1934	1933	Increase— Decrease—D
Contracts for sale of lands.....	\$2,638,009.51	\$3,279,019.67	D \$641,010.16
Loans, bills receivable, and notes.....	100,000.00	175,000.00	D 75,000.00
Accounts receivable.....	133,579.34	163,085.26	D 29,455.92
	2,871,588.85	3,617,054.93	D 745,466.08
Less, accounts payable.....	84,894.09	86,370.37	D 1,476.28
Less, suspense account (collections not taken to account by land agents).....	20,637.82	11,857.13	I 8,800.69
	105,551.91	98,227.50	I 7,324.41
Balance Land Department current assets.....	2,766,036.94	3,518,827.43	D 752,790.49

DEFENDANTS' EXHIBIT 14-F

is a copy of Plaintiff's Annual Report to its stockholders for the year 1935.

On page 3, Charles Donnelly is listed as Plaintiff's president, one of its directors, and also president of its executive committee.

The Report begins as follows:

"Office of the
Northern Pacific Railway Company,
St. Paul, Minnesota, April 21, 1936.

To the Stockholders of the
Northern Pacific Railway Company:

The following, being the thirty-ninth annual report, shows the result of the operation of your property for the year ended December 31, 1935." (p. 5)

Then follows a statement of Plaintiff's Income Account for the years 1934 and 1935 (p. 5), and statements respecting its earnings, expenses, property, and other matters. (pp. 6-15) The following statement is made respecting the Land Department (p. 13):

"Land Department.

The operations of the Land Department for the year are summarized on pages 38 and 39.

Revenues were materially larger than for the year 1934, accounted for in the main by the re-

sumption of minimum royalty payments on certain Minnesota iron ore leases. Down payments on new contracts and collection of deferred payments on old contracts fell off, and timber sales were not active, but rentals from grazing, cultivation, coal and mineral leases increased. Improvement in business lines with which the Department is in contact seems to be general.

During the year 107,724.82 acres were sold, as compared with 108,367.55 acres in 1934, a decrease of .59%. Land, town lot and miscellaneous sales in 1935 amounted to \$1,081,056.65, as compared with \$766,612.88 in 1934, an increase of 41.02%. Contracts cancelled in 1935 aggregated 115,624.61 acres, representing \$601,588.45 in deferred payments. In 1934 cancellations aggregated 85,645.25 acres, representing \$576,503.51 in deferred payments. The outstanding deferred payments on December 31, 1935, amounted to \$2,153,418.70, as compared with \$2,638,009.51 on December 31, 1934, a decrease of 18.37%. Total expenses and taxes amounted to \$827,340.51, as compared with \$884,967.27 in 1934, a decrease of 6.51%. Net cash receipts amounted to \$199,064.97, as compared with \$3,508.24 in 1934, and a deficit in 1933 of \$223,794.03." [2114]

The Report concludes:

“Subsidiary Companies.

The income accounts and balance sheets of the Chicago, Burlington and Quincy Railroad Company; the Spokane, Portland and Seattle Railway Company and its subsidiaries; the Minnesota and International Railway Company; and the Northwestern Improvement Company, will be found on pages 41 to 55.

By order of the Board of Directors,
CHARLES DONNELLY,
President.” (p. 15)

On pages 18 and 19 is set forth Plaintiff’s General Balance Sheet, December 31, 1935, wherein the book value of road and equipment is set forth and stated to be \$600,301,591.05, and in separate items the book value of “Miscellaneous Physical Property” is stated to be \$11,926,247, and that of “Contracts for sale of land grant lands” is stated to be \$2,153,419, there being no other item of real property listed as an asset.

The Profit and Loss Account is set forth on page 20, which shows, among other items, a charge for “Loss on Land Department operations” of \$267,064.66.

On page 23 is a statement of “Investments in Affiliated Companies, December 31, 1935.” Under this head is listed stock of the par value of \$20,000,-

000, and bonds of the par value of \$36,855,000 of the Spokane, Portland and Seattle Railway Company, and stock of the par value of \$24,800,000 and book value of \$6,775,000 of the Northwestern Improvement Company.

On page 45 is set forth the "Income Account" of the "Spokane, Portland and Seattle Railway System including Oregon Trunk Railway, Oregon Electric Railway and United Railways Companies", showing, among other things, the railway operating revenues, net operating revenue and net railway operating income of said companies for 1934 and [2115] 1935. On page 45 it is stated, further, that Plaintiff owns one-half of the entire issue of 400,000 shares of stock of the Spokane, Portland and Seattle Railway Company, and that the latter company owns the entire issue of stock of the Oregon Trunk Railway and stock and bonds of the United Railways Company, and 98% of the stock of the Oregon Electric Railway Company. The operated mileage of said roads is shown to be:

Spokane, Portland and Seattle	552.86 miles
Oregon Trunk	151.92 miles
Oregon Electric	192.04 miles
United Railways	50.14 miles

Total 946.96 miles.

On page 39 it is shown that for 1935 the new contracts for sale of land amounted to \$275,916, the collections on outstanding contracts were \$158,919, and that outstanding contracts were cancelled by default to the extent of \$601,588. It is further shown that the balance of such contracts on hand December, 31, 1934, was \$2,638,010, and on December 31, 1935: \$2,153,419.

