

## FINANCE DOCKET No. 12635

DELAWARE, LACKAWANNA & WESTERN RAILROAD  
COMPANY EQUIPMENT TRUST CERTIFICATES*Submitted December 15, 1939. Decided January 8, 1940*

Authority granted to assume obligation and liability in respect of not exceeding \$3,100,000 of Delaware, Lackawanna & Western Railroad Company equipment-trust certificates of 1940, series C, to be issued by the United States Trust Company of New York, as trustee, and sold at par and accrued dividends to the Reconstruction Finance Corporation in connection with the procurement of certain equipment.

*Douglas Swift* for applicant.

## REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

The Delaware, Lackawanna and Western Railroad Company, by application filed on November 10, 1939, as supplemented December 15, 1939, applied for authority to assume obligation and liability in respect of \$3,100,000 of Delaware, Lackawanna & Western Railroad Company equipment-trust certificates of 1940, series C. No objection to the application has been offered.

The applicant represents that it needs additional equipment for the efficient and economical management and operation of its railroad and to meet adequately the demands upon its service. It therefore proposes to acquire the following:

Description	Units	Approximate unit price	Total estimated cost
50-ton, 40-ft. 8¼-in., all-steel boxcars.....	500	\$2,900	\$1,450,000
50-ton, 35-ft., all-steel hopper cars.....	500	2,650	1,325,000
70-ton, 54-ft. 4½-in., low-side, drop-end, all-steel gondola cars.....	100	3,250	325,000
Total.....			3,100,000

Charles C. Hubbell and Philip D. Jonas, as vendors, will procure the equipment from the builders and will enter into an agreement to be dated February 1, 1940, with the United States Trust Company of New York, as trustee, and the applicant, creating the Delaware, Lackawanna & Western Railroad Company equipment trust of 1940, series C, and will sell and transfer the equipment to the trustee. The agreement will provide for the lease of the equipment by the trustee to the

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applicant and for the issue by the trustee of not exceeding \$3,100,000 of equipment-trust certificates.

Upon the execution of the agreement and the deposit by the vendors with the trustee of the sum of \$3,100,000, the trustee will execute and deliver to the vendors, or upon their order, trust certificates of a principal amount equal thereto. From the deposited cash and from any funds paid by the applicant to the trustee as additional rental, as required by the lease, the trustee will pay the total cost of the equipment.

The certificates originally issued may be in temporary form, without dividend warrants, fully registered, in the denomination of \$1,000 or such multiple thereof as the vendors may request, will be dated the day of issue, and will represent an interest in the trust in the amount specified. Registered holders will be entitled to receive dividends on the principal amount thereof at the rate of 2½ percent per annum from the date thereof, payable semiannually on February 1 and August 1. These certificates will be exchangeable for definitive certificates, which will be dated February 1, 1940, will be in the denomination of \$1,000, payable to bearer or registrable as to principal, and representing an interest of that amount in the trust, will have dividend warrants attached entitling the holder to dividends at the rate of 2½ percent per annum, payable semiannually on February 1 and August 1, and will mature in 20 equal semiannual installments of \$155,000, beginning August 1, 1940, and on February 1 and August 1 of each year thereafter to and including February 1, 1950. Pursuant to the terms of the agreement, the applicant will endorse upon each of the temporary and definitive certificates, substantially in the forms given in the agreement, its unconditional guaranty of the prompt payment, when due, of the principal thereof and the dividends thereon. The agreement will also provide that, upon the request of the bearers or registered holders of all outstanding unmatured certificates, certain of the certificates and the appurtenant dividend warrants, upon presentation thereof to the trustee, will be deferred as to payment by stamping or printing thereon legends to that effect. An appropriate notation will also, if so requested by the bearers or registered holders of all outstanding unmatured certificates, be endorsed by the trustee on all certificates not so deferred which are presented for that purpose, to indicate the preference and priority of such certificates and the deferment of other certificates.

The lease of the equipment between the trustee and the applicant will also be dated February 1, 1940, and will require that the applicant pay to the trustee, (a) the necessary and reasonable expenses of the trust and lease; (b) the taxes, assessments, and other governmental charges upon the income or property of the trust, or the agreement

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evidencing the same, which the trustee may be required to pay, and the taxes, assessments, or other governmental charges, except inheritance, estate, and income taxes, which the applicant or the trustee may be required to pay or to retain from the principal of the trust certificates, or from the dividends thereon, under any present or future law of the United States of America or of any State, county, or municipality thereof, or any other lawful taxing authority therein; (c) the dividend warrants attached to, and the dividends payable on, the trust certificates when they become payable; (d) the principal of the trust certificates when it becomes payable; and (e) if default is made in the full payment of any such dividend warrants, dividends, or principal when payable, interest thereon at the rate of 6 percent per annum. The lease will also require that the applicant pay to the trustee on demand, as additional rental thereunder, such amounts as will, together with the sum of \$3,100,000 to be deposited with the trustee by the vendors under the agreement, be sufficient to pay the total cost of the equipment. Provision is also made in the lease for the transfer of the title to the equipment to the applicant, or its nominee or nominees, upon performance by the applicant of all its obligations thereunder.

The applicant proposes to sell the certificates to the Reconstruction Finance Corporation at par and accrued dividends. The purchase of the certificates by the Corporation was approved by our certificate of January 8, 1940, in *Delaware, L. & W. R. Co. Reconstruction Financing*, 236 I. C. C. 541.

We find that the proposed assumption of obligation and liability by The Delaware, Lackawanna and Western Railroad Company in respect of not exceeding \$3,100,000 of Delaware, Lackawanna & Western Railroad Company equipment-trust certificates of 1940, series C, 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 order will be entered.

PORTER, *Commissioner*, dissenting:

For reasons set forth in connection with prior reports, I dissent from the approval of the purchase by the Reconstruction Finance Corporation and the assumption of liability by the railroad company, of equipment-trust certificates representing the entire cost of the equipment.

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