

FINANCE DOCKET No. 1566.

CONTROL OF SUSSEX R. R. BY D., L. & W. R. R.

IN THE MATTER OF THE APPLICATION OF THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY FOR AUTHORITY TO ACQUIRE CONTROL, BY LEASE, OF THE RAILROAD AND PROPERTY OF THE SUSSEX RAILROAD COMPANY.

Submitted July 21, 1923. Decided August 30, 1923.

Acquisition by the Delaware, Lackawanna & Western Railroad Company of control of the railroad and property of the Sussex Railroad Company, by lease, conditionally approved and authorized.

William S. Jenney, W. J. Larrabee, and R. B. Ferguson for applicant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

The Delaware, Lackawanna & Western Railroad Company, a carrier by railroad subject to the interstate commerce act, on August 29, 1921, filed an application under paragraph (2) of section 5 of the act for an order authorizing it to acquire control, by lease, of the railroad and property of the Sussex Railroad Company, a carrier by railroad subject to the act, hereinafter called the Sussex Company. A hearing was held on the application. Subsequently a similar application was filed with the Board of Public Utility Commissioners of New Jersey, and after a hearing that body declined to approve the form of lease submitted. Thereafter a new form of lease was submitted to the New Jersey commission and approved by it on July 12, 1923, subject to certain conditions. On July 21, 1923, the applicant filed with us a supplementary application for authority to acquire control of the railroad and property of the Sussex Company under the terms of the lease approved by the New Jersey commission. No objection to the granting of the application has been presented to us.

The railroad of the Sussex Company extends from a connection with the Morris & Essex Railroad (leased to and operated by the applicant) at or near Stanhope in a general northerly direction to Branchville, with a branch line from Branchville Junction to Franklin Furnace, a total distance of 30.55 miles, all in the State of New Jersey.

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The Sussex Company proposes to lease its railroad and other property to the applicant for the full term of the corporate existence of the Sussex Company and any and all renewals thereof. The charter of the Sussex Company provides that the corporation "shall and may have continual succession." Under this charter provision the proposed lease would effect a transfer of the railroad and property of the Sussex Company to the applicant in perpetuity. The applicant agrees to pay to stockholders of the Sussex Company interest at the rate of 2 per cent per annum upon the par value of their stock, and is to assume, pay, and discharge all bonds, debts, and liabilities of the Sussex Company which shall accrue and become payable during the continuance of the lease, and all taxes and assessments upon the property, income, or franchises of the Sussex Company levied by any governmental authority. The Sussex Company covenants to maintain its corporate organization, and upon the request of applicant, but subject in each instance to the approval of any regulatory bodies having jurisdiction, to issue and deliver to the applicant its bonds, stock, or other obligations for such amount as may be required by the applicant for the construction and purchase of equipment for said railroad, the construction of buildings and extensions, and for additions and betterments; and such other bonds and securities as may be required, from time to time, to refund or pay the bonds or other obligations theretofore issued, as the same shall mature and become payable. The applicant agrees to pay the interest and principal of all bonds or other obligations issued at its request.

The general balance sheet of the Sussex Company as of December 31, 1922, showed capital stock outstanding, \$1,638,600; long-term debt, consisting of notes and open accounts, all of which is owing to the applicant, \$814,686.78; unadjusted credits, \$5,001.22; investment in road and equipment, \$1,979,377.30; profit and loss debit balance, \$554,860. From January 1, 1920, to December 31, 1922, operating revenues and expenses totaled \$651,863.10 and \$1,216,016.90, respectively, and the deficit in net railway operating income was \$682,140.74. The applicant owns 30,885 shares of the capital stock of the Sussex Company, of the par value of \$50 each, out of a total issue of 32,772 shares. The Sussex Company has no bonded indebtedness.

The applicant has operated the railroad of the Sussex Company since 1881 as a part of its system and with its own equipment, but the revenues, operating expenses, taxes, and statistical data have been separately accounted and recorded in the books of the Sussex Company. It appears that the present form of control and operation has necessitated separate accounting and separate reports of operations to Federal and State regulatory bodies, which will be

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eliminated under the proposed lease. The applicant estimates that this will effect a saving of \$15,000 a year, while the interest payment on the capital stock of the Sussex Company, not owned by it, will amount to less than \$2,000 annually.

Nothing contained in this report or in the order to be entered herein shall be construed to authorize the applicant or the Sussex Company to issue any securities or to assume any obligation or liability in respect thereof.

Upon the facts presented and upon the express conditions (1) that the applicant shall not sell, pledge, or otherwise dispose of the capital stock of the Sussex Company now owned by it, or any part thereof, without our consent; and (2) that proof shall be furnished us that the form and execution of the proposed lease were duly authorized by the stockholders of the contracting companies, we find that the acquisition by the applicant of control of the railroad and property of the Sussex Company under the terms of the lease described in the supplementary application will be in the public interest. An order will be entered accordingly.

CHAIRMAN MEYER did not participate in the disposition of this case.

ORDER.

Entered August 30, 1923.

A hearing and 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 said report is hereby referred to and made a part hereof:

It is ordered, That the Delaware, Lackwanna & Western Railroad Company be, and it is hereby, authorized to acquire control of the railroad and property of the Sussex Railroad Company in accordance with the terms of the lease described in the supplementary application and report aforesaid: *Provided, however,* and the authorization herein given is upon the express conditions, (1) that the Delaware, Lackwanna & Western Railroad Company shall not sell, pledge, or otherwise dispose of the capital stock of the Sussex Railroad Company now owned by it, or any part thereof, without the consent of this commission; and (2) that proof shall be furnished to this commission that the form and execution of the lease were duly authorized by the stockholders of the contracting companies.

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