The following is a copy of page 38 of said Report: [2116]

NORTHERN PACIFIC RAILWAY COMPANY.

LAND DEPARTMENT.

The transactions for the year ended December 31, 1935, were as follows:

	Acres	Cash payment	Contracts for deferred payments	Total
New sales.....	107,724.82	\$805,140.30	\$275,916.35	\$1,081,056.65
Cancellation of prior sales.....	115,624.61	4,051.12	601,588.45	605,639.57
Net sales.....	7,899.79	801,089.18	325,672.10	475,417.08

The cash transactions of the Department were as follows:

	Northern Pacific R. R. land grants	St. Paul and Duluth R. R. land grant	Total
Received from sales as above.....	\$184,550.03	\$316,539.15	\$ 801,089.18
Received from payments on contracts.....	158,669.20	249.51	158,918.71
Interest collected on deferred payments.....	54,280.50	12,117.09	66,397.59
Total.....	697,499.73	328,905.75	1,026,405.48
Less for expenses.....	338,350.29	5,371.08	343,721.37
Less for taxes.....	475,616.19	8,002.95	483,619.14
Total.....	813,966.48	13,374.03	827,340.51
Net cash receipts for the year.....	116,466.75	315,531.72	199,064.97

The net deficit included in property and profit and loss accounts was made up as follows:

Net sales.....	\$158,645.93	\$316,771.15	\$475,417.08
Interest collected.....	54,280.50	12,117.09	66,397.59
Total.....	212,926.43	328,888.24	541,814.07
Expenses and taxes.....	813,966.48	13,374.03	827,340.51
Net income.....	601,040.05	315,514.21	285,525.84
Charged to—Miscellaneous Physical property.....	18,461.18	.....	18,461.18
Charged to—Profit and loss.....	582,578.87	315,514.21	267,064.06

BALANCE OF LAND DEPARTMENT CURRENT ASSETS.

	1935	1934	Increase— Decrease—D
Contracts for sale of lands.....	\$2,153,418.70	\$2,638,009.51	D \$484,590.81
Loans, bills receivable, and notes.....	25,000.00	100,000.00	D 75,000.00
Accounts receivable.....	151,284.22	133,579.34	I 17,704.88
Total.....	2,329,702.92	2,871,588.85	D 541,885.93
Less, accounts payable.....	64,012.55	84,894.09	D 20,881.54
Less, suspense account (collections not taken to account by land agents).....	26,975.55	20,657.82	I 6,317.73
Total.....	90,988.10	105,551.91	D 14,563.81
Balance Land Department current assets.....	2,238,714.82	2,766,036.94	D 527,322.12

DEFENDANTS' EXHIBIT 15

is identical with Schedule 14 shown on page 93 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 16

is identical with Schedule 15 shown on page 94 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 17

is identical with Schedule 15-A shown on page 94 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 18

is identical with Schedule 16 shown on page 95 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 19

is identical with Schedule 17 shown on page 96 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 20

is identical with Schedule 18 shown on page 97 of Defendants' Exhibit 53.

[2118]

Defendants' Exhibit 20-A:

NORTHERN PACIFIC RAILWAY COMPANY

1607

AVERAGE ANNUAL ADJUSTED INCOME FROM ACCOUNTS 513, 514 and 515 FOR 1932 TO 1934 INC. AND 1933 TO 1935 INC.
CAPITALIZED AT 6%

LINE					TOTAL	TOTAL	AVERAGE	AVERAGE	
	1932	1933	1934	1935	1932 to 1934	1933 to 1935	1932 to 1934	1933 to 1935	
e	Account 513 - Dividend Income	\$9,119,425	\$7,501,694	\$6,001,695	\$5,471,513	\$22,622,812	\$18,974,900	\$ 7,540,937	\$ 6,324,967
b	Dividend on N.W.L. Stock - Total	6,592,000	4,992,000	3,492,000	3,792,000	15,076,000	12,276,000	5,025,333	4,092,000
c	Dividend on S. P. & S. Ry. Co. Stock								
d	Dividend on C. B. & Q. Ry. Co. Stock	2,490,537	2,490,537	2,490,537	1,660,358	7,471,611	6,641,432	2,490,537	2,213,811
e	Total Deductions for Stock Dividends (b/c/d)	9,082,537	7,482,537	5,982,537	5,452,356	22,547,611	18,917,432	7,515,870	6,305,811
f	Adjusted Dividend Income (a-e)	36,888	19,157	19,156	19,155	75,201	57,468	25,067	19,156
g	Account 514 - Income from Funded Securities	275,566	295,735	560,135	779,235	1,129,436	1,635,105	376,478	545,035
h	Interest on S. P. & S. Ry. Co. Bonds	72,419	225,000	50,000	725,000	797,419	1,450,000	265,806	483,333
i	Adjusted Income from Funded Securities (g-h)	203,147	70,735	60,135	54,235	332,017	185,105	110,672	61,702
j	Account 515 - Income from Unfunded Securities and Accounts	156,478	116,913	47,988	34,636	317,379	195,537	105,793	65,179
k	Total Adjusted Dividend Income, Adjusted Income from Funded Securities and Income from Unfunded Securities and Accounts (f+i+j)	\$ 394,513	\$ 206,805	\$ 123,279	\$ 108,026	\$ 724,597	\$ 436,110	\$ 241,532	\$ 146,037

Annual average for line k - 1932 to 1934 (\$241,532) capitalized at 6%: \$4,025,533.

