

FINANCE DOCKET No. 12521  
DELAWARE, LACKAWANNA & WESTERN RAILROAD  
COMPANY OPERATION

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*Submitted October 30, 1939. Decided November 8, 1939*

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Certificate issued authorizing the Delaware, Lackawanna & Western Railroad Company to operate under trackage rights over a line of the Lehigh & New England Railroad Company in Sussex County, N. J. Condition prescribed.

*Douglas Swift and W. J. Larrabee for applicant.*

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

By DIVISION 4:

The Delaware, Lackawanna and Western Railroad Company on August 16, 1939, applied for authority to operate under trackage rights over the line of the Lehigh and New England Railroad Company between Augusta and Sussex, approximately 10.1 miles, all in Sussex County, N. J. No representations have been made by State authorities, and no objection to the application has been offered.

The purpose of the proposed operation is to expedite the transportation of milk from Sussex to Newark, N. J. There is a daily movement of milk between those points, but the train schedules of the two carriers do not afford reasonably expeditious service. It is proposed that the trains of the applicant move directly between Sussex and Newark. No intermediate points on the line of the Lehigh & New England will be served by the applicant, and its operation on the trackage-rights segment will be confined to the transportation of milk and the return of necessary equipment for that purpose. The record shows that the proposed operation will not result in any change in the volume of milk handled by the applicant, but that the service to the public will be materially improved.

It is estimated by the applicant that one tank carload of milk a day will be handled and that the operating revenue therefrom will amount to \$23,777 a year. The operating costs assignable to that traffic, including transportation and maintenance expenses, tax accruals, joint facility rents, and equipment rents are estimated at \$19,317, resulting in net operating revenue of \$4,460 a year.

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An agreement dated July 19, 1939, has been executed by the applicant and the Lehigh & New England, under which the latter grants to the former the joint use of the line between Augusta and Sussex for the transportation of milk only. As consideration for such use, the applicant agrees to pay as rental \$10 for each loaded car of milk handled on the trackage section, with a minimum of \$200 a calendar month. There are other provisions in the agreement, including such as are usually found in trackage-rights agreements between railroad companies, not enumerated herein. The agreement will continue in effect from its date until canceled by either party upon 60 days' notice in writing. It is provided, however that at the end of 1 year from its date, and annually thereafter, the Lehigh & New England shall have the sole right to fix the rental to be paid by the applicant for the trackage rights in question.

In view of the fact that under this provision the rental may be increased from year to year, we think we should retain jurisdiction of the proposal herein for the purpose of having any such future increases submitted for our consideration and approval, and our authorization will be granted upon that condition.

Subject thereto, we find that the present and future public convenience and necessity require the operation by The Delaware, Lackawanna and Western Railroad Company, under trackage rights, over the line of the Lehigh and New England Railroad Company in Sussex County, N. J., as described herein.

An appropriate certificate will be issued.

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