

FINANCE DOCKET No. 3551.
BONDS OF GREENE R. R.

Submitted April 14, 1924. Decided April 21, 1924.

1. Authority granted to the Greene Railroad Company to issue not exceeding \$207,000, principal amount, of first and refunding mortgage 5 per cent gold bonds to be delivered to the Delaware, Lackawanna & Western Railroad Company, lessee, in refundment of certain obligations.
2. Authority granted to the Delaware, Lackawanna & Western Railroad Company to assume obligation and liability, as guarantor, in respect of said bonds.

William S. Jenney for the applicants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

The Greene Railroad Company, hereinafter called the Greene Company, and the Delaware, Lackawanna & Western Railroad Company, hereinafter called the Lackawanna, common carriers by railroad engaged in interstate commerce, have filed a joint application under section 20a of the interstate commerce act, in which the Greene Company asks authority to issue \$300,000 of first and refunding mortgage 5 per cent gold bonds, \$208,000 to be issued forthwith and \$92,000 to be placed in its treasury to provide for future capital requirements, and the Lackawanna asks authority to assume obligation and liability, as guarantor, in respect of \$300,000 of such bonds. No objection to the granting of the application has been presented to us.

The Greene Company was incorporated, under an act of the Legislature of New York, passed April 2, 1850, for the purpose of constructing, maintaining, and operating a railroad from a point at or near Chenango Forks, in Broome County, to Greene, Chenango County, N. Y. Shortly after incorporation, and about April 26, 1870, its franchise and property were leased to the Lackawanna for the term of the lessor's corporate existence and any renewal or renewals thereof. By the terms of the lease the Lackawanna agreed to construct the railroad authorized by the corporate charter, and the lessor agreed to issue the necessary securities to finance construction. The lease provides that the Greene Company shall, at the request of the Lackawanna, make, issue, and deliver to the lessee bonds of the lessor

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for such amount and to such extent as may be required to raise the money necessary for construction, and the Lackawanna is obligated to pay the principal and interest on such bonds.

Pursuant to the certificate of incorporation and the lease of April 26, 1870, a single-track railroad was constructed by the lessee in 1870 along the route mentioned above, a distance of 8.1 miles. The property was never operated by the Greene Company, but was put into operation by the Lackawanna as part of the system in November, 1870.

In compliance with the request of the Lackawanna, the Greene Company proposes to issue \$208,000 of first and refunding mortgage bonds, which will be secured by a mortgage to be made by the Greene Company to the Farmers' Loan & Trust Company, of New York, trustee. They will be dated as of the date of the issue or the date of the mortgage, will mature 50 years from date, will bear interest at the rate of 5 per cent per annum, payable semiannually, and will be delivered to the Lackawanna at par.

The capital stock of the Greene Company was originally \$200,000, consisting of 2,000 shares of the par value of \$100 per share. It has not been increased or reduced, and is all issued and outstanding.

The Greene Company also has outstanding \$200,000 of first-mortgage 7 per cent bonds, which matured December 1, 1902, and were paid by the Lackawanna, which holds them as an indebtedness of the Greene Company; a note for \$7,059.30, dated July 20, 1921, which matured June 30, 1922, given to the Lackawanna for advances made; and an open-account indebtedness to the Lackawanna for advances made subsequent to July 20, 1921, amounting on December 31, 1923, to \$747.65, making a total indebtedness of \$207,806.95. Our authority therefore will limit the bonds to be issued forthwith to \$207,000.

The Lackawanna asks authority to guarantee both principal and interest on \$300,000 of the bonds and to indorse its guaranty on each bond, substantially in the form set forth in the application. Our authority for such guaranty will not extend beyond the \$207,000 of bonds herein authorized to be issued.

We find that the proposed issue of \$207,000 of first and refunding mortgage bonds by the Greene Company and the proposed assumption of obligation and liability, as guarantor, in respect thereof by the Lackawanna as aforesaid, (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 them of service to the public as common carriers, and which will not impair their ability to perform that

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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.

Entered April 21, 1924.

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, for the purpose of refunding certain of its outstanding obligations and indebtedness, the Greene Railroad Company be, and it is hereby, authorized to issue not exceeding \$207,000, principal amount, of its first and refunding mortgage 5 per cent gold bonds under and pursuant to, and to be secured by, its first and refunding gold bond mortgage, to be dated as of the date executed, to the Farmers' Loan & Trust Company, of New York, trustee; said bonds to be dated as of the date of issue or the date of the mortgage, to mature 50 years from date, to bear interest at the rate of 5 per cent per annum, payable semiannually, and to be delivered at par to the Delaware, Lackawanna & Western Railroad Company.

It is further ordered, That the Delaware, Lackawanna & Western Railroad Company be, and it is hereby, authorized to assume obligation and liability, as guarantor, in respect of the payment of the principal and interest of not exceeding \$207,000, principal amount, of the Greene Railroad Company first and refunding mortgage 5 per cent gold bonds, herein authorized, by indorsing upon each of said bonds its guaranty of the payment of such principal and interest, substantially in the form set forth in the application.

It is further ordered, That, except as herein authorized, said bonds shall not be sold, pledged, repledged, or otherwise disposed of by the applicants, unless and until so ordered by this commission.

It is further ordered, That, within 10 days after the execution thereof, the Greene Railroad Company shall file with the commission a verified copy of the mortgage in the form in which it was executed.

It is further ordered, That, the applicants shall report concerning the matters herein involved in conformity with the commission's

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order dated May 25, 1922, respecting applications filed under section 20a of the interstate commerce act.

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

FINANCE DOCKET No. 1527.

DEFICIT STATUS OF MEMPHIS, DALLAS & GULF R. R.

Submitted July 16, 1921. Decided April 28, 1924.

The Memphis, Dallas & Gulf Railroad Company (Martin Walsh, receiver) held not to have been under private operation during any portion of the Federal control period, and therefore not entitled to the benefits of section 204 of the transportation act, 1920. Claim dismissed.

Martin Walsh for the carrier.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

The Memphis, Dallas & Gulf Railroad Company (Martin Walsh, receiver) during the period of Federal control had lines of railroad in operation, extending from Hot Springs to Ashdown and from Daleville to Delark, Ark., aggregating about 125 miles in length. On June 29, 1918, the Director General of Railroads notified the carrier of the relinquishment of these properties from Federal control. Effective July 1, 1918, the receiver entered into a contract with the director general whereby compensation was to be paid for the use of the properties for the remainder of the Federal control period. The receiver has nevertheless filed claim for reimbursement of deficits under section 204 for the period from January 1 to July 1, 1918.

We have held in similar cases that the railroad properties included in the proclamation of the President issued December 26, 1917, were in the view of the law under Federal control and operation until relinquished by a method prescribed in section 14 of the Federal control act. *Application of St. Joseph Belt Ry.*, 65 I. C. C., 443; *Deficit Status of Abilene & Southern Ry.*, 72 I. C. C., 333. Following our conclusion in those cases, we find that the Memphis, Dallas & Gulf Railroad Company (Martin Walsh, receiver) was not under 86 I. C. C.