Annual average for line k-1933 to 1935 (\$146,037) capitalized at 6%: \$2,433,950.

DEFENDANTS' EXHIBIT 21

is identical with Schedule 19 shown on page 98 of
Defendants' Exhibit 53.

[2120]

Defendants' Exhibit 21-A

NORTHERN PACIFIC RAILWAY COMPANY

INDICATED INCREASE IN WASHINGTON VALUE IF ACTUAL CASH IN WASHINGTON HAD BEEN DEDUCTED AS NON-OPERATING PROPERTY.

	1935 A S S E S S M E N T				1936 A S S E S S M E N T					
	DEDUCTING CASH ON HAND		NOT DEDUCTING CASH ON HAND		DEDUCTING CASH ON HAND		NOT DEDUCTING CASH ON HAND			
	(P. 76 Ex. H)	(1)	(2)	(3)	(4)	(P. 76 Ex. H)	(5)	(6)	(7)	(8)
1. MARKET VALUE OF OUTSTANDING STOCK AND BONDS AS REFLECTED BY MARKET QUOTATIONS FOR YEAR ENDING FEB., 1934 AS TO 1935 ASSESSMENT AND YEAR ENDING FEB., 1935 AS TO 1936 ASSESSMENT		\$339,315,872		\$339,315,872		\$344,874,344		\$344,874,344		
2. DEDUCTION FOR NON-CARRIER PROPERTY INCLUDING CASH ON HAND.		108,031,167		108,031,167		100,669,294		100,669,294		
3. AVERAGE AMOUNT OF CASH ON HAND DURING YEAR-SYSTEM.				6,560,115				8,307,996		
4. DEDUCTION FOR NON-CARRIER PROPERTY EXCLUDING CASH ON HAND.				101,471,052				92,361,298		
5. VALUE OF SYSTEM OPERATING PROPERTY INDICATED BY ONE YEAR AVERAGE OF STOCK AND BOND QUOTATIONS.		231,284,705		237,844,820		244,205,050		252,513,046		
6. PROPORTION IN WASHINGTON AS INDICATED BY GIVING ONE-THIRD WEIGHT TO RELATIVE REPLACEMENT COST AND TWO-THIRDS WEIGHT TO RELATIVE NET RAILWAY OPERATING INCOME LESS TAXES, AVERAGE FOR ONE YEAR.		34.47%		34.47%		33.92%		33.92%		
7. VALUE THUS APPORTIONED TO WASHINGTON.		79,723,838		81,985,109		82,834,353		85,652,425		
8. 80% OF ABOVE FIGURE.			\$63,779,070		\$65,588,087		\$66,267,482		\$68,521,940	
9. COST OF REPRODUCTION NEW LESS DEPRECIATION-WASHINGTON.		158,731,254		158,731,254		158,138,051		158,138,051		
10. 20% OF ABOVE FIGURE.			31,746,251		31,746,251		31,627,610		31,627,610	
11. VALUE INDICATED OF WASHINGTON OPERATING PROPERTIES.			95,525,321		97,334,338		97,895,092		100,149,550	
12. INCREASE IN COMPUTED WASHINGTON OPERATING PROPERTY VALUE BY EXCLUDING SYSTEM CASH.					1,809,017				2,254,458	
13. CASH ON HAND IN WASHINGTON.					687,974				668,601	
14. INDICATED INCREASE IN WASHINGTON VALUE IF ACTUAL CASH IN WASHINGTON HAD BEEN DEDUCTED AS NON-OPERATING PROPERTY					1,121,043				1,585,857	

DEFENDANTS' EXHIBIT 22

is identical with tabulation shown on page 22, of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 23

is identical with Schedule 20 shown on page 98 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 24

is identical with Schedule 21 shown on page 98 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 25

is identical with Schedule 22 shown on page 99 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 26

is identical with Schedule 23 shown on page 99 of Defendants' Exhibit 53.

