

FINANCE DOCKET No. 13497

NEW YORK, SUSQUEHANNA & WESTERN RAILROAD
COMPANY TRUSTEE PURCHASE

Submitted December 8, 1941. Decided December 30, 1941

Purchase by Walter Kidde, trustee in reorganization proceedings of the New York, Susquehanna & Western Railroad Company, of the property constituting the Edgewater section of the Erie Terminals Railroad Company, approved and authorized.

M. C. Smith, Jr., for applicant.

Ralph E. Lum for railroad company.

H. A. Taylor for trustees of another railroad company.

Leo Manville for interveners.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

Walter Kidde, trustee in reorganization proceedings of the New York, Susquehanna and Western Railroad Company, hereinafter sometimes referred to as the Susquehanna, on October 15, 1941, applied under section 5 (2) of the Interstate Commerce Act, as amended, for authority to purchase the railroad constituting the Edgewater section of the Erie Terminals Railroad Company, otherwise sometimes referred to herein as the Terminal, approximately 1.5 miles, in Bergen County, N. J. A hearing has been held. No representations have been made by State authorities, and no objection to the application has been offered. All points hereinafter mentioned are in New Jersey unless otherwise indicated. The New York Central Railroad Company intervened to protect the rights of a subsidiary company to operate over the railroad involved in the transaction pursuant to existing agreements which will be discussed hereinafter.

The railroad proposed to be acquired, hereinafter sometimes designated as the line, serves a congested industrial area on the west bank of the Hudson River, and consists of two segments, the southerly section extending from the Hudson-Bergen County boundary line north about 3,500 feet to a connection with the Susquehanna's tracks at Edgewater Terminal, and the northerly section continuing from the north end of those tracks about 4,250 feet to a point near Fort Lee ferry. The applicant has on file with the State an application

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for a proposed line to extend 1.5 miles northward. No construction has been accomplished on this route, however. While the continuity of the line is interrupted by about 2,000 feet of line of the Susquehanna, the Terminal has acquired right-of-way lands through this area. The Terminal has also filed with the State an application for a proposed line of railroad parallel to the Erie Railroad from a point at or near Suffern to Secaucus, on which route it now owns some land and a bridge across the Hackensack River. This structure is used by the Erie. The last-mentioned property is not included in the transaction proposed herein.

The original location of the line, which included a continuous route from the Hudson-Bergen County line northward to Fort Lee ferry, was filed with the State by the Edgewater & Fort Lee Railroad. The filing costs, \$8,000, were defrayed by the Susquehanna's subscribing to and paying for 80 shares of the Edgewater & Fort Lee stock. The New Jersey Shore Line Railroad, the predecessor of the New Jersey Junction Railroad (New York Central Railroad Company, lessee), hereinafter sometimes called the Shore Line, had theretofore applied for a route through the same area. An agreement of April 6, 1904, between the Edgewater & Fort Lee and the Shore Line provided that the former would build a line of railroad substantially between the termini involved in the application herein, while the latter would build a line connecting with it at the county line and running south to a point at or near Weehawken. Each party acquired trackage rights over the railroad so constructed by the other. Certain parcels of land constituting a part of the right-of-way are owned by the Erie Land & Improvement Company.

The first Erie Terminals Railroad Company was incorporated on February 8, 1907, and the proceeds from the sale of the capital stock of 600 shares with a par value of \$100 a share were subscribed and paid for by the Erie. The present corporation referred to as the Terminal is a consolidated corporation formed on April 22, 1907, by a merger of the first Erie Terminals Railroad and the Edgewater & Fort Lee Railroad. As a result of this consolidation, the Erie became the owner of 600 new shares of Terminal stock, while the Susquehanna owned 80 shares as before. There is no other stock outstanding. As of April 22, 1907, an agreement was entered into between the Edgewater & Fort Lee, the Susquehanna, and the first Erie Terminals Railroad which provided, among other things, that the Edgewater & Fort Lee would have trackage rights over the Susquehanna between Edgewater and Passaic Junction and the Susquehanna would have similar rights over the line of the Edgewater & Fort Lee. Under an agreement of April 1, 1911, and supplements

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thereto, the Susquehanna acquired trackage rights over the Shore Line. The agreement also provided that the Susquehanna would handle all cars through its Edgewater terminal.

The Terminal is not an operating carrier, its property being operated by the Susquehanna under the April 22, 1907, agreement and supplements. No change in the method of operating the property is contemplated if the proposed transaction is approved. The Terminal's income arises mainly from advances made by the latter and miscellaneous rent income, while expenses consist of railway and miscellaneous taxes and interest both on funded debt and on advances made by the Erie and the Susquehanna. Deficits in income after payment of fixed charges have accrued every year since 1936.

