FINANCIAL DOCKET No. 11681

# NEW YORK, SUSQUEHANNA & WESTERN RAILROAD COMPANY REORGANIZATION

*Submitted December 20, 1944. Decided March 5, 1945*

Upon petitions and further consideration, plan for the reorganization of the New York, Susquehanna & Western Railroad Company pursuant to section 77 of the Bankruptcy Act approved.[1]

Appearances as shown in previous reports.

## SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

Within the statutory period of 60 days from the date of the report and order of division 4, of July 19, 1944, 257 I. C. C. 593, approving a plan for the reorganization of the New York, Susquehanna and Western Railroad Company, debtor, pursuant to section 77 of the Bankruptcy Act, 11 U. S. C. 205, petitions for its modification were filed by the insurance group,[2] the trustee of the debtor's estate, the trustee under the mortgage of Midland Railroad Company of New Jersey, the trustee under the Paterson Extension mortgage, the trustee under the general mortgage, a group of holders of general-mortagage bonds, the protective committee for holders of general-mortgage bonds, and Edith Merritt. Replies were filed by the trustee under the second mortgage, the New York Central interests, and the Erie.

The insurance group, the debtor's trustee, the trustee under the Midland and under the Paterson Extension mortgages, the protective committee for the second-mortgage bondholders, and the general-mortgage interests, including Miss Merritt, request reargument before the Commission in the event that their requests for modification are not granted. The New York Central asks that the petitions of the debtor's trustee and of the insurance group insofar as they relate to rights of the New York Central be denied by the Commission. Oral argument was heard on December 20, 1944.

The petitions, as well as the replies, in the main are restatements of requests and contentions previously made in the proceeding, and repeti-

[1] For previous reports see 257 I. C. C. 593 (July 19, 1944).

[2] The abbreviated designations of the parties and mortgages used in the prior report are generally used herein.

tion of previous discussions in dealing with them is unnecessary. Absence of comment in this report upon any of the contentions made in the petitions and replies may be taken to indicate that we deem such contentions to have been adequately treated in the prior report.

*Capitalization.*—Under the approved plan, the total capitalization of the reorganized company is $14,452,844, including $452,844 of equipment obligations as of the effective date, January 1, 1944. The insurance group, which filed the plan upon which hearings were held, requests that the capitalization of $16,250,000, exclusive of equipment obligations, proposed in its original plan be approved, or in any event that the income bonds be increased from $2,500,000 as in the approved plan to $4,000,000, resulting in a capitalization of $15,952,844, including the equipment obligations. The trustee under the Midland mortgage and the Paterson Extension mortgage, the trustee under the general mortgage, the general-mortgage bondholders' protective committee and the group of general-mortgage bondholders either join in these requests or present similar requests, while Miss Merritt requests that $2,000,000 of income bonds in addition to the amount provided in the plan, or $1,000,000 additional income bonds and $1,000,000 additional preferred stock, be authorized. As an alternative to increasing the income bonds to approximately $4,000,000, the trustee under the general mortgage and the group of general mortgage bondholders request that the common stock be increased from 35,000 to 50,000 shares.

The insurance group and all of the petitioners representing general-mortgage interests, except one, urge as additional ground for fixing the capitalization as originally proposed by the group, the savings expected to result from the order of the court of July 5, 1944, authorizing the trustee to acquire eight additional Diesel locomotives on a lease agreement at the approximate cost of $753,480, the yearly payments on which, after the initial down payment of 10 percent, will be approximately $70,600 over a period of about 8 years. In the petition of the debtor's trustee in response to which the order was entered, it was stated that on the basis of 1940 wages and prices, an estimated saving of $232,869 a year would be effected by the purchase of these locomotives, and that on the basis of present prices and wages the estimated saving would be increased substantially. It was further stated therein that at the close of the war, or at such time as the traffic of the road drops to the 1940 level, all the facilities required for the operation of steam locomotives may be retired with a resulting reduction of approximately $11,000 a year in expenses due to elimination of depreciation, taxes, and maintenance of these facilities. Copies of the court's order and of the trustee's petition have been transmitted to us by the clerk of the court pursuant to order 49 of general orders in bankruptcy and

are included among those which the parties stipulated should be treated as part of the record.

Consideration should be given at this point to the adequacy of the additions and betterments fund to meet the requirements on account of the purchase of these additional eight Diesels, as installment payments on new equipment are capital investments and would not be payable out of income ahead of contingent interest upon the income bonds except by and through the additions and betterments fund or from funds made available through depreciation accruals.

The amounts of payments into the additions and betterments fund [3] were fixed in the approved plan on the basis of computations made by the trustee that the requirements for additions and betterments to roadway and structures for the period 1943–48 would average about $56,000 a year and that the depreciation on equipment would be sufficient in the next several years to finance necessary new equipment purchases, including the remaining payments of approximately $72,000 a year on the eight Diesel locomotives purchased in 1941, except for about $20,000 to be drawn from the additions and betterments fund through May 1, 1950. By that time the scheduled payments on the eight Diesels first purchased will have been completed. No provision was made for meeting through these funds payments such as those for the second eight Diesels. Assuming the same annual depreciation charges on them as on the first eight Diesels, $24,750, an additional amount of approximately $46,000 would be required in the additions and betterments fund to meet the yearly payments of approximately $70,600 on them, at least through May 1, 1950.

