

FINANCE DOCKET No. 2443.

NEW YORK, LACKAWANNA & WESTERN RAILWAY
STOCK AND BONDS.

IN THE MATTER OF THE JOINT APPLICATION OF THE NEW YORK, LACKAWANNA & WESTERN RAILWAY COMPANY AND THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY FOR AUTHORITY FOR THE FORMER TO ISSUE CAPITAL STOCK AND FIRST AND REFUNDING MORTGAGE BONDS, AND FOR THE LATTER TO ASSUME OBLIGATION AND LIABILITY, AS GUARANTOR, IN RESPECT THEREOF.

Submitted July 6, 1922. Decided August 2, 1922.

1. Authority granted to the New York, Lackawanna & Western Railway Company to issue not exceeding \$13,639,000 of first and refunding mortgage bonds; said bonds to be delivered to the Delaware, Lackawanna & Western Railroad Company in reimbursement of advances made, or to be made, by that company, and in payment of a note for \$1,639,335.99.
2. Authority granted to the New York, Lackawanna & Western Railway Company to issue not exceeding \$10,000,000 of first and refunding mortgage bonds or not exceeding \$5,000,000 of common capital stock and such amount of said bonds as together with said stock will make an aggregate of \$10,000,000; said bonds, or said bonds and stock, to be sold at not less than par or to be exchanged, for the purpose of redeeming, paying, or refunding certain construction-mortgage bonds and certain terminal and improvement mortgage bonds.
3. Authority granted to the Delaware, Lackawanna & Western Railroad Company to assume obligation and liability, as guarantor, in respect of said bonds and of said stock.
4. Action on request for authority to issue bonds and stock for other purposes deferred.

Wm. S. Jenney for applicants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, POTTER, AND COX.

BY DIVISION 4:

The New York, Lackawanna & Western Railway Company, hereinafter termed the railway company, a corporation organized for the purpose of engaging in transportation by railroad subject to the interstate commerce act, and the Delaware, Lackawanna & Western Railroad Company, hereinafter termed the railroad company, a common carrier by railroad engaged in interstate commerce, have jointly applied for authority under section 20a of that act (1) for the railway company to issue \$30,000,000 of its first and refunding bonds

and \$5,000,000 of capital stock for the purpose of refunding outstanding mortgage indebtedness, for capital expenditures, and for other purposes; and (2) for the railroad company to assume obligation and liability, as guarantor, in respect of all of the bonds and of the stock to the extent of dividends thereon not to exceed 5 per cent per annum. No objection to the granting of the application has been presented to us.

The railway company was organized under the laws of the State of New York on August 24, 1880, for a period of 100 years, for the purpose of constructing a double-track railroad from Binghamton to Buffalo, N. Y. On October 2, 1882, it leased the line so constructed to the railroad company for the period of the lessor's corporate existence and any renewals thereof. Under the terms of the lease the railroad company, as lessee, assumed the payment of \$12,000,000 of 6 per cent bonds issued by the railway company under a first mortgage dated December 31, 1880. Subsequent to the date of the lease the railway company made two additional mortgages. The first, known as the construction mortgage, and dated August 1, 1883, was given to secure the payment of \$5,000,000 of 5 per cent bonds; and the second, known as the terminal and improvement mortgage, and dated May 1, 1890, was given to secure payment of \$5,000,000 of 4 per cent bonds. Under the terms of each of these mortgages, the railroad company guaranteed the payment of the bonds to be issued thereunder. In addition, the railroad company, as lessee, agreed to pay dividends at the rate of 5 per cent per annum upon all outstanding capital stock of the railway company, it being understood that no stock would be issued without the consent of the lessee. The capital stock of the lessor outstanding at the present time amounts to \$10,000,000, of which \$9,929,600 is held by the public and \$70,400 by the lessee.

The first-mortgage bonds of the railway company matured January 1, 1921. In conformity with the terms of the lease, \$11,995,000 of these bonds, being all that have been presented for redemption, were purchased and acquired by the railroad company, leaving \$5,000 still outstanding in the hands of the public. In addition thereto, the railroad company now holds the railway company's note for \$1,639,335.99, which was given to cover sums advanced to the railway company and used for capital expenditures. This note matured on June 20, 1922. The bonds authorized under the construction mortgage and under the terminal and improvement mortgage are now outstanding and will mature on August 1, 1923, and May 1, 1923, respectively.

Under the terms of the lease, the lessor is required to deliver to the lessee bonds or other obligations to enable the lessee to pay and

discharge at maturity the principal of the first-mortgage bonds and any other obligations of the lessor issued before the maturity of the first-mortgage bonds, and to provide for additional capital expenditures chargeable to construction account. In order, therefore, to meet its obligations thereunder, the lessor has increased its authorized capital stock from \$10,000,000 to \$15,000,000, and proposes to execute and deliver a first and refunding mortgage, to be dated as of May 1, 1922, to the Farmers' Loan & Trust Company, to secure a maximum issue of \$30,000,000 of bonds. By the terms of the proposed mortgage, a copy of which is filed in this proceeding, bonds to amount of \$13,639,000 are reserved for refunding or paying the first-mortgage bonds of the railway company and its note to the railroad company, and the remainder for the purpose of refunding or paying the construction-mortgage bonds and the terminal and improvement mortgage bonds, to provide for the enlargement, improvement, extension, and equipment of the property of the railway company, and for other purposes.

