7. That the collateral herein required to be pledged will constitute full and adequate security for the loan.

An appropriate certificate will be issued.

COMMISSIONER MILLER did not participate in the disposition of this case.

FINANCE DOCKET No. 11662

NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY REORGANIZATION

Submitted March 29, 1940. Decided May 14, 1940

After hearing on debtor's plan of reorganization, approval at this time of any plan of reorganization of the New York, Ontario & Western Railway Company refused, without prejudice to continuation of the proceedings.[1]

Edward G. Buckland for debtor.

Elbert N. Oakes for debtor's trustee.

Henry J. Friendly for interveners.

William S. Begg for trustee under the general mortgage.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

On May 20, 1937, the New York, Ontario and Western Railway Company, hereinafter called the debtor, filed in the District Court of the United States for the Southern District of New York a petition for the purpose of effecting a plan of reorganization in accordance with the provisions of section 77 of the act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", as amended. On the same day the petition was approved as properly filed under the act and section mentioned, and proceedings designated No. 68276 for reorganization of the debtor under the provisions of the act were begun and are now pending. Pursuant to court orders, the debtor filed a plan of reorganization on January 11, 1939, and, after notice, a hearing on the plan was held and concluded before us on March 19, 1940. Under the provisions of the act, we are required, following such hearing, to render a report and order in which we shall approve a plan of re-

[1] Previous reports: 221 I. C. C. 577 and 224 I. C. C. 129.

organization, which may be different from any which has been proposed, or to render a report and order in which we shall refuse to approve any plan.

A group of 10 insurance companies, holders of about 38 percent of the debtor's outstanding refunding and general bonds, which intervened in the proceeding, has recently initiated an investigation and study to determine the debtor's economic status and what may be done to operate the road successfully under present and prospective conditions.

Location and general description of property.—The debtor's main line, located entirely in the State of New York, extends from Cornwall to Oswego, with branch lines from New Berlin Junction to New Berlin, from Walton to Delhi, and from Summitville to Kingston, totaling approximately 318 miles. It operates between Cornwall, N. Y., and Weehawken, N. J., under a trackage-right agreement, over the tracks of the West Shore Railroad Company, New York Central Railroad Company, lessee. It operates, under lease, tracks of the following named companies: Ellenville & Kingston Railroad Company, approximately 28 miles, from Ellenville, N. Y., to Kingston, N. Y.; Port Jervis, Monticello & Summitville Railroad Company, approximately 38 miles, from Summitville, N. Y., to Port Jervis, N. Y., and Valley Junction, N. Y., to Monticello, N. Y.; Ontario, Carbondale & Scranton Railway Company, approximately 72 miles, from Cadosia, N. Y., to Scranton, Pa., and Sibley Junction, Pa.; Wharton Valley Railway Company, approximately 7 miles, from New Berlin, N. Y., to Edmeston, N. Y.; Pecksport Connecting Railway Company, approximately 4 miles, from Pecksport, N. Y., to White's Corners, N. Y.; Utica, Clinton & Binghamton Railroad Company, approximately 31 miles, from Randallsville, N. Y., to Utica, N. Y.; and Rome & Clinton Railroad Company, approximately 13 miles, from Clinton, N. Y., to Rome, N. Y. The debtor owns all the outstanding securities of all these companies except the last two.

A report covering owned and leased property of the debtor as of December 31, 1936, prepared by our Bureau of Valuation, and made a part of this record by our order of April 22, 1938, shows original cost exclusive of lands and rights $49,491,781, cost of reproduction new $64,958,375, cost of reproduction less depreciation $40,618,835, and value of lands and rights $2,728,553.

Past and prospective earnings.—The debtor's coal traffic originates generally in the vicinity of its branch line to Scranton, Pa., and has declined so greatly in recent years that the revenues from it in 1939 were only 44 percent of those in 1932. Merchandise freight revenues have been fairly constant and in 1939 were 96 percent of those for 1932.

Passenger and all other revenues combined have declined to a greater extent than coal revenues, and the decline has been continuous, except for the years 1936 and 1937 when they exceeded those for 1935.

The debtor submitted an income account statement showing for the years 1932 to 1939, and for an estimated prospective year, annual operating revenues, the amount available for interest in each year, and the amount available for interest after adjustment for amounts credited but which were not actually received, as follows:

	Operating revenues	Available for interest	Adjusted available for interest
Year 1932	$10,571,876	$2,070,657	$1,810,566
Year 1933	9,644,523	1,702,478	1,678,479
Year 1934	9,389,831	1,235,774	1,215,440
Year 1935	8,590,513	1,348,504	1,307,746
Year 1936	8,705,935	995,156	974,156
Year 1937	6,480,030	[1] *372,757*	[1] *372,757*
Year 1938	6,439,655	[1] *702,085*	[1] *702,085*
Year 1939	6,014,157	[1] *587,496*	[1] *587,496*
Prospective year	6,795,908	260,177	

[1] Italics show deficits.