That amount may be somewhat higher than may prove to be required in every year, as there would be some funds available by reason of the margin between the probable depreciation charges on roadway and structures of about $68,000 and the estimated average annual requirements for additions and betterments to roadway and structures of approximately $56,000, and under the discretionary latitude allowed the trustee by the court as to arrangements for the payment for the last 8 Diesels, including the use of certain funds in special salvage accounts, the yearly installments thereon may not be as high as $70,600. Recognition is also taken of the fact that the trustee represented to the court that by reason of the purchase of the last 8 Diesels it would not be necessary to purchase 75 of the 160 new hopper cars included, as a total cost for all the cars of $400,000 spread over 15 years, in the trustee's estimate of future requirements presented at the hearing on the

[3] The basic amount is $65,000 a year or 2 percent of railway operating revenues, whichever is greater, plus, through May 1, 1950, $20,000 a year. Two percent of railway operating revenues in 1941, for example, was $73,854.

plan, as those 75 cars were intended for the transportation of the railroad's fuel coal. However, the future equipment needs of the reorganized company operating as an independent carrier, in the light of the traffic which may be experienced, is a matter difficult to forecast, and we believe that some provision should be made for additional equipment required for changes in operations due to traffic conditions not immediately predictable. The trustee's estimate of the needs for additions and betterments to road property did not include expenditures for such items as elimination of grade crossings and additional interchange and terminal facilities that may be required from time to time. Under all the circumstances, we regard payments into the fund of $130,000 through May 1, 1950, and $85,000 thereafter, as reasonably required, particularly in order to protect payments of income-bond interest, which, under the provisions of the plan, become due and payable to the extent earned under the method provided for the disposition of available net income. We will modify the plan accordingly.

The plan provides that whenever prior to 1951, the amount of the fund shall exceed $120,000 or whenever in 1951 or thereafter, it shall exceed $100,000, such excess over $120,000 or over $100,000, as the case may be, may be applied, in the discretion of the board of directors, to the purchase or redemption of Terminal bonds, first and consolidated bonds, and income bonds, in the order named, after retirement of all of the immediately preceding class of bonds. In view of the increases in the amounts payable into the fund, the plan should be modified so as to provide that whenever prior to 1951, the amount in the fund shall exceed $165,000 or whenever in 1951 or thereafter, such amount shall exceed $120,000, the excess over $165,000 or over $120,000, as the case may be, may be applied as stated in the plan as to the excess over $120,000 and over $100,000, respectively. The plan further provides that if on May 1 in any year the amount in the fund representing payments in previous years is equal to or exceeds $200,000, no contribution shall be made to the fund in such year. No change in that provision appears to be required.

The insurance group's so-called minimum request that the approved capitalization be raised from $14,452,844 to at least $15,952,844, in which the trustee under the Midland and the Paterson Extension mortgages and the general-mortage interest join, is based upon the treatment of depreciation of roadway and structures in connection with the additions and betterments fund in the prior report. The plan there approved provided that the amount otherwise chargeable out of available net income for the additions and betterments fund should be reduced, to the extent permitted by law and by applicable government regulation, by the amount of any proper charges for depreciation of roadway and structures during the calendar year. The

petitioners contend that, although permitting the contribution to the fund to be reduced by this depreciation, division 4, in its discussion and conclusions as to the permissible income bonds and total capitalization, improperly listed among the charges prior to income-bond interest the full amount of the capital fund, $85,000, rather than the net amount payable into the fund after allowance for the reduction by the amount of the depreciation charges. Based upon the trustee's estimate of yearly charges of from $65,000 to $70,000 for depreciation of roadway and structures and an initial allocation of $85,000 to the fund, these petitioners contend that only $17,000 need be taken from available net income for the fund, and that the $2,500,000 of income bonds authorized by the approved plan should be increased to at least $4,000,000, the increase being the approximate result of capitalizing $70,000 at 4½ percent.

Charges to operating expenses for depreciation of roadway and structures have been required only since January 1, 1943. Under our accounting classification, when a unit of depreciable road property, other than land, is retired from service, the ledger value of the unit is credited to the appropriate investment account and the ledger value, less the value of salvage, is charged to the accrued depreciation account, insurance, if any, recovered being credited to the latter account. When the unit is replaced with property of like purpose, the newly acquired property, for the purposes of the accounting classification, is considered as an addition and the entire cost thereof accounted for accordingly. This charge to the accrued depreciation account does not involve any cash, nor does it indicate the setting aside of any fund for the purpose of the replacement, although the replacement involves a cash expenditure.[4] Since the plan permits the use of the additions and betterments fund for total expenditures for additions and betterments, that fund doubtless will be used for replacements of this character, although clearly such expenditures normally should, to the extent that funds representing depreciation charges are available, be paid for out of them. As a rule the costs of such replacements in connection with any comprehensive improvement program would be included in the estimated cost of the program.

In view of the foregoing, we conclude that we should modify the plan so as to provide that the amounts payable to the additions and betterments fund for any year shall be paid from the credits to the reserve for depreciation on roadway and structures in respect of such year, to the extent that such credits are adequate and are earned.

[4] Cash representing depreciation charges would not be placed under the Classification of Accounts, in a reserve fund as that term is used here.