[2122]

Statements' Exhibit 26-a:

2668

NORTHERN PACIFIC RAILWAY COMPANY

COST OF REPRODUCTION LESS DEPRECIATION OF TUNNELS & SUBWAYS AND BRIDGES, TRESTLES, & CULVERTS AS FOUND BY I. C. C.
FOR JUNE 30, 1917

System	Cost of Reproduction Less Depreciation			Actual Additions 6/30/17 to 12/31/16	Depreciated Additions 6/30/17 to 12/31/16	Cost Rep. Less Dep. Plus Actual Additions	Cost Rep. Less Dep. Plus Dep. Additions
	Tunnels & Subways	Bridges, Trestles & Culverts	Totals				
Wholly Owned & Used	\$ 5,999,971	\$ 23,755,168	\$ 29,755,159				
Jointly Owned & Used (N. P. Portion)	898,220	1,360,974	2,259,194				
Wholly Owned but not Used (Leased)	105,936	205,431	311,367				
Total Owned	7,004,127	25,321,595	32,325,720				
Hartford & Eastern Ry. Co.	105,936	83,750	189,686				
Total Owned less Hartford & Eastern Ry. Co.	6,898,191	25,237,845	32,136,034	\$ 6,548,400	\$ 5,573,648	\$ 38,684,434	\$ 37,709,882
<u>Washington</u>							
Wholly Owned & Used	3,276,166	9,763,576	13,039,742				
Jointly Owned & Used (N. P. Portion)	898,220	99,111	997,331				
Wholly Owned but not Used	105,936	83,750	189,686				
Total Owned	4,280,322	9,946,437	14,226,759				
Hartford & Eastern Ry. Co.	105,936	83,750	189,686				
Total Owned less Hartford & Eastern Ry. Co.	\$ 4,174,386	\$ 9,862,687	\$ 14,037,073	\$ 1,304,650	\$ 1,110,685	\$ 15,341,723	\$ 15,147,758
Per Cent in Washington	60.514215	39.078962	43.680166	19.923187	19.927434	39.658647	40.169413

DEFENDANTS' EXHIBIT 27

is identical with Schedule 24 shown on page 100 of
Defendants' Exhibit 53.

[2124]

Defendants' Exhibit 27-A

NORTHERN PACIFIC RAILWAY COMPANY

CAPITALIZATION OF RENTALS PAID BY GREAT NORTHERN AND OREGON - WASHINGTON RAILROADS FOR JOINTLY USED SEATTLE - VANCOUVER LINES AND PERCENTAGE RELATIONSHIP OF SAID LINE TO ALL NORTHERN PACIFIC LINES IN WASHINGTON.

	<u>1932</u>	<u>1933</u>	<u>1934</u>	<u>1935</u>	<u>TOTAL 3 YEARS 1932 - 1934, INCLUSIVE</u>	<u>AVERAGE 3 YEARS 1932- 1934, Inc.</u>	<u>TOTAL 3 YEARS 1933-1935, INCLUSIVE</u>	<u>AVERAGE 3 YEARS 1933-1935, Inc.</u>
A. RENTALS PAID N.P. BY								
B. G.N.	\$547,775	\$548,804	\$547,961	\$546,176	\$1,644,540	\$548,180	\$1,642,941	\$547,647
C. O.-W.	542,650	547,494	544,608	545,240	1,634,752	544,917	1,637,342	545,781
D. TOTAL RENTALS	\$1,090,425	\$1,096,298	\$1,092,569	\$1,091,416	\$3,279,292	\$1,093,097	\$3,280,283	\$1,093,428
E. CAPITALIZED AT 6%	\$18,173,750	\$18,271,633	\$18,209,483	\$18,190,267		\$18,218,283		\$18,223,800
F. ONE-HALF OF LINE E						\$9,109,141		\$9,111,900
G. TOTAL (LINE E + LINE F)						\$27,327,424		\$27,335,700
H. MILES OF ROAD AS OF DECEMBER 31, 1935.								
I. WASHINGTON								
J. MAIN LINE						661.27		
K. BRANCH LINE						1,139.87		
L. TOTAL						1,801.14		
M. SEATTLE TO TACOMA						39.20		
N. TACOMA TO TENINO (PRAIRIE LINE VIA ROY)						39.52		
O. TACOMA TO VANCOUVER (PT. DEFIANCE LINE VIA EAST OLYMPIA)						132.70		
P. TOTAL						211.42		
Q. SEATTLE-VANCOUVER LINE'S PERCENTAGE OF TOTAL IN WASHINGTON						11.74%	LINE Q + LINE L	

DEFENDANTS' EXHIBIT 27-B:

Northern Pacific Railway Company

FIVE YEAR AVERAGE NET JOINT FACILITY RENTS (CREDIT) IN STATE OF WASHINGTON FOR YEARS 1931 TO 1935, INC.

<u>Years</u>	<u>Net Joint Facility Rents (Credit)</u>
1931	\$1,270,536
1932	1,378,302
1933	1,355,064
1934	1,302,225
1935	1,278,826
Total	\$6,584,953
Five Year Average	\$1,316,990

Average of \$1,316,990 Capitalized at 6% \$21,949,833

The figures for the years 1931 to 1935, inclusive were obtained from Plaintiff's Exhibit 1, Page 21.