The railway company proposes to issue \$13,639,000 of bonds forthwith and to deliver them to the railroad company, in accordance with the terms of the proposed mortgage, in reimbursement of the amounts advanced, or to be advanced, by that company to retire the first-mortgage bonds of the railway company, and in part payment of the note for \$1,639,335.99. It further proposes to issue forthwith bonds in the amount of \$10,000,000, or capital stock in an amount not exceeding \$5,000,000 and such amount of bonds as, together with the stock so issued, will aggregate \$10,000,000, the bonds, or the stock and bonds, to be sold or exchanged, at not less than par, for the purpose of redeeming, paying, and refunding before, at, or after maturity the construction-mortgage bonds and the terminal and improvement mortgage bonds of the railway company. It is also proposed that the remainder of the bonds, and such part of the stock as is not issued as aforesaid, are to be held in the treasury of the railway company and issued, in the discretion of its board of directors, or of the executive committee of the board of directors, for any of the purposes recited in the resolution of the board of directors, a copy of which was filed with the application, authorizing the issue of first and refunding bonds and the execution of the mortgage to secure them. The proposed bonds are to be dated May 1, 1922, to bear interest at the rate of 5 per cent per annum, payable semiannually on May 1 and November 1 in each year, and to mature May 1, 1973.

The railroad company proposes to assume obligation and liability in respect of the payment of the principal and interest of all bonds to be issued by the lessor by indorsing thereon its guaranty in the

form set forth in the application, and should the railway company elect to issue stock in the amount of \$5,000,000, to assume obligation and liability in respect of the payment of dividends thereon at the rate of 5 per cent per annum, payable quarterly.

It does not appear necessary at this time to authorize the issue of stock or bonds in excess of the requirements for meeting obligations of the railway company which have matured, or will mature, as herein stated. Action will therefore be deferred on that part of the application in excess of those requirements.

We find that the issue of first and refunding mortgage bonds and of capital stock by the New York, Lackawanna & Western Railway Company, and the assumption of obligation and liability, as guarantor, in respect thereof by the Delaware, Lackawanna & Western Railroad Company, as herein limited (*a*) are for lawful objects within their respective corporate purposes, and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by the Delaware, Lackawanna & Western Railroad Company of service to the public as a common carrier, and which will not impair its ability to perform that service, and (*b*) are reasonably necessary and appropriate for such purposes.

An appropriate order will be entered.

COMMISSIONER POTTER did not participate in the disposition of this case.

ORDER.

Investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the New York, Lackawanna & Western Railway Company be, and it is hereby, authorized to issue not exceeding \$13,639,000, principal amount, of first and refunding mortgage bonds under and pursuant to, and to be secured by, a proposed first and refunding mortgage to be made by it to the Farmers' Loan & Trust Company, under date of May 1, 1922; said bonds to be dated May 1, 1922, to bear interest at the rate of 5 per cent per annum, payable semiannually on May 1 and November 1 in each year, and to mature May 1, 1973; said bonds to be delivered to the Delaware, Lackawanna & Western Railroad Company at par for the purpose stated in said report.

It is further ordered, That the New York, Lackawanna & Western Railway Company be, and it is hereby, authorized to issue not exceed-

ing \$10,000,000, principal amount, of first and refunding mortgage bonds under and pursuant to, and to be secured by, said proposed first and refunding mortgage to the Farmers' Loan & Trust Company; said bonds to be dated May 1, 1922, to bear interest at the rate of 5 per cent per annum, payable semiannually on May 1 and November 1 in each year, and to mature May 1, 1973; or, to issue not exceeding \$5,000,000 of common capital stock in shares of the par value of \$100 each, and such an amount of such first and refunding mortgage bonds as, together with said stock, shall not exceed \$10,000,000; the certificates representing said shares to be in the form submitted with the application; said bonds, or said bonds and said stock, to be sold or exchanged at not less than par, so far as may be necessary for the purpose of purchasing, paying, retiring, or refunding certain construction-mortgage bonds and certain terminal and improvement mortgage bonds of the applicant, as set forth in the application and said report.

It is further ordered, That the Delaware, Lackawanna & Western Railroad Company be, and it is hereby, authorized (1) to assume obligation and liability, as guarantor, in respect of the payment of the principal and interest of not exceeding \$23,639,000, principal amount, of first and refunding mortgage bonds of the New York, Lackawanna & Western Railway Company, the issue of which is hereinbefore authorized, by indorsing upon each of said bonds its guaranty in the form set forth in the application; and (2) to assume obligation and liability, as guarantor, in respect of the payment of dividends, not to exceed 5 per cent per annum, upon not exceeding \$5,000,000, par value, of the common capital stock of the New York, Lackawanna & Western Railway Company, the issue of which is hereinbefore authorized, by indorsing upon each certificate of stock its guaranty in the form set forth in the application.

It is further ordered, That, except as herein authorized to be issued, none of said securities shall be sold, pledged, repledged, or otherwise disposed of by the applicants, or either of them, unless and until so ordered by this commission.

It is further ordered, That, within 10 days after the execution and delivery thereof, the New York, Lackawanna & Western Railway Company shall file with this commission a verified copy of said first and refunding mortgage in the form in which it was executed.

It is further ordered, That the New York, Lackawanna & Western Railway Company shall file with this commission, within 10 days thereafter, respectively, reports showing all pertinent facts relating (1) to the issue and delivery of first and refunding mortgage bonds to the Delaware, Lackawanna & Western Railroad Company, and (2) to the issue and sale, or exchange, of first and refunding mort-

gage bonds and/or common capital stock as herein authorized; said reports to be signed and verified by an executive officer having knowledge of the facts.

It is further ordered, That the Delaware, Lackawanna & Western Railroad Company shall report to this commission, within 10 days thereafter, respectively, all pertinent facts relating (1) to the delivery of bonds to it by the New York, Lackawanna & Western Railway Company as herein authorized, and (2) to the assumption by it of obligation and liability in respect of said bonds and/or said stock; such reports to be signed and verified by an executive officer having knowledge of the facts.

And it is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said bonds, or interest thereon, or as to said capital stock, or dividends thereon, on the part of the United States.