Accordingly, in the computation of charges prior to income-bond interest, there need be included in respect of the additions and betterments fund only such part of the fund as is payable out of available net income. On the assumption that the credits to the reserve for depreciation on roadway and structures will be about $68,000, as estimated by the trustee, the amounts payable into the fund out of available net income will be approximately $62,000 a year through May 1, 1950, and approximately $17,000 a year thereafter.

We believe that some additional recognition should be given in the capital structure to the earning possibilities of this railroad. The debtor's trustee has made a commendable record in reducing the past and probable future operating expenses and in the development of traffic possibilities. Although the savings in operating expenses are not of themselves assurances of future traffic, we think that in the light of all the circumstances, including the possible savings through increases in the use of Diesel power, the conclusion of division 4 that the reorganized company's expectable earnings available for interest and other corporate purposes in a normal year are from $600,000 to $700,000, is somewhat too low. Upon further consideration we find that such earnings may be expected to range from $700,000 to $775,000. Under all the circumstances, we conclude that the amount of income bonds issuable at reorganization should be increased to $4,000,000 and that the amount of other securities should remain as approved in the prior report. Stating the 35,000 shares of common stock at $100 a share, the resulting capitalization will be $15,952,844. We will modify the plan accordingly.

In connection with these revisions of the plan we have reviewed the provisions relative to the so-called security-retirement fund, which require the payment into a fund for the retirement of income bonds and, after all of those bonds have been retired, for the retirement of the preferred stock of amounts equal to 50 percent of dividends on the common stock. Such a fund is essentially a sinking fund intended in part as contributing to the compensation to the senior security holders for the loss of their senior rights. The payment of common stock dividends of $3 a share, amounting to $105,000 (the initial prior charges being $621,623 as shown in appendix B hereto), with an accompanying contribution to the security-retirement fund of $52,500 would require an earnings level of approximately $779,123, and dividends of $4 a share on the common stock, amounting to $140,000 with an accompanying contribution of $70,000 to the fund would require an earnings level of approximately $831,623. Under the capital structure which we here approve we do not believe that a required contribution to the fund of an amount equal to 50 percent of the common stock dividends is warranted or necessary, and we conclude that the

purposes of the fund will be accomplished by requiring that the amounts set aside for the fund be equal to 20 percent of the amounts paid in common-stock dividends. We will modify the plan accordingly.

We have also reviewed the provisions of the plan relative to the sinking fund for the retirement of the new Terminal bonds, and, after the retirement of all of such bonds, for the retirement of the first and consolidated mortgage bonds. That sinking fund is $20,000 a year, with provision that as bonds are purchased or redeemed through it they shall be canceled. The trustee under the Terminal mortgage, in view of the ample security for the Terminal bonds under earnings tests, the long term for the bonds, and the reduced rate of interest which is provided in the plan approved in the prior report, requests, in effect, that the bonds purchased or redeemed by the use of this fund shall be deposited in the fund and continue to draw interest, which interest shall be added to the fund and used for the purposes thereof. Such a provision would enhance the value of the Terminal bonds and improve the position of all securities junior thereto through the earlier purchase or redemption of the senior securities. We conclude that it should be substituted in the plan for the existing provision, with the qualification that after all the Terminal bonds shall have been purchased for the benefit of the reorganized company or redeemed, through the operation of the fund or otherwise, the Terminal bonds deposited in the fund shall be canceled.

The $4,000,000 of income bonds should be distributed among the holders of the Midland and refunding bonds according to the plan initially proposed by the insurance group as described in the prior report and shown in the appendixes hereto. The $3,000,000 of preferred stock should be distributed between the holders of the refunding and the second-mortgage bonds, including, in the case of the last-named bonds, those pledged under the general mortgage, as initially proposed by the insurance group and shown in the appendixes.

These allocations result in satisfying the claim of the Midlands 37.97 percent in fixed-interest bonds and 62.03 percent in income bonds. The only charges between fixed interest and income bond interest are the charges out of available net income for the additions and betterments fund and the sinking fund, both of which we deem to be financially required. Thus, the relative lien position and the relative claim on earnings of the Midlands is effectively preserved. The claim of the refundings is satisfied 24.23 percent in fixed-interest bonds, 21.80 percent in income bonds, and 53.97 percent in preferred stock. Their lien position is preserved to the extent that new mortgage securities are available and their claim on earnings is sub-

stantially preserved, as they are required to share with the seconds in earnings on the preferred stock only to a comparatively small extent, and the several advantages to them under the new capital structure more than compensate for that slight disadvantage. In these allocations there is sufficient preferred stock to satisfy approximately 20 percent of the claim of the seconds, including those pledged. Common stock only is available to satisfy the remaining 80 percent of their claim and that of the generals not satisfied through the preferred stock and other common stock allocable to them with respect to the pledged seconds.

The second-mortgage trustee, while conceding that a separate issue of securities to give recognition to the lien position of the seconds would not be justified, contends that the plan should provide sufficient preferred stock so that the holders of the seconds, including those pledged, could be offered 50 percent of their claim in such stock. In the alternative, it suggested a somewhat involved method of determining the distribution to the seconds and the generals of the common stock that would be available for them. We need not describe the suggested method, for the reason that we are not persuaded of its soundness and the distribution to the seconds which we find proper is somewhat more favorable to the seconds than would result from the application of this trustee's method, as we understand it, to the amount of common stock available for the seconds and the generals under the capitalization which we here approve.