The estimate for a prospective year was made on an expected anthracite-coal tonnage of 1,158,000 tons originating on debtor's line near Scranton, Pa. Small independent companies were estimated to furnish 320,000 tons, the Scranton Coal Company 120,000 tons, Monarch mine 168,000 tons, and Penn Anthracite 550,000 tons. The Scranton Coal Company was in bankruptcy at the time of the estimate and was not operating, although it was hoped that it would resume operation. There is at present no prospect that production by this company will start soon. Monarch Mine production continued through about the first half of 1939, when the company went into bankruptcy. There is no present prospect of the resumption of its operations. In view of the material change in the prospects with respect to anthracite-coal traffic, the debtor's president and its trustee estimate that the coal revenues will fall $1,000,000 below the estimate for a prospective year.

Recently, the intervening group of insurance companies secured the services of an expert to investigate the economic status of the debtor and determine what could be done to bring about successful operation of the road under the present and prospective conditions. The chairman of the group estimates that about 3 months will be required to complete the study.

Income statements for the 8 years, 1932 to 1939, filed with us show that there were deficits before interest charges in 1937, 1938, and 1939. Comparing annual average operating revenues, operating expenses, and taxes for the first 5 years of the 8-year period with those for the last 3 years discloses that in the latter period operating revenues declined 33 percent, mainly due to a 48-percent decline in revenues from coal traffic, that operating expenses declined 17 percent, and that tax accruals, adjusted for a $121,949 credit in 1937 for accruals in 1936 not paid, increased 27 percent.

During the hearing all parties indicated that the closing of operations by coal-mining companies had so changed the prospects of the operation of the debtor that no plan would be feasible until sources of additional traffic not now apparent had been discovered or some plan for changing the character or method of operation had been developed.

Present financial structure.—The total assets of the debtor disclosed by its December 31, 1939, balance sheet amount to $92,799,858, including investment in road and equipment $85,026,665, improvements on leased railway property $872,414, sinking funds $60, miscellaneous physical property $15,960, investments in affiliated companies $4,816,493, other investments $96,000, current assets $1,143,500, deferred assets $551,528, and unadjusted debits $277,238. Liabilities as of the same date consisted of capital stock $58,114,043, grants in aid of construction $225,560, long-term debt $30,202,049, current liabilities $7,466,619, deferred liabilities $137,025, unadjusted credits $4,306,118, and a deficit in corporate surplus of $7,651,556.

Included in current assets as of December 31, 1939, were cash $204,967, special deposits $151,533, net balances receivable from agents and conductors $77,753, and material and supplies $511,344. Among the items of current liabilities were loans and bills payable $1,057,000, traffic and car-service balances payable $117,898, audited accounts and wages payable $1,884,575, including $1,034,962 taxes vouchered and unpaid, interest matured unpaid $3,824,400, funded debt matured unpaid $166,977, and unmatured interest accrued $310,263. Tax liability of $78,648 and accrued depreciation, equipment, $3,914,519 were included in unadjusted credits.

The debtor had outstanding on December 31, 1939, common stock consisting of 581,076 shares, $100 par value a share. There also were outstanding $6,383 of scrip convertible into common stock and $60 of scrip convertible into preferred stock. Unmatured funded debt consisted of $20,000,000, principal amount, of refunding 4-percent gold mortgage bonds dated June 1, 1892, due June 1, 1992, on which accrued interest was $2,670,747; $8,630,000 of general 4-percent gold mortgage bonds, dated May 31, 1905, and due June 1, 1955, on which accrued interest was $1,066,747; and New York State Grade Crossing Elimination Bonds $402,049, on which accrued interest, together with that accrued on $9,523 of such bonds matured and unpaid, was $28,809. Matured and unpaid funded debt was $150,000 of Inland Lakes to Sea Terminal Corporation 6-percent bonds, on which accrued interest was $27,275, and $7,454 of registered serial collateral 4-percent notes to the Public Works Administration, now held by the Reconstruction Finance Corporation, on which accrued interest was $109.

Nonnegotiable debt to affiliated companies consisted of demand notes to the New York, New Haven & Hartford Railroad Company, of which $570,000 bears interest at 5 percent and $600,000 at 6 percent per annum. Accrued interest on nonnegotiable debt to December 31, 1939, was $189,083.

Loans and bills payable included 5-percent demand notes of $1,000,000 due to the Chase National Bank, on which accrued interest was $143,889, and $57,000 of such notes to the Central Hanover Bank & Trust Company, on which accrued interest was $8,004. Collateral held by the Central Hanover Bank & Trust Company consists of $269,000 of the debtor's general-mortgage bonds, $300,000 of Scranton Coal Company first-mortgage gold notes, now a second lien, and $100,000 of Penn Anthracite Collieries Company first-mortgage bonds. The Chase National Bank holds as collateral $3,101,000 of the debtor's general-mortgage bonds, $610,000 of Scranton Coal Company notes, and an assignment of the debtor's equity in part of the collateral pledged to secure notes held by the Central Hanover Bank & Trust Company.