The courts having jurisdiction of the properties of the Susquehanna and the Erie have approved the terms under which the proposed transaction is to be consummated. Copies of the proposed deed and agreement are of record herein. In consideration for the conveyance of all right, title, and interest of the Terminal, and also whatever interest the Erie may have in lands, the railroad, and all rights in connection with the line, including a fee of \$3,080 on deposit with the State covering the proposed extension north of Fort Lee Ferry, and also certain parcels of land, title to which is now in the Erie Land & Improvement Company, the applicant proposes to pay out of current funds \$286,503 to the Erie trustees. The 80 shares of the Terminal stock owned by the Susquehanna are to be assigned to the Erie trustees. The present indebtedness of the Terminal to the Susquehanna, exclusive of current operating expenses, is to be canceled. The Susquehanna is to assume the rights and obligations of the Terminal under existing contracts and leases. In their petition to the court for approval of the transaction, the Erie trustees allege that the Susquehanna advanced \$413,000 and the Erie \$36,000 for the construction of the line. The consummation of the proposed transaction will also terminate pending litigation concerning claims and counterclaims that have been filed by the Erie and the applicant against each other in the Susquehanna's reorganization proceedings.

The Terminal's general balance sheet as of June 30, 1941, shows investment in road and equipment \$880,029; miscellaneous physical property \$223,128; current assets \$33,622; deferred assets \$23,891; capital stock \$68,000; grants in aid of construction \$12,692; nonnegotiable debt to affiliated companies (notes) \$600,000; open accounts \$443,327; current liabilities \$19,836; and total corporate surplus \$16,815. The Susquehanna's general balance sheet as of September 30, 1941, and a pro forma general balance sheet as of the same date

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giving effect to the proposed journal entries in connection with the proposed purchase, presented by the applicant, show, respectively: Investment in road and equipment \$36,295,051 and \$36,728,053; acquisition adjustment 0 and \$19,709 (credit); miscellaneous physical property \$54,866 and \$69,930; investments in affiliated companies, stocks \$598,760 and \$590,760 and advances \$496,257 and \$109,324; balance of investments \$26,484 and \$26,484; cash \$907,101 and \$870,598; balance of current assets \$1,757,702 and \$1,757,702; other deferred assets \$5,667 and \$8,747; and balance of deferred assets and unadjusted debits \$192,356 and \$192,356. No changes have been made in liabilities, which are as follows: Stock \$26,004,400; grants in aid of construction \$69,745; long-term debt \$18,948,733; current liabilities \$2,523,120; deferred liabilities \$2,834,487; unadjusted credits \$463,443; and corporate surplus \$10,510,041 (credit). Nothing herein contained shall be construed as an approval of any item shown in the proposed accounting.

In *Erie R. Co.*, 33 Val. Rep. 1, the final value for rate-making purposes of the property leased to the Susquehanna as of June 30, 1918, was \$180,000. The costs of reproduction new and less depreciation were \$56,602 and \$42,817, respectively, while the value of land was \$135,778. The net cost of additions, betterments, and retirements from January 30, 1918, to December 31, 1939, is \$43,714.

Counsel for the New York Central suggest on brief that the instruments conveying the property should be made expressly subject to all agreements relating to the property, and that they should be identified therein by particular description. This suggestion arises presumably from the fact that the order of the court authorizing the trustee to purchase the property provides that the property shall be made subject to the liens of certain mortgages, whereas heretofore it has not been subject to any mortgage. Counsel for the parties to the transaction have revised the proposed agreement so as to provide that the applicant and its successors and assigns will assume all liability and obligation of every nature which now exists under and by virtue of prior contracts, agreements, leases, and licenses which now exist upon the property, and agree to perform, fulfill, and carry out all the liability and obligation of the predecessor company party to the contracts.

The property proposed to be acquired will continue to be operated as before, and therefore the status or interests of carrier employees will not be adversely affected. There will be no increase in the applicant's fixed charges or any guaranty or assumption of the payment of dividends or fixed charges. No other railroad has sought to be included in the proposed arrangement. The transaction is in

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the public interest because it simplifies the Susquehanna's corporate structure and permits owner operation of the property rather than its operation under operating agreements.

Our authorization and approval will be granted upon the understanding that, before recording the transaction in its books, the applicant will submit the related journal entries for our approval.

We find that the purchase by Walter Kidde, trustee in reorganization proceedings of the New York, Susquehanna and Western Railroad Company, of the property of the Erie Terminals Railroad Company, as described herein, is a transaction within the scope of section 5 (2) of the Interstate Commerce Act, as amended; that the terms and conditions proposed are just and reasonable; and that the transaction will be consistent with the public interest. Since the transaction involves no change in the status or interests of carrier employees, no condition as to employment is necessary.

An appropriate order will be entered.

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