If common stock were allotted to the seconds at the rate of 11.5 shares for each $1,000 bond, they would receive 1 share for approximately each $91.5468 of the 80 percent of their claim not satisfied by the preferred stock allotted to them, or about 1.092 shares for each $100 of such remaining claim. The total amount thus distributable with respect to the outstanding and pledged seconds would be $1,150,000. On common-stock dividends of $2.75 and $3.75 a share, respectively, the seconds would receive about $3.00 and $4.09 with respect to each $100 of claim represented by such stock.

As may be computed from appendix B hereto, common-stock dividends of $2.75 a share could initially be paid at an earnings level of approximately $737,123 after setting aside an amount equal to 20 percent of the dividend for the security-retirement fund. This is within the range of probable earnings which we find may be expected in a normal future year and is about $58,000 greater than the estimate of the debtor's trustee of earnings in a normal future year, made before the purchase of the additional eight Diesel locomotives was authorized. The trustee's estimate of the operating savings from that purchase has been stated herein.

As may also be computed from appendix B, after the reduction beginning in 1951 by $45,000 of the amount payable from available net income into the additions and betterments fund, a common-stock dividend of $3.75 a share and the required amount for the security-retirement fund could be paid at an earnings level of about $734,123. The total dividends on the common and preferred stock thus allotted to the seconds upon the payment of a dividend of $3.75 a share on the common stock would amount to approximately $4.28 for each $100 of total claim of the seconds. The right to participate in higher dividends on the common stock is, of course, an element in compensating the seconds in respect of the securities which they would surrender.

The requirements prior to dividends on the common stock will be further reduced as income bonds are retired through the security-retirement fund. The retirement of $24,500 of such bonds in connection with a dividend of $3.50 on the common stock, for example, would reduce the prior charges about $1,100 a year. The $20,000 cumulative sinking fund will permit the purchase or redemption of the $2,000,000 Terminal bonds bearing interest of $80,000 a year in approximately 41 years. While the charges prior to dividends will not be actually reduced until the cancelation of those bonds at the end of the period, the potential equity of the stock will increase from year to year through the operation of that fund for the ultimate retirement of all fixed-interest bonds.

Under the existing capital structure, interest could be paid on the principal of the existing securities to and including the outstanding and the pledged seconds at the contract rates at an earnings level of $526,273. At the same rates, interest on the principal and the accumulated interest on the same securities amounts to $669,223. No sinking funds or funds to meet capital expenditures are included therein. If to the $669,223 were added $17,000, corresponding to the portion of an additions and betterments fund payable out of available net income after 1950 under the plan herein approved, a $20,000 sinking fund, and $26,250 for a security-retirement fund (corresponding to the amount payable into that fund based on a $3.75 dividend on the common stock under the approved capitalization), all of which funds we deem to be financially required, the resulting amount would be $732,473. This is only slightly less than the earnings level of $734,123 at which, as above indicated, dividends of $3.75 a share might be paid on the common stock after 1950. As above shown, that amount, $734,123, under the capitalization approved and under the assumed distributions, would be sufficient to service, beginning in 1951, all new securities, including the requirements of the additions

and betterments fund, the sinking fund, the security-retirement fund, and earnings of $4.28 per $100 of total claim of the seconds. This comparison, we think, clearly indicates, in view of all the advantages of the new capital structure, that the seconds would not be required to sacrifice their earnings position even though they would be required to share earnings with the generals.

In the prior report $215,199 of common stock was allotted to the Paterson Extension bondholders in payment of the $215,199 of their claim remaining after deducting from the total claim the appraised value of $55,634 with respect to noncarrier assets to be conveyed for the benefit of these bondholders. This exchange of a debt security for stock must be considered in connection with the several facts discussed in regard to the Extension properties in the prior report, and in the light of the value of the common stock and the advantages of the organization, more specifically discussed elsewhere herein.

Upon further consideration and in view of the modification of the capitalization herein approved, we think that somewhat better treatment should be given this class of bondholders than was accorded them in the prior report. If common stock were allotted to them at the rate of 12 shares for each $1,000 bond, they would receive approximately 1.115 shares for each $100 of the $215,199 of claim remaining after deducting from the claim the appraised value of the noncarrier lands. With dividends of $3.75 a share they would receive approximately $4.18 with respect to each $100 of remaining claim. This allocation we find will accord them fair and equitable treatment of their claims and will afford them the equitable equivalent of the rights which they now hold. It will fully satisfy their claim and consequently they will not be entitled to share in the unmortgaged assets. In connection with the conveyance of noncarrier lands, it will represent all values in the Extension properties and will leave nothing therein for distribution to the holders of junior liens thereon. We will modify the plan as indicated.

We see no reason for disturbing the conclusions of the prior report as to the value of the unmortgaged assets or the findings that the equity of the existing classes of preferred and common stockholders has no value.

After deducting from the 3,500,000 total amount of common stock the assumed allocation of $1,150,000 to the seconds, $240,000 to the Paterson Extensions, and $400,000 assigned to the unmortgaged assets, there would remain $1,710,000 for distribution to the generals with respect to mortgaged assets. This distribution would be at the rate of 1 share for each $155.14 of claim remaining after deducting the allotments to them with respect to the pledged seconds, or approximately 0.644 share for each $100 of such remaining claim. Common-stock dividends of $3.75 a share on the portion of the claim represented by this

allotment would amount to approximately $2.41 per $100 of such claim. Including these dividends and those on the preferred and common stock allotted with respect to the pledged seconds as well as on the small amount of common stock allotted with respect to the unmortgaged assets,[5] the generals would receive upon the payment of common-stock dividends of $3.75 a share a total of approximately $2.78 for each $100 of total claim. The total amount of preferred and common stock for the generals under the assumed allocations amounts to about 72.82 percent of their claim.