[2126]

DEFENDANTS' EXHIBIT 28

is identical with table shown on page 45 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 29

is identical with graph shown on page 48 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 30

is identical with table shown on page 49 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 31

is identical with table shown on page 53 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 32

is identical with table shown on page 55 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 33

is identical with table shown on page 56 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 34

is identical with graph shown on page 57 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 35

is identical with Schedule 26 shown on page 101 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 35-A

makes the same showing with respect to each of the years 1930 to 1935 as is set forth for the year 1934 alone in Schedule 26 shown on page 101 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 36

is identical with Schedule 25 shown on page 100 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 36-A

shows the same data with respect to each of the years 1930 to 1935, inclusive, and the annual average for the periods 1932 to 1934 inclusive, and 1933 to 1935 inclusive, as is shown [2127] on Schedule 25, appearing on page 100 of Defendants' Exhibit 53 with respect to 1934 and the five-year annual averages, 1930 to 1934 and 1931 to 1935. The percentage of plaintiff's system net revenue from railway operations earned in Washington and the percentage of plaintiff's system net railway operating income as so computed is shown by said exhibit to be as follows for the periods indicated:

Period	Net revenue from railway operations	Net railway operating income:
1930	38.598610	38.737322
1931	40.419464	40.577879
1932	41.893191	58.295740
1933	29.545202	36.508900
1934	31.690890	35.232891
1935	31.091747	37.188064
1932 to 1934 inclusive.....	33.319238	38.603423
1933 to 1935 inclusive.....	30.830287	36.284425

DEFENDANTS' EXHIBIT 37

is identical with Schedule 27 shown on page 101 of Defendants' Exhibit 53. [2128]

DEFENDANTS' EXHIBIT 37-A

Northern Pacific Railway Company

RATIOS OF COST OF REPRODUCTION NEW LESS DEPRECIATION
STATE OF WASHINGTON TO SYSTEM

	Year	C. R. N.-L. D. State of Wash. (Col. 1)	C. R. N.-L. D. System (Col. 2)	Ratio State to System (Col. 3)
Final Valuation	.....1935	\$158,313,054	\$472,164,615	33.105627
" "	.....1934	156,901,317	474,065,831	33.096947
" "	.....1935	157,992,418	478,677,858	33.006001
" "	.....1932	158,615,857	479,183,133	33.101302
" "	.....1931	158,448,404	477,476,653	33.184744
" "	.....1930	158,586,546	476,651,866	32.851344
Tentative	"1929	154,788,033	470,067,573	32.928890
" "	"1928	153,605,638	464,689,892	33.055515
" "	"1927	152,543,452	459,858,406	33.171831
" "	"1926	152,260,570	453,999,612	33.537599
Computed	"1925	150,906,679	446,833,095	33.772494
" "	"1924	150,356,244	441,547,329	34.052124

[2129]

DEFENDANTS' EXHIBIT 38

is identical with Schedule 27-A shown on page 102 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 39

is identical with Schedule no. 27-B shown on page 103 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 39-A

is a certified copy of a paper writing consisting of 22 mimeographed sheets, designated on the title page as Railroad Construction Indices Compiled by the Engineering Section of the Bureau of Valuation of the Interstate Commerce Commission," and dated at Washington, D. C., July 1, 1936. The Title page contains the following notation:

"These indices summarize and record the result of studies made by the Engineering Section of the Bureau of Valuation over a period of years. They have not been examined or passed on by the Interstate Commerce Commission."

Sheet 3 is a map of the United States, the legend on which states that the same is a "map showing division of the country into regional groups for which indices have been established." On this map, the United States is divided into eight sections or regions, numbered from I to VIII inclusive. Region VI contains the states of Washington, Montana, Minnesota, North Dakota, and Wisconsin and parts of Oregon, Idaho, South Dakota, and Illinois, and includes all of the territory occupied by the operating property of the Northern Pacific Railway Company.

Sheets 2, 3, 17, and 18 are the only sheets relating to Region VI and are set forth in full as follows:

[2130]

DEFENDANTS' EXHIBIT 39A

Sheet 2

Bureau of Valuation

Engineering Section

General Notes

The general indices for the United States are broken down into eight regional sets shown on the attached map.

The indices are on the basis of 1910-1914 equals 100.

The indices shown for Accounts which include items such as grading, tunnel excavation, bridges, ballast haul and tracklaying and surfacing were developed from analysis of major construction contracts covering a period of over thirty years and from joint studies made with the various sub-committees of the Presidents' Conference Committee. The indices shown for material accounts such as ties, rails, other track material, ballast and fences were based on studies of carriers' returns to Valuation Order 14, joint studies made with the various sub-committees of the Presidents' Conference Committee, well-known engineering and trade publications, contracts covering major construction projects over a period of thirty years, and other information furnished by individual carriers.

The indices represent territorial index factors and are of value in indicating trends. They are not necessarily applicable for use in the determination

of reproduction costs upon individual railroads, telegraph or telephone companies, or other utilities.

The accounts for which the indices are shown are the several primary accounts designated in the Classification of Investment in Road and Equipment of Steam roads. The accounts are as follows:

I—Road:

1. Engineering.
3. Grading.
4. Underground Power Tubes.
5. Tunnels and Subways.
6. Bridges, Trestles and Culverts.
7. Elevated Structures.
8. Ties.
9. Rails.
10. Other Track Material.
11. Ballast.
12. Track Laying and Surfacing.
13. Right-of-Way Fences.
14. Snow and Sand Fences and Snowsheds.
15. Crossings and Signs.
16. Station and Office Buildings.
17. Roadway Buildings.
18. Water Stations.
19. Fuel Stations.
20. Shops and Enginehouses.
21. Grain Elevators.
22. Storage Warehouses.
23. Wharves and Docks.
24. Coal and Ore Wharves.

