

DECISIONS OF

Pennsylvania Public Utility Commission

VOLUME 37



HARRISBURG, PENNSYLVANIA

1961

APPLICATION OF LACKAWANNA & WYOMING VALLEY
RAILWAY COMPANY

APPLICATION DOCKET No. 87218, FOLDERS 1 AND 2

Abandonment of Service—Railway Companies—Railroad Companies—Reorganization (plans of)—Jurisdiction—Commission Approval Required.

Although the acquisition by a railway company of the properties, rights, and interests of a railroad company under a plan of reorganization was exempt from the provisions of Section 202(d) of the Public Utility Law because both companies were subject to the jurisdiction of the Interstate Commerce Commission, application submitted by the railway company to perfect the plan of reorganization and to comply with the requirements of the Public Utility Law and the Act of June 8, 1911, P. L. 710, as amended, were approved.

*Rowland L. Davis, Jr., James F. Mulligan and David P. Reese for
Lackawanna & Wyoming Railroad Company.*

BY THE COMMISSION, *April 18, 1960:*

Lackawanna & Wyoming Valley Railway Company (Railway), a Delaware corporation chartered August 19, 1959, filed the above applications March 29, 1960, seeking the approval of this Commission, at A. 87218, Folder 1, under Section 202(a) of the Public Utility Law, of the right as a foreign corporation to do business as a public utility in Pennsylvania, and at A. 87218, Folder 2, under Section 201(b) of the Public Utility Law, to operate a line of railroad transporting freight as a common carrier between the City of Scranton, Lackawanna County, and the City of Wilkes-Barre, Luzerne County, a distance approximating 19 miles.

Railway, as a companion matter to the instant applications, submitted to Pennsylvania Department of State its Power of Attorney and Statement for registration under the Act of June 8, 1911, P. L. 710, as amended, to operate a railroad in Pennsylvania. The said Power of Attorney and Statement has been transmitted by the Department of State to this Commission for its consideration in connection with the pending application at A. 87218, Folder 1, and for Commission approval prior to acceptance for official filing by the Department of State.

Railway was caused to be formed to serve as the successor owner and operator of the assets, rights, franchises, and railroad properties, all in Pennsylvania, of Lackawanna & Wyoming Valley Railroad Company (Railroad), a Pennsylvania corporation chartered June 20, 1913, for the purposes of consummating a plan of reorganization approved by the Interstate Commerce Commission on December 6, 1957, at 295 I. C. C. 653, and confirmed by the United States District Court for the Middle District of Pennsylvania at No. 10621 on June 30, 1959.

The facilities of Railroad, a bankrupt, to be acquired by Railway consist principally of a single standard gauge line of railroad extending between the City of Scranton, via Avoca, Pittston, and Plains to the City of Wilkes-Barre, connecting with lines of The Delaware, Lackawanna and Western Railroad Company, Erie Railroad Company, and Lehigh Valley Railroad Company for the interchange of freight. No rolling stock is owned by Railroad other than two cars used for maintenance purposes and operations have been conducted with one diesel locomotive leased from The Delaware, Lackawanna and Western Railroad Company.

By order of the Interstate Commerce Commission dated January 28, 1960, at Finance Docket No. 16575, and by Consummation Order and Final Decree of the United States District Court for the Middle District of Pennsylvania, at No. 10621, dated February 23, 1960, Railway was authorized to acquire the properties and assets and assume certain liabilities of Railroad and to issue certain securities in exchange therefor.

The plan of reorganization provides that Railway will have a capitalization of \$1,950,000, consisting of \$975,000 principal amount of 50 year General Mortgage Income Bonds, dated January 1, 1960 and maturing January 1, 2010, bearing 4% interest, and \$975,000 common stock consisting of 19,500 common shares of \$50 stated value per share. Railway will issue to the holders of Railroad's defaulted 5% First Mortgage Gold Bonds outstanding in the principal amount of \$1,950,000, \$500 principal amount of General Mortgage Income Bonds and \$500 stated value common stock (10 shares of \$50 stated value) for each \$1,000 principal amount of defaulted bonds outstanding.