Under the described allocations, the Midlands and the refundings will receive considerably more higher-rated securities in satisfaction of their claims than under the plan approved in the prior report. Their positions in the new capital structure are also considerably strengthened by the cumulative feature added to the sinking-fund provisions, which will result in the earlier retirement of the new Terminal and first and consolidated mortgage bonds. The reduction of the amounts payable into the security-retirement fund will, of course, result in the retirement of the income bonds and preferred stock at a lower rate than under the plan approved in the prior report, but this we think is more than offset by the other advantages of the plan.

The seconds will surrender a debt claim and take stock in exchange, under the above allotments. The additional risk involved must be considered in the light of the probable earnings of the new company, its improved capital structure, and freedom from probable future reorganizations. Among the items tending to offset the additional risk, are the provisions for substantial retirement of debt and the expectable increase in common-stock dividends which should result.

In consideration of the foregoing and all other provisions of the plan, we conclude and find that securities should be allocated to the Terminal bondholders as described in the prior report and shown in the appendixes hereto, and that the remaining new securities should be allocated as above indicated and shown in the appendixes hereto. Considering all of the provisions of the plan and the probable earning power of the reorganized company, we find that the treatment approved for the various classes of security holders affords due recognition of the liens of each and of the classes of bondholders and affords them full compensation for the loss of senior rights.

*Controversy with the New York Central.*—The contractual situation as to the trackage rights of the New York Central interests over the northern and southern extensions of the Edgewater terminal, the acquisitions of the extensions by the debtor's trustee as part of a gen-

[5] The generals would share in the unmortgaged assets ratably with the unsecured creditors to the extent that the principal amount of their claim is not satisfied by the other allotments.



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eral settlement with the Erie, the notice of rejection of the trackage rights and related agreements by the trustee, the fact that the Central published its rates to and from points on the extensions, and that the Susquehanna moved the Central's cars to and from industries on the extensions at rates of compensation fixed by the agreements and not contained in tariffs filed with us, are described in the prior report. The debtor's trustee now seeks to have included in the plan the provision which would reject the trackage rights and related agreements in the event the court should hold that the agreements may not be rejected by the trustee but may be rejected by the plan. This is the same provision which division 4 declined to approve on the ground that it would render the plan not compatible with the public interest. All the petitioners now seeking modification of the plan, except Edith Merritt, join in the trustee's petition. The trustee under the second mortgage, in its reply, also joins in that petition.

The debtor's trustee argues that, whether the plan should contain a provision rejecting the contracts does not affect the public interest, but only affects the private rights of the debtor's creditors. In this connection the trustee claims that the Central is a creditor because it is "the holder of a claim under a contract executory in whole or in part," *Group of Institutional Investors* v. *Chicago, M. St., P. & P. R. Co.*, 318 U. S. 523, 549, and argues that it is unfair to other creditors if the Central as a contract creditor should retain all of the benefits of the contract while other creditors, under the plan, would be required to take losses. Whether the circumstances are such that the Central should be required to share with other creditors in losses incident to the reorganization depends upon the nature of the rights resulting from the contract, whether in the reorganization proceedings those rights are or should be disturbed, and whether injury would result from disturbing them. In *Group of Institutional Investors* v. *Chicago, M., St. P. & P. R. Co., supra*, there was under consideration a plan of reorganization which provided for a modification of an existing lease, including the rent payable thereunder in the form of interest to the lessor's bondholders, and made the acceptance of such modification by substantially all of the lessor's bondholders an alternative to a rejection of the lease by the plan. The rejection of the lease in that case would amount to the lessor's repossessing its property. That situation clearly does not involve many of the complicating considerations of this case.

Sufficient has been stated herein to show that the basic contracts were in essence mutual grants of perpetual trackage rights, although the parties are to make continuing payments to each other in the nature of rents based on proportions of interest on the cost of construction and of maintenance, taxes, et cetera. The Susquehanna's

position with respect to the northern and southern extensions is that of a grantor, although its position with respect to the Central's segment is that of a grantee. The direct promise of the Susquehanna, made in the second of the basic contracts, dated April 1, 1911, to shift the Central's cars across the terminal at a reasonable switching rate is, of course, executory in its nature. The charge for such service was not published in a tariff filed with us.

The debtor's trustee and the insurance group contend that the Susquehanna is obliged to move all the Central's traffic at cost and that if it were freed of the basic contracts, it could realize, by appropriate divisions of rates on the traffic which the Central now delivers and originates on the northern and southern extensions, additional net income estimated at $200,000 to $250,000 a year. The operating agreements in effect prior to that of April 29, 1933, provided for compensating for the switching movements on a share-the-cost basis. By the last-named agreement the sum of $4.30 was fixed for each loaded car of the Central moved to or from the northern extension and $6.65 for each loaded car handled for the Central south of the Edgewater terminal. By the same agreement the so-called trackage charge for each loaded car of the Central moved across the Edgewater yard, which had been $4 since 1921, was made $1. Apparently the Central moves few, if any, cars for the Susquehanna, and apparently the Susquehanna has little occasion to move its own traffic to or from the Central's segment. No detailed evidence was introduced showing the cost of the movements which the Susquehanna performs for the Central, but with a record of many years of basing the charges on the cost of the operations, it should be possible to gage how the later specific-sum charges are related to the preceding cost charges. But, however that may be, we see no reason why the Susquehanna should not be paid reasonable rates for the services performed, including a reasonable charge for crossing the Edgewater yard. To the extent that the Susquehanna is not so paid, the situation should be remedied.

