

FINANCE DOCKET No. 6568

ASSUMPTION OF OBLIGATION AND LIABILITY BY
DELAWARE, LACKAWANNA & WESTERN RAILROAD

Submitted October 17, 1927. Decided November 2, 1927

Authority granted to assume obligation and liability, as guarantor, in respect of \$9,871,000 of Morris & Essex Railroad Company first refunding mortgage 3½ per cent gold bonds, and to sell such bonds at not less than 83½ per cent of par and accrued interest, the proceeds to be used for capital purposes.

William S. Jenney for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND ESCH

BY DIVISION 4:

The Delaware, Lackawanna & Western Railroad Company, a common carrier by railroad engaged in interstate commerce, has duly applied for authority under section 20a of the interstate commerce act to assume obligation and liability, as guarantor, in respect of \$9,871,000 of Morris & Essex Railroad Company first refunding mortgage 3½ per cent gold bonds, and to sell these bonds, which are now held in its treasury. No objection to the granting of the application has been presented to us.

It appears that the bonds were issued by the Morris & Essex under its first refunding mortgage dated December 1, 1900, to the Farmers' Loan & Trust Company, and were delivered to the applicant prior to the effective date of section 20a in connection with the refunding of first-mortgage bonds due May 1, 1914, of first consolidated mortgage bonds due June 1, 1915, and in reimbursement of advances for construction purposes.

The bonds bear the guaranty of the applicant for the payment of the principal and interest, which guaranty was executed thereon under the terms of a lease dated December 10, 1868, and supplemental agreement of June 27, 1917, whereby the properties of the Morris & Essex are leased to the applicant in perpetuity. As indicated in our report of July 21, 1927,¹ although these bonds were indorsed as has been stated, there would be no assumption of obligation and liability

¹ 131 I. C. C. 34, 43.

in fact until the applicant parted with the possession of the bonds, and as such obligation would arise at a date subsequent to the effective date of section 20a, authority under that section would be necessary. It is now proposed to consummate the assumption of obligation and liability in respect of the bonds which bear the guaranty of the applicant, by selling them.

The applicant shows that its estimated net income for the 12 months from October 1, 1927, to September 30, 1928, together with the cash made available during the period aforesaid by charges for depreciation on equipment, will be insufficient to meet its needs for capital expenditures, for dividends, and to maintain its working-cash balance. It therefore proposes to sell the bonds in the amount indicated and to apply the proceeds toward expenditures for new equipment, the completion of additions and betterments in course of construction, and for additions and betterments to be made, estimated to be \$5,434,144, \$4,875,000, and \$2,750,000, respectively, making a total of \$13,059,044.

Arrangements have been made to sell the bonds, subject to our approval, to J. P. Morgan & Company at 83½ per cent of par and accrued interest. A part of the rental payable by the applicant under the lease of the Morris & Essex properties consists of the interest on the lessor's bonds. Therefore, on the basis given, the annual cost to the applicant of the proceeds of the bonds to be sold will be approximately 4.23 per cent.

We find that the proposed assumption of obligation and liability by the applicant as aforesaid (a) is for lawful objects within its corporate purposes, and compatible with the public interest, which are necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purposes.

An appropriate order will be entered.

ORDER

Entered November 2, 1927

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 Delaware, Lackawanna & Western Railroad Company be, and it is hereby, authorized to assume obligation and liability, as guarantor, in respect of not exceeding \$9,871,000 of

131 I. C. C.

Morris & Essex Railroad Company first refunding mortgage 3½ per cent gold bonds, dated December 1, 1900, and maturing December 1, 2000, now held by it, by indorsing thereon its guaranty of the payment of the principal thereof and the interest thereon, and to sell said bonds at not less than 83½ per cent of par and accrued interest, the proceeds to be used by the applicant solely for expenditures chargeable to capital account.

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

It is further ordered, That the applicant shall report concerning the matters herein involved in conformity with the commission's order dated February 19, 1927, 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.

131 I. C. C.