The principal amount of the debt and total capitalization as of December 31, 1939, and the annual interest charges thereon are shown in the statement below. In addition the debtor is contingently liable in respect of $1,564,000, plus unpaid interest, debt of the Scranton Coal Company.

Nature of obligation	Outstanding principal or par amount	Annual interest requirement
Inland Lakes to Sea Terminal Corporation purchase mortgage	$150,000	$9,000
New York State Grade Crossing Elimination bonds	411,572	15,217
Refunding-mortgage bonds	20,000,000	800,000
General-mortgage bonds	8,630,000	345,200
Registered collateral notes (Public Works Administration)	7,454	298
Demand notes held by banks	1,057,000	52,850
Demand notes held by New Haven R. R. Co.	1,170,000	64,500
Total debt	31,426,026	1,287,065
Common stock and convertible scrip	58,113,983	
Preferred convertible scrip	60	
Total capitalization	89,540,069	

Debtor's plan of reorganization.—The debtor's plan of reorganization, the only plan filed in this proceeding, was proposed when the anthracite-coal traffic originating on the debtor's lines had diminished to a lower volume than the volume in years prior thereto, and after a coal company, controlled by the debtor, had filed a petition in bankruptcy and had ceased production.

The plan, based upon the debtor's obligations existing as of September 30, 1938, and the estimate of prospective earnings referred to above, would be effective as of July 1, 1939, or later. It contemplated consolidation of the debtor and the leased lines of which it owned all the securities. It provided for fixed-interest obligations necessary to raise $2,000,000 of new money for working capital, and further provided for assumption by the reorganized company of $12,000 of Public Works Administration notes, $66,000 of equipment-trust certificates, and an estimated (the accounting was not yet complete) $408,038 of New York State Grade Crossing Elimination bonds. By December 31, 1939, the Public Works Administration notes had been reduced to $7,454, the equipment-trust certificates had been paid, and the unpaid grade-crossing bonds amounted to $411,572.

Applied to the obligations of the debtor as of December 31, 1939, the capitalization, fixed and contingent interest, and preferred-dividend requirements under the plan are shown in the table below:

	Principal amount	Fixed interest	Contingent interest	Preferred dividends
Undisturbed obligations	$419,026	$15,515		
Fixed-interest bonds	2,000,000	80,000		
Contingent-interest bonds	5,000,000		[1] $225,000	
Total debt	7,419,026			
Preferred stock	17,670,747			$883,537
Common no-par stock [2]	13,482,300			
Total	38,572,073	95,515	225,000	883,537

[1] Contingent-capital fund (estimated $135,918, or 2 percent of revenues) and first-mortgage sinking-fund payment $100,000 would be prior to contingent interest.
[2] No-par stock included at $100 a share.

Description of proposed securities.—The new first-mortgage bonds would constitute a first lien on all property of the debtor except equipment subject to lien of equipment trusts. They would mature in 20 years and bear fixed interest at the rate of 4 percent. The mortgage would contain provisions for a capital fund and sinking fund. The new general mortgage would constitute a lien junior to the lien of the first mortgage on the same property as the first mortgage. Bonds issued thereunder in consummation of the plan would mature in 50 years and bear interest contingent upon earnings at the rate of 4½ percent per year, such interest to be cumulative to the maximum amount at any one time of 18 percent. The general mortgage would contain capital-fund and sinking-fund provisions similar to the first mortgage.

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Preferred stock would have a par value of $100 a share and would be entitled to dividends of 5 percent per annum, payable out of available net income as defined in the plan, but only as and when declared. Dividends would be cumulative to the extent earned and not paid. The preferred stock would be redeemable at 105, would participate up to a maximum of $1 a share equally with common stock after payment of a $5 common-stock dividend, and would have voting rights. Common stock would be without par value, but would be distributed at a price of $100 a share.

Conclusions.—Since the closing of the Monarch mine with the consequent reduction of coal traffic, there is little prospect that revenues of the debtor or its income available for fixed charges will equal the prospective year used in preparing the plan. The results of the recent operations of the debtor, as set out above, show clearly that it cannot be expected to earn the expenses incurred in the operation of the property until there has been developed a solution for the difficulties of the coal companies supplying the debtor's traffic which will insure a continual supply of such traffic, or there has been discovered some other source of traffic not now apparent.

Under the provisions of section 77 it is our duty, after a plan has been filed and hearings held thereon, to render a report either approving a plan or refusing to approve any plan, so that the court and the parties may be advised of our views. We conclude that we should not approve a plan of reorganization for the debtor unless and until further operations of the property disclose the possibility of more profitable operation than is at present apparent. This conclusion is without prejudice to continuation of the reorganization proceedings.

An appropriate order will be entered.

COMMISSIONER MILLER did not participate in the disposition of this case.