The trustee does not seek to bring about any change in the method of performing the actual operations over the northern and southern extensions, which, he contends, is the only practical method of handling the traffic. He seeks merely to have the Susquehanna freed from the basic agreements. He asserts that as long as the basic contracts exist, the Central may assert a contractual right at any time to exercise with its own motive power its trackage rights and to bring to an end the operating agreements which are terminable on short notice. This he contends would be contrary to the public interest, because, even with the Susequehanna conducting all operations, the northern and southern extensions, which run for 1.61 miles through a crowded industrial area already are taxed to capacity

by the movement of 20,000 to 30,000 loaded cars annually of freight other than tide-water coal, in addition to upwards of 10,000 cars a year moved for the Central. He also points out that 20,000 or more loaded cars of tidewater coal move annually through the yard and that the only way to get across the yard in the movement of the Central's cars between the northern and southern extensions is to go into the entrance of the Susquehanna tunnel and out again on the other arm of wye tracks, which converge northwardly and southwardly from the tunnel.

The relief which the trustee seeks on behalf of the Susquehanna, as we understand it, involves the complete ousting of the Central from its rights on the northern and southern extensions with the effect that the Susquehanna would then be the only carrier serving those points and as such, entitled to participate in through rates to and from industries located thereon. The trustee and the insurance group cite *Louisiana, A. & T. Ry. Co. Operation*, 170 I. C. C. 602 as requiring that method of treatment of the situation in order that the present method of physical operations may lawfully continue. In that case we declined to authorize as trackage rights under section 1 (18) of the Interstate Commerce Act an agreement by which one carrier undertook to transport over its lines in line-haul movement freight of another carrier, as the agent of the other carrier, at rates of compensation as between the two carriers not contained in a published tariff but contained in the agreement. We found that the agreement was in conflict with section 6 (7) of the Interstate Commerce Act which forbids a carrier from engaging in transportation unless its tariff schedules are duly filed with the Commission and further forbids a carrier from demanding or collecting a greater or less compensation for such transportation than the rates, fares, and charges which are specified in the tariff, et cetera. Under that agreement, the agent carrier which would perform the operations would also issue bills of lading and freight bills in the name of the other carrier. This was found to constitute a failure to comply with section 20 (11) of the Interstate Commerce Act requiring a common carrier receiving property for transportation to issue a bill of lading and making it liable for any loss or damage to such property caused by it or by subsequent carriers over whose line or lines such property might pass when transported on a through bill of lading. In regard to originating and terminating movements by a carrier not a party to a through rate we said:

> While under certain circumstances one carrier may be regarded in a sense as acting as agent for another, as in the case of a switching or terminal carrier, not a party to the joint rate, which makes delivery of a shipment following line-haul transportation by another carrier, there can be, under the act,

no unrestricted relationship of agency under which the line-haul carrier is left free to contract with the switching carrier as to the charge which the latter shall receive for its service, but the switching carrier is bound to collect its published tariff rate for the transportation service which it performs.

Some contention is made that the so-called trackage rights were never consummated by the actual operation of the Central over the tracks. The trackage rights here involved were acquired prior to the time we were given jurisdiction over the extension of a railroad in that manner. In the absence of a court adjudication, we are not inclined to regard the basic agreements as to the trackage rights as voided by reason of the past method of operation. But under our decision in *Louisiana, A. & T. Ry. Co. Operation, supra*, we see no justification for the failure of the parties in the future to provide rates and charges by tariffs filed with us for the movements of the Central's cars over the northern and southern extensions, including movement across the Susquehanna's yard.

We see no reason why the situation cannot be adequately remedied without the disaffirmance of the basic contracts, by the termination of the existing switching agreements and the publication by the Susquehanna of just and reasonable rates which would cover all the movements of the Central's cars here discussed. The point may be raised that the Susquehanna would not be justified in publishing switching rates for movements which appear to be under trackage rights of another carrier. But the situation here is due to the historic reasons for its development, the congested field of operations, the crossing of the terminal, the expense and economic consequences of expanding the present facilities on ground already used for the industries feeding the railroad, which, taken as a whole, clearly indicate that no change should be made in the general method of physical operations now employed. Moreover, the switching rates would apply over the tracks of the Susquehanna even though the movements be related to preexisting rights therein held by the Central.

The debtor's trustee indicates that in disposing of this general matter in the prior report division 4 attributed too broad a conception to the meaning of public interest as that term is used in section 77 (d), which requires that, in approving a plan we must find that it "will be compatible with the public interest." The trustee argues that "public interest" as used in section 77 must be determined in view of "the purpose of the Act, the requirements it imposes, and the context of the provision in question * * *," *New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 24, and cites language from the concurring opinion of Mr. Justice Roberts in *Ecker* v. *Western Pac. R. Corp.*, 318 U. S. 448, 512, to the effect that the power of the Commission to

determine whether a plan " 'will be compatible with the public interest' * * * obviously relates, in the main, to the proposed corporate and capital structure of the reorganized company. That structure must be such that the rehabilitated enterprise may have a reasonable prospect of satisfactory public service."