25. Gas Producing Plants. [2131]
26. Telegraph and Telephone Lines.
27. Signals and Interlockers.
28. Power Dams, Canals and Pipe Lines.
29. Power Plant Buildings.
30. Power Substation Buildings.
31. Power Transmission Systems.
32. Power Distribution Systems.
33. Power Line Poles and Fixtures.
34. Underground Conduits.
35. Miscellaneous Structures.
36. Paving.
37. Roadway Machines.
38. Roadway Small Tools.
39. Assessments for Public Improvements.
40. Revenues and Operating Expenses During
Construction.
41. Cost of Road Purchased.
42. Reconstruction of Road Purchasee.
43. Other Expenditures—Road
44. Shop Machinery.
45. Power Plant Machinery.
46. Power Substation Apparatus.
47. Unapplied Construction Material and
Supplies.

II—Equipment:

51. Steam Locomotives.
52. Other Locomotives.

- 53. Freight-Train Cars.
- 54. Passenger-Train Cars.
- 55. Motor Equipment of Cars.
- 56. Floating Equipment.
- 57. Work Equipment.
- 58. Miscellaneous Equipment.

III—General Expenditures:

- 71. Organization Expenses.
- 72. General Officers and Clerks.
- 73. Law.
- 74. Stationery and Printing.
- 75. Taxes.
- 76. Interest During Construction.
- 77. Other Expenditures—General.

[2132]

Interstate Commerce Commission
Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of Railroad Construction Indices, compiled by the Engineering Section of the Bureau of Valuation of the Interstate Commerce Commission, dated July 1, 1936.

In Witness Whereof I have hereunto set my hand and affixed the seal of said Commission this 17th day of February, A. D. 1938.

[Seal of Interstate
Commerce
Commission]

W. P. BARTEL

Secretary of the Interstate
Commerce Commission

[2135]

DEFENDANTS' EXHIBIT 39-B

Northern Pacific Railway Company

DECREASES IN ASSESSED VALUES OF WASHINGTON LANDS OTHER THAN TIMBER AND RAILWAY AND DECREASES OF ASSESSED VALUES OF NORTHERN PACIFIC OPERATING PROPERTIES IN WASHINGTON.

	1917	1934	1935	1936
Aggregate value of all lands exclusive of timber lands and operating railway as equalized by county boards of equalization.....	\$458,175,940	\$353,149,019	\$352,772,964	\$350,058,037
Decrease under 1917.....		22.92%	23.00%	23.60%
Equalized assessed values of Northern Pacific operating properties in Washington.....	\$ 51,806,783	\$ 40,167,043	\$ 39,489,470	\$ 39,238,513
Decrease under 1917.....		22.47%	23.78%	24.26%

[2136]

DEFENDANTS' EXHIBIT 39-C

purports to be a computation showing the "Cost Reproduction New" as of June 30, 1917 of Grading on "wholly owned and used" road of the Northern Pacific Railway Company in the State of Washington, compiled from the Engineering Report of the Interstate Commerce Commission, Bureau of Valuation, Pacific District, Account No. 3. Such Cost of Reproduction New is shown by said Exhibit to be \$36,744,671, and the 1935 Cost of Reproduction New based on the Indices shown in Defendants' Exhibit 39-A is shown by said exhibit to be \$37,112,118, computed by applying the factor "1.01" to \$36,744,671.

DEFENDANTS' EXHIBIT 40

is identical with Schedule 28 shown on page 104 of Defendants' Exhibit 104.

DEFENDANTS' EXHIBIT 40-A

shows the same data with respect to each of the years 1930 to 1935, inclusive, and the annual average for the periods 1932 to 1934 inclusive, and 1933 to 1935 inclusive, as is shown on Schedule 28, appearing on page 104 of Defendants' Exhibit 53 with respect to 1934 and the five-year annual averages, 1930 to 1934 and 1931 to 1935. The percentage of plaintiff's system net railway operating income (excluding taxes) earned in Washington as so computed is shown by said exhibit to be as follows for the periods indicated:

<u>Period</u>	<u>Net railway operating income (excluding taxes)</u>
1930	36.530290%
1931	36.369872%
1932	36.187779%
1933	31.705506%
1934	34.091509%
1935	33.602571%
1932 to 1934 inclusive	33.791517%
1933 to 1935 inclusive	33.181822%

[2137]

DEFENDANTS' EXHIBIT 41

shows the same data with respect to each of the years 1930, 1931 and 1932 as is shown on Schedule 29, appearing on page 105 of Defendants' Exhibit 53 with respect to 1934. The apportionment of freight revenue to Washington by virtue of the calculations shown on the exhibit for said years is as follows:

	<u>1930</u>	<u>1931</u>	<u>1932</u>
(12) Division of Interstate revenue on basis of cost.....	\$10,902,504	\$ 8,089,884	\$ 6,185,330
(13) Intrastate freight revenue— Washington	9,715,203	7,761,841	5,497,482
(14) Total freight revenue— Washington	\$20,617,707	\$15,851,725	\$11,682,812