The order of the Court dated February 23, 1960, specified that consummation of the plan of reorganization was to become effective at the close of business February 23, 1960. Therefore, Railway in effect became the successor owner and operator of the properties, rights, and franchises of Railroad on February 24, 1960.

The acquisition by Railway of the properties, rights, and franchises of Railroad as aforesaid being exempt from the provisions of Section 202(d) of the Public Utility Law of May 28, 1937, P. L. 1953, as amended, by reason of Railway and Railroad being subject to the jurisdiction of the Interstate Commerce Commission, the instant applications before us have been submitted by Railway to perfect the plan of reorganization and to comply with the requirements of the Pennsylvania Public Utility Law and the Act of June 8, 1911, P. L. 710, as amended.

The matters and things here involved having received the full consideration of the Commission, we are of the opinion that the applications filed at A. 87218, Folders 1 and 2, by Lackawanna & Wyoming Valley Railway Company are appropriate and proper for the service, accommodation and convenience of the public to enable it to serve as the successor owner and operator of the railroad facilities and certain net assets of Lackawanna & Wyoming Valley Railroad Company and that the said applications should be approved; **THEREFORE,**

IT IS ORDERED:

1. That the application filed at A. 87218, Folder 1, by Lackawanna & Wyoming Valley Railway Company, incorporated in Delaware on March 29, 1960, for authority under Section 202(a) of the Public Utility Law of May 28, 1937, P. L. 1053, as amended, of the right of a foreign corporation to do business as a public utility in Pennsylvania, be and is hereby approved and that a certificate of public convenience issue evidencing such approval.

2. That the application filed at A. 87218, Folder 2, by Lackawanna & Wyoming Valley Railway Company for authority, under Section 201(b) of the Public Utility Law of May 28, 1937, P. L. 1053, as amended, to begin the exercise of the right, power, or privilege of operating a line of railroad for the transportation of property as a common carrier between the City of Scranton, Lackawanna County, and the City of Wilkes-Barre, Luzerne County, in substitution of similar service heretofore furnished between said points by Lackawanna & Wyoming Valley Railroad Company under the Saving Clause provisions of Section 1401 of the Public Utility Law, be and is hereby approved subject to the following conditions:

- (1) That Lackawanna & Wyoming Valley Railway Company shall within 30 days hereof file with this Commission tariffs or tariff adoption supplements establishing rates the same as those charged by Lackawanna & Wyoming Valley Railroad Company and tariff concurrences, as appropriate, providing joint rates with connecting carriers conforming with the rates now in effect.

- (2) That Lackawanna & Wyoming Valley Railway Company shall comply with all provisions of the Public Utility Law and the Railroad Regulations as now exist or as may hereafter be amended and all other rules and regulations of the Commission;

and upon compliance with the requirements set forth in condition (1) above a certificate of public convenience issue at A. 87218, Folder 2, evidencing Commission approval of the application.

YELLOW CAB COMPANY OF PITTSBURGH

v.

OWL CAB COMPANY

COMPLAINT DOCKET No. 17116

Taxicab Companies—Illegal Operations—Inability to Contact Employee—Knowledge of Principal—Commission Policy—Principal Responsible for Acts of Agents—Call and Demand Service.

Commenting that the Commission must and will look to the principal, not its agents, for strict compliance with the requirement of the law and the regulations of the Commission and the inability to control employees is no defense, the Commission found that a taxicab company violated restrictions embodied in its certificate by transporting persons beyond its duly authorized service area, even though the principal neither knew nor condoned the unlawful operations.

Dickie, McCamey, Chilcote and Robinson by David J. Armstrong and David H. Trushel for Yellow Cab Company of Pittsburgh.

Jerome Solomon for Owl Cab Company.

BY THE COMMISSION, *April 18, 1960:*

The matter is before the Commission on the complaint of Yellow Cab Company of Pittsburgh charging respondent, Owl Cab Company, with transportation for hire throughout the City of Pittsburgh, in violation of its certificate.