Without derogating in the least from the principles just quoted, we are of the view that, considering the broad scope of matters that may be included in a plan of reorganization, and particularly that a plan may provide for the rejection of contracts or for their assumption by the reorganized company, all of the applicable concepts of public interest contemplated by the Interstate Commerce Act are within the meaning of that term as used in section 77. In the *New York Central Securities* case, *supra*, the Supreme Court enumerated as criteria of public interest within the meaning of the Interstate Commerce Act "the transportation needs of the public," measures which would "best promote the service in the interest of the public and the commerce of the people," matters which have "direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities." Section 77, in fact, establishes a coupling link between it and the Interstate Commerce Act where in subsection (f) it requires that upon confirmation of a plan we shall—

> without further proceedings, grant authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation or merger of the debtor's property, or pooling of traffic, to the extent contemplated by the plan and not inconsistent with the provisions and purposes of the Interstate Commerce Act as now or hereafter amended.

By the basic contracts and the railroads constructed pursuant thereto, the Central's railroad, in legal contemplation, was extended to the northern end of the northern extension and its traffic has moved ever since on that theory. Thus, since about 1911, both the Central and the Susquehanna have served the industries located on the three segments of railroad.

There is another aspect of this situation which we deem to be of importance. In acquiring title to the northern and southern extensions the Susquehanna's trustee made the following assumption:

> The party of the second part (the trustee) hereby assumes all liability and obligation of every nature which now exists under and by virtue of the said contracts, agreements, leases and licenses which now exist against and rest upon the party of the first part (the Erie Terminals Railroad Company) under and by virtue thereof, and agrees to be bound by and to perform, fulfill and carry out all the liability and obligation of the party of the first part which exists under and by virtue of said contracts, agreements, leases and licenses, the assumption and agreement of the party of the second part contained in this paragraph "Second" to be binding upon his successors and assigns. [Parenthetical inserts supplied.]

The basic contracts were set forth in the application to the Commission for authority to acquire the properties and substantially the above-quoted undertaking was set forth in the report of division 4 granting the authority. See 249 I. C. C. 777, 780. Representations were made on behalf of the trustee to the court handling the Erie reorganization, to the court handling the Susquehanna reorganization, and to the Board of Public Utility Commissioners of New Jersey, in connection with applications for approval of the transaction, substantially to the effect that the rights of the Central under said contracts were not to be adversely affected by reason of the conveyance to the trustee.

Under all the circumstances, including both the question of public interest involved and the circumstances and conditions under which the acquisition of the northern and southern extensions was authorized and consummated, we are of the opinion and find that the requested provision conditionally rejecting the basic contracts should not be approved by us as part of the plan.

*Miscellaneous matters.*—In order to clarify the treatment of certain outstanding obligations, the insurance group requests that the following provisions be made part of the plan:

> Unpaid amounts which became due on coupons prior to June 1, 1937, aggregating about $8,287.50 shall be paid in cash at reorganization or by the reorganized company. To the extent that claims are filed and allowed on outstanding first and refunding mortgage bond-scrip certificates in the principal amount of $533 and coupon obligations of first-mortgage bonds due in 1895 in the amount of $30, such claims shall be classified in accordance with the court's classification and be satisfied in cash or new securities on the same basis as other claims in the same class or be disposed of otherwise as the court shall direct.

We approve the inclusion of these provisions in the plan.

The insurance group points (1) to the provision of each of the new mortgages as described in the approved plan authorizing, with our approval and with the concurrent action of the reorganized company and of the holders of not less than 75 percent in principal amount of all bonds outstanding under the mortgage, the postponement, within certain limitations, of the time or times of payment of any interest on, or the principal of the bonds and (2) to another provision to be contained in each of the mortgages authorizing the modification or alteration of the mortgage and of the rights and obligations of the company thereunder and of the holders of the bonds by the concurrent action of the reorganized company and of the holders of not less than two-thirds in aggregate principal amount of the bonds outstanding, with the proviso, among others, that no such modification or alteration shall alter or impair the obligation of the reorganized company to pay the principal of, or interest on, any of the bonds at

the time and place and at the rate and in the currency provided therein without the consent of the holder of such bond. The group believes that there is such conflict between these two provisions in regard to modification of the time of payment of interest and principal of the bonds as to lead to future disputes, and suggests that a clarifying provision be inserted. In order to remove any possible doubt as to conflict between these provisions, we will modify the plan so as to provide that the first provision referred to in this paragraph shall apply nothwithstanding any other provision of the mortgage.

We will also, on our own motion, modify the provisions authorizing modification or alteration of the mortgages that may be accomplished by the concurrent action of the company and of the holders of not less than two-thirds in amount of the bonds outstanding so as to provide that no such modification or alteration of the provisions of the Terminal mortgage or of the first and consolidated mortgage relative to sinking funds, or of the provisions of the general mortgage relative to sinking funds or security-retirement funds, shall be made without the approval of the Commission or such other regulatory body as may at the time have jurisdiction in the premises.