DEFENDANTS' EXHIBIT 41-A

shows the same data with respect to each of the years 1933, 1934 and 1935 as is shown on Schedule 29, appearing on page 105 of Defendants' Exhibit 53 with respect to 1934. The apportionment of freight revenue to Washington by virtue of the calculations shown on the exhibit for said years is as follows:

	<u>1933</u>	<u>1934</u>	<u>1935</u>
(12) Division of Interstate revenue on basis of cost.....	\$ 6,636,087	\$ 7,654,473	\$ 8,234,750
(13) Intrastate freight revenue— Washington	4,836,839	4,882,700	4,830,125
(14) Total freight revenue— Washington	\$11,472,926	\$12,537,173	\$13,064,875
			[2138]

DEFENDANTS' EXHIBIT 42

is identical with Schedule 30 shown on page 106 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 42-A

shows the same data with respect to each of the years 1930 to 1935 inclusive as is shown on Schedule 30 appearing on page 106 of Defendants' Exhibit 53 with respect to 1934. The percentages of freight and passenger operating expenses, both for the system and for Washington, are shown by said exhibit to be as follows:

	(8) Percent Freight to Total (System)	(9) Percent Passenger to Total (System)	(17) Percent Freight to Total— Washington	(18) Percent Passenger to Total Washington.
1930	69.742529%	30.257471%	73.176335%	26.823665%
1931	70.407169%	29.592831%	72.596890%	27.403110%
1932	70.465560%	29.534440%	72.318113%	27.681887%
1933	71.036051%	28.963949%	71.801734%	28.198266%
1934	71.591594%	28.408406%	72.772718%	27.227282%
1935	72.262857%	27.737143%	72.819543%	27.180457%

[2139]

DEFENDANTS' EXHIBIT 43

is identical with Schedule 31 shown on page 108 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 43-A

shows the same data with respect to each of the years 1930 and 1931 as is shown on Schedule 31 appearing on page 108 of Defendants' Exhibit 53 with respect to 1934. The Joint Facility Rents—Credit for Washington and for the System, and the Rate of Return and amount allowed for use of property, for said years is shown by said exhibit to be as follows:

	<u>1930</u>	<u>1931</u>
(20) Joint Facility Rents— System (Cr.)	\$ 2,437,105	\$ 2,419,941
(21) Joint Facility Rents— Washington (Cr.)	1,277,576	1,270,536
(30) Allowance for Use of Property— Rate of Return (Percent).....	4.568112%	2.852036%
(31) Allowance for use of property excl. Taxes—Total		
System	\$21,773,991	\$13,617,806
Washington	7,153,049	4,519,034

DEFENDANTS' EXHIBIT 43-B

shows the same data with respect to each of the years 1932 and 1933 as is shown on Schedule 31 appearing on page 108 of Defendants' Exhibit 53 with respect to 1934. The Joint Facility Rents—Credit for Washington and for the System, and the rate of return and amount allowed for use of property for said years is shown by said exhibit to be as follows:

	<u>1932</u>	<u>1933</u>
(20) Joint Facility Rents— System (Cr.)	\$ 2,466,395	\$ 2,567,989
(21) Joint Facility Rents— Washington (Cr.)	1,378,302	1,355,064
(30) Allowance for Use of Property— Rate of Return (Percent).....	1.808858%	2.477496%
(31) Allowance for use of property excl. Taxes—Total		
System	\$ 8,667,742	\$11,859,225
Washington	2,869,136	3,914,256

DEFENDANTS' EXHIBIT 43-C

shows the same data with respect to each of the years 1934 and 1935 as is shown on Schedule 31 appearing on page 108 of Defendants' Exhibit 53 with respect to 1934. The Joint Facility [2140] Rents—Credit, for Washington and for the System, and the Rate of Return and amount allowed for use of property for said years is shown by said exhibit to be as follows:

	<u>1934</u>	<u>1935</u>
(20) Joint Facility Rents— System (Cr.)	\$ 2,545,359	\$ 2,508,374
(21) Joint Facility Rents— Washington (Cr.)	1,302,225	1,278,826
(30) Allowance for Use of Property— Rate of Return (Percent).....	2.790288%	2.755906%
(31) Allowance for use of property Excl. Taxes—Total		
System	\$13,227,802	\$13,012,413
Washington	4,377,999	4,307,841

DEFENDANTS' EXHIBIT 44

is identical with Schedule 32 shown on page 110 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 44-A

shows the same data with respect to each of the years 1930 to 1935 inclusive, as is shown on Schedule 32 on page 110 of Defendants' Exhibit 53 with respect to 1934 only. The figures shown on said exhibit in the respective printed lines of said Schedule 32 for said years are as follows:

Lines:	1930	1931	1932	1933	1935
2 and 4:	\$577,009,898	\$577,548,003	\$579,889,535	\$579,015,150	\$569,079,532
5 and 7:	182,778,329	185,098,556	185,335,862	184,297,388	181,690,770
9 and 11:	476,651,866	477,476,653	479,183,133	478,677,858	472,164,615
12 and 14:	156,586,546	158,449,404	158,615,857	157,992,418	156,313,054

DEFENDANTS' EXHIBIT 45

is identical with Schedule 33 shown on page 111 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 45-A

shows the same data with respect to each of the years 1930 to 1935 inclusive, as is shown on Schedule 33 on page 111 of Defendants' Exhibit 53 with respect to 1934 only.

