

FINANCE DOCKET No. 5055

BONDS OF MORRIS & ESSEX RAILROAD COMPANY

Submitted February 7, 1930. Decided February 8, 1930

Authority granted the Delaware, Lackawanna & Western Railroad Company to sell at not less than 101¼ per cent of par and accrued interest \$10,000,000 of construction-mortgage gold bonds, series A, of the Morris & Essex Railroad Company, and use the proceeds to provide in part for expenditures made and to be made for additions and betterments on its railroad system. Previous reports, 105 I. C. C. 141 and 154 I. C. C. 103.

William S. Jenney for applicant.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

BY DIVISION 4:

By our order of November 19, 1925,¹ as amended by our order of April 27, 1929,² the Morris & Essex Railroad Company, hereinafter called the Morris & Essex, was authorized to issue \$10,000,000 of its 5 per cent construction-mortgage gold bonds, series A, and to deliver them at par to the Delaware, Lackawanna & Western Railroad Company, hereinafter called the Lackawanna, in partial reimbursement of expenditures for additions and betterments, and the Lackawanna was authorized to assume obligation and liability, as guarantor, in respect of the payment of the principal of and interest on these bonds. The original order as amended provides that, except as therein authorized, the bonds shall not be sold, pledged, repledged, or otherwise disposed of by either the Morris & Essex or the Lackawanna unless and until so ordered by us.

Pursuant to the authority granted, the Morris & Essex issued \$10,000,000, principal amount, of its construction-mortgage gold bonds, series A, and delivered that amount of bonds to the Lackawanna. By supplemental application filed herein on January 20, 1930, the Lackawanna requests authority to sell these bonds and to use the proceeds to provide in part for expenditures made and to be made for additions and betterments on its railroad system.

Statements filed as part of the application show that from October 1, 1928, to December 31, 1929, inclusive, expenditures made by the Lackawanna exceeded its income for that period by \$8,371,932. The

¹ 105 I. C. C. 141.

² 154 I. C. C. 103.

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expenditures made include \$15,429,647 for additions and betterments to road and equipment. The Lackawanna states that as bonds could not be sold advantageously during the 15 months' period mentioned, and as the work under construction could not be stopped without great loss, it was necessary to provide for the expenditures in excess of its income by temporary bank loans, by sale of Government securities, and by use of cash in its treasury. It is estimated that the requirements of the Lackawanna for the current year, including \$24,112,875 for additions and betterments to its road and equipment, will exceed its available income by \$20,034,643, making the total excess of requirements, actual and anticipated, over estimated income \$28,406,575.

Requirements for the current year in excess of those to be met with the proceeds from the sale of the series-A bonds are to be provided for in part by the sale of \$15,000,000, principal amount, of Morris & Essex construction-mortgage gold bonds, series B, now in the treasury of the Lackawanna. The series-B bonds were issued by the Morris & Essex and delivered to the Lackawanna under authority of our order of April 27, 1929, in *Bonds of Morris & Essex Railroad Company*.⁸ By supplemental application in that proceeding the Lackawanna has requested authority to sell the series-B bonds.

Arrangements have been made for the sale of the series-A bonds to J. P. Morgan & Company at 101 $\frac{1}{4}$ per cent of par and accrued interest. On that basis the average annual cost to the Lackawanna will be approximately 4.914 per cent.

Upon the facts presented we find that the assumption of obligation and liability by the Lackawanna, as guarantor, in respect of the \$10,000,000 of construction-mortgage gold bonds, series A, of the Morris & Essex, to be sold and the proceeds used 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 supplemental order will be entered.

THIRD SUPPLEMENTAL ORDER

Entered February 8, 1930

Further investigation of the matters and things involved in this proceeding having been had, and said division having, on the date

⁸ 154 I. C. C. 105.

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hereof, made and filed a second supplemental 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 order entered herein on November 19, 1925, as amended by supplemental order of April 27, 1929, authorizing (1) the Morris & Essex Railroad Company to issue construction-mortgage gold bonds, series A, in the amount of \$10,000,000, and to deliver them at par to the Delaware, Lackawanna & Western Railroad Company in partial reimbursement of expenditures for additions and betterments, and (2) the Delaware, Lackawanna & Western Railroad Company to assume obligation and liability, as guarantor, in respect of said bonds, be, and it is hereby, modified so as to permit the Delaware, Lackawanna & Western Railroad Company to sell said bonds at not less than 101 $\frac{1}{4}$ per cent of par and accrued interest, and use the proceeds for the purposes stated in the supplemental application and report aforesaid.

It is further ordered, That, except as hereby modified, and as modified by said supplemental order of April 27, 1929, said order of November 19, 1925, shall remain in full force and effect.

158 I. C. C.