

FINANCE DOCKET No. 6616
ACQUISITION AND STOCK ISSUE BY DELAWARE, LACK-
AWANNA & WESTERN RAILROAD

Submitted January 13, 1928. Decided March 13, 1928

1. Certificate issued authorizing the Delaware, Lackawanna & Western Railroad Company to acquire and operate the line of railroad of the Lackawanna & Montrose Railroad Company in Susquehanna County, Pa.
2. Authority granted to the Delaware, Lackawanna & Western Railroad Company to issue \$130,500 of capital stock, consisting of 2,610 shares of the par value of \$50 each, in exchange for an equal number of shares of like par value of outstanding capital stock of the Lackawanna & Montrose Railroad Company.

W. S. Jenney for applicant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

By DIVISION 4:

The Delaware, Lackawanna & Western Railroad Company, a common carrier by railroad subject to the interstate commerce act, on November 30, 1927, filed an application (1) under paragraph (18) of section 1 of that act for a certificate that the present and future public convenience and necessity require the acquisition and operation by it of the line of railroad of the Lackawanna & Montrose Railroad Company, hereinafter called the Montrose Company, extending from Alford Junction to Montrose, a distance of 9.93 miles, all in Susquehanna County, Pa., and (2) under section 20a of the act for authority to issue 2,610 shares of stock of the par value of \$50 each, in exchange for an equal number of shares of like par value of the outstanding capital stock of the Montrose Company. No representations have been made by State authorities and no objection to the granting of the application has been presented to us.

The Montrose Company was organized in 1889 under the laws of Pennsylvania, and its railroad was completed for operation in 1891. The greater portion of the funds for construction of the line was advanced by the applicant, which was reimbursed for its advances by the issue to it of capital stock of that company. The applicant has controlled the Montrose Company through ownership of capital stock for over 35 years, and now owns 2,608 shares of its total out-

138 I. C. C.

standing stock of 2,610 shares. The Montrose Company owns no locomotives, cars, shops, or shop equipment, and has no operating organization. Its railroad, which at one end connects at Alford Junction with the applicant's main line, has no physical connection with any other railroad, although Montrose, which is the other terminus of the road and has a population of 1,661, is served also by a branch of the Lehigh Valley. Although the Montrose Company is nominally independent, its line actually serves as a branch or feeder of the applicant's system and the applicant has operated it as a part of its system practically ever since it was built. It does not compete with any of the lines of the applicant and, it is claimed, could not be operated independently of its system.

In several years prior to 1900 the Montrose Company showed an apparent profit from operation, but in later years a series of deficits has been shown, the deficit in net income amounting to \$19,692 in 1925, \$43,406 in 1926, and \$38,352 for the first 10 months of 1927. Its balance sheet as of October 31, 1927, shows investment in road \$142,124.70, capital stock \$130,500, long-term debt \$449,685.06 (consisting of notes \$51,745.53 and open accounts \$397,939.53), tax liability \$589.72, and profit and loss debit balance \$438,650.08.

While the line in question has not been self-sustaining for a number of years and, it is claimed, can not be made so through independent operation, nevertheless a considerable amount of revenue tonnage, amounting for the year 1926 to 35,035 tons, moves to and from points thereon. Much of this tonnage moves about 165 miles over the applicant's line and yields substantial revenue and profit to the applicant.

It is claimed that if the proposed acquisition is approved several thousand dollars can be saved annually by the elimination of separate accounting and reports now required to be made to National and State regulatory bodies, and that the inaccuracies of operating statistics, resulting from more or less arbitrary divisions of revenue and expenses of operation as between the two companies, will be eliminated.

The proposed acquisition is to be accomplished pursuant to an "agreement of merger" between the applicant and the Montrose Company entered into under date of December 16, 1926. The applicant represents that the consolidation and merger of the two companies have been duly approved by the stockholders of each and have been duly effected in accordance with the laws of Pennsylvania, under which both companies were incorporated. The "agreement of merger" provides, among other things, that the holders of the capital stock of the Montrose Company, upon surrendering their certificates of stock, properly indorsed, to the applicant's treasurer,

138 I. C. C.

shall receive in exchange for each share thereof one share of stock of the applicant, that the applicant shall cancel and discharge all indebtedness of the Montrose Company to it, amounting on October 31, 1926, to \$403,996, and shall assume all the liabilities, obligations, and debts of that company. The Montrose Company has no funded debt and no debts except those due the applicant.

The applicant seeks authority to issue 2,610 shares of its capital stock of the aggregate par value of \$130,500 to be exchanged, as provided by the agreement, for the 2,610 shares of like aggregate par value of outstanding capital stock of the Montrose Company, which thereupon will be canceled. The board of managers and stockholders of the applicant have approved the increase of its capital stock necessary for that purpose. It appears that in effect there will be substituted for the 2,608 shares of stock of the Montrose Company that the applicant now owns an equal number of shares of the latter's own stock. Our order will provide that 2,608 shares of the stock to be issued shall be held by the applicant subject to our further order.

Upon the facts presented we find (1) that the present and future public convenience and necessity require the acquisition and operation by the applicant of the line of railroad of the Montrose Company described in the application, and (2) that the issue of capital stock by the applicant as aforesaid (a) is for a lawful object within its corporate purposes, and compatible with the public interest, which is 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 purpose.

An appropriate certificate and order will be issued.

EASTMAN, *Commissioner*, dissenting:

I dissent for the reasons set forth in my separate expression in *Acquisition by Southern Pacific Co.*, 131 I. C. C. 726.

CERTIFICATE AND ORDER

Issued March 13, 1928

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 hereby certified, That the present and future public convenience and necessity require the acquisition and operation by the
138 I. C. C.

Delaware, Lackawanna & Western Railroad Company of the line of railroad of the Lackawanna & Montrose Railroad Company in Susquehanna County, Pa., described in the application and report aforesaid.

It is ordered, That the Delaware, Lackawanna & Western Railroad Company be, and it is hereby, authorized to issue \$130,500 of capital stock, consisting of 2,610 shares of the par value \$50 each; said stock to be exchanged for an equal number of shares of like par value of the outstanding capital stock of the Lackawanna & Montrose Railroad Company which thereupon shall be canceled; 2,608 shares of the stock authorized herein to be held by the applicant subject to the further order of this commission.

It is further ordered, That, except as herein authorized, said stock shall not be exchanged, 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 issue of said stock 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 stock, or dividends thereon, on the part of the United States.

138 I. C. C.