DEFENDANTS' EXHIBIT 46

is identical with Schedule 34 shown on page 112 of Defendants' Exhibit 53. [2141]

DEFENDANTS' EXHIBIT 46-A

shows the same data with respect to each of the years 1930 to 1935 inclusive, as is shown on Schedule 34 on page 112 of Defendants' Exhibit 53 with respect to 1934 only. The figures shown on said exhibit in the respective printed lines of said Schedule No. 34 for said years are as follows:

Year	Line 1:	Line 2:	Line 3:	Line 4:	Line 5:
1930	\$18,396	\$65,135,270	\$20,617,707	31.653675%	\$5,823
1931	10,072	50,823,027	15,851,725	31.190045%	3,142
1932	23,209	38,789,246	11,682,812	30.118688%	6,990
1933	23,848	40,224,391	11,472,926	28.522311%	6,802
1935	15,616	45,262,826	13,064,875	28.864470%	4,507

DEFENDANTS' EXHIBIT 47

is identical with Schedule 35 shown on page 112 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 47-A

shows the same data with respect to each of the years 1930 to 1935 inclusive, as is shown on Schedule 35 on page 112 of Defendants' Exhibit 53 with respect to 1934 only.

DEFENDANTS' EXHIBIT 48

is identical with Schedule 36 shown on page 113 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 48-A

shows the same data with respect to each of the years 1930 to 1935 inclusive, as is shown on Schedule 36 on page 113 of Defendants' Exhibit 53 with respect to 1934 only. The figures shown in said exhibit in the respective printed lines of said Schedule 36 for said years are as follows:

Year:	Line 7:	Line 8:	Line 9:	Line 10:	Line 11:
	(St. and Sys. same)				
1930	\$2,462,635	\$1,303,106	(r) \$25,530	\$2,437,105	\$1,277,576
1931	2,476,423	1,327,018	(r) 56,482	2,419,941	1,270,536
1932	2,466,395	1,378,302	.....	2,466,395	1,378,302
1933	2,567,989	1,355,063	.....	2,567,989	1,355,063
1935	2,508,373	1,278,826	.....	2,508,373	1,278,826

[2142]

DEFENDANTS' EXHIBIT 49

is identical with Schedule 37 shown on page 114 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 49-A

shows the same data with respect to each of the years 1930 to 1935 inclusive, as is shown on Schedule 37 on page 114 of Defendants' Exhibit 53 with respect to 1934 only. The figures shown in said exhibit in the respective printed lines of said Schedule 37 for said years are as follows:

Year:	Line 1:	Line 9:	Line 32:	Line 33:
1930	\$1,895,503	\$592,844	\$18,389,952	\$22,296,847
1931	1,396,903	466,365	14,657,048	17,645,849
1932	943,251	348,218	10,570,609	12,845,325
1933	732,256	371,852	10,153,354	12,064,954
1935	825,622	513,978	11,284,500	13,618,241

DEFENDANTS' EXHIBIT 50

is identical with Schedule 38 shown on page 115 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBITS 50-A and 50-B

Defendants' Exhibit 50-A shows the same data with respect to each of the years 1930 to 1932 inclusive, and Defendants' Exhibit 50-B shows the same data with respect to each of the years 1933 to 1935 inclusive as is shown on Schedule 38 on page 115 of Defendants' Exhibit 53 with respect to 1934 only. The figures shown in said exhibits in the re-

spective printed lines of said Schedule 38 for said years are as follows:

[2143]

Year:	Line 4:	Line 14:	Line 25:	Line 31:	Line 37:
Ex. 50-A					
1930					
System:	23,372,223	391,900,484	57,112,573	3,787,471	476,172,751
Wash.:	6,719,556	86,895,948	13,720,474	927,938	108,263,916
1931:					
System:	19,169,092	320,710,498	46,682,058	2,575,633	389,137,281
Wash.:	5,778,709	72,756,661	11,999,851	744,251	91,279,472
1932:					
System:	16,072,557	250,841,512	39,718,844	2,123,581	308,756,494
Wash.:	4,859,172	55,130,724	10,584,744	695,605	71,270,245
Ex. 50-B:					
1933:					
System:	15,991,515	273,019,615	38,055,382	2,230,928	329,297,440
Wash.:	4,770,303	57,196,045	9,685,381	766,559	72,418,288
1935:					
System:	18,301,967	338,800,962	41,481,801	3,450,747	402,035,477
Wash.:	5,490,739	68,761,282	10,807,946	883,478	85,943,445

DEFENDANTS' EXHIBIT 51

is identical with the tabulation shown on page 76 of Defendants' Exhibit 53.

DEFENDANTS' EXHIBIT 52

is identical with the tabulation shown on page 78 of Defendants' Exhibit 53.

[2144]