The group refers to the provision of the approved plan that holders of the preferred stock, voting as a class, shall have the right to elect not less than two directors after default of the equivalent of six quarterly dividends, and in the interests of clarification suggests that there be added to that provision the words "whether or not earned and whether or not the defaults are consecutive." We approve this clarifying provision and will modify the plan accordingly.

In the section of the approved plan relating to the appointment of voting trustees, it is provided that in certain contingencies the court shall appoint such trustee. As there may be occasion for such an appointment by the court after the termination of the reorganization proceeding, the group suggests that we add a clarifying provision that the appointment be made by the judge of the District Court of the United States for the District of New Jersey who may, at the time when the appointment is required, be in charge of the proceeding herein or, if these proceedings shall have terminated, by the senior judge in said district. We approve this more specific provision, with the explanation that it should also apply to approvals of appointments required by the plan. We will modify the plan accordingly.

In the first paragraph of article VII of the order of division 4 of July 19, 1944, describing the approved plan, after describing the rates of redemption of the new first and consolidated mortgage bonds on or before January 1, 1986, it was inadvertently stated that the rate of redemption would be 1 percent if redeemed thereafter and on or before January 1, 2000. The order should have stated additionally that

the rate of redemption would be 1 percent if redeemed after January 1, 1986, and on or before January 1, 1993, and one-half percent if redeemed thereafter and on or before January 1, 2000. We will correct the plan accordingly.

In article VII, paragraph 5(b), describing the approved plan it is provided that additional new first and consolidated mortgage bonds may be issued, among other things, to cover 75 percent of the cost of additions and betterments. A similar provision is made applicable by the approved plan to the issue of additional general mortgage income bonds. In view of the fact that, under our accounting classification, the entire cost of a unit of road property replacing with property of like purpose, a unit retired, is accounted for as an addition, and in order to avoid mortgage-debt inflation, the plan should be modified so as to provide that in the case of additions and betterments to property, made after January 1, 1944, other than new equipment, and additional fixed property as defined in the approved plan (or securities representative thereof) the 75 percent shall be applied to the net cost of the additions and betterments, the net cost to be determined by deducting from the cost the amount required by our accounting classification to be credited to capital accounts by reason of the retirement of any property replaced by property for or in respect of which any such expenditures shall have been made. We will modify the plan accordingly.

The plan as approved by us includes in the mortgages a provision permitting elimination from the mortgages, among other things, of the provisions relating to the additions and betterments fund in the event that the reorganized company shall be unified with any other corporation by consolidation, merger, sale, lease, or otherwise. We are of the view that such elimination should not be permitted. We will on our own motion modify the plan accordingly.

Attached hereto are appendix A showing in summary form the method of distribution of new securities to the several classes of claims and other data, as more particularly described herein and in the prior report, and appendix B showing in summary form the present capital structure, the distribution of new securities according to class of claim, summary of plan (including annual charges), and the distribution of new securities per $1,000 principal amount of claim.

*Conclusions.*—Upon consideration of the record and the beforementioned petitions, we conclude and find:

1. That the report and order of the Commission, by division 4, dated July 19, 1944, approving a plan of reorganization for the New York Susquehanna and Western Railroad Company, pursuant to section 77 of the Bankruptcy Act, should be modified and amended, as herein specified, that the findings of division 4 contained in said

report, except as modified herein, should be, and hereby are, affirmed, and that, as thus modified and amended, the plan will meet the requirements of section 77 (b) and (e) of the Bankruptcy Act, as amended, will be compatible with the public interest, and should be approved.

2. That, except as the plan shall be so modified and amended, the petitions for its modification should be denied.

An appropriate supplemental order will be entered.

# APPENDIX A

*Method of distribution of new securities*

| | Terminal and Midland part | | | | | | | Refunding part | | Bonds wholly junior | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Terminal and Midland part total [1] | Terminal bonds | Midland bonds (including Northern and Southern Extension) | Passaic and New York division | Paterson Extension bonds | Hackensack and Lodi division | Unmortgaged assets (unsecured claims) | Refunding part total [1] | Refunding bonds | Second-mortgage bonds | General, mortgage bonds (to extent secured by pledge of second-mortgage bonds) | General-mortgage bonds | System total |
| Amount of claims: | | | | | | | | | | | | | |
| Principal | ---------- | $2,000,000 | $3,489,000 | ------ | $200,000 | -------- | $2,388,258 | ---------- | $3,744,000 | $448,000 | $552,000 | $2,551,000 | ---------- |
| Interest to Jan. 1, 1944 on coupons due on or after June 1, 1937 | ---------- | [2] | 1,177,538 | ------ | 70,833 | -------- | ---------- | ---------- | 1,326,000 | 141,680 | 174,570 | 882,221 | ---------- |
| Total claims | ---------- | 2,000,000 | 4,666,538 | ------ | 270,833 | -------- | 2,388,258 | ---------- | 5,070,000 | 589,680 | 726,570 | 3,433,221 | ---------- |
| 1. Adjusted income available for fixed charges | $62,690.89 | 84,279.26 | 15,107.30(D) | [3] | 3,971.70(D) | [4] | [5] 2,509.37(D) | $20,417.35 | 20,417.35 | ---------- | ---------- | ---------- | [6] $83,108.24 |
| 2. Line 1 expressed as percent of system total | 75.42382% | ---------- | ---------- | ------ | ---------- | -------- | ---------- | 24.56718% | ---------- | ---------- | ---------- | ---------- | 100% |
| 3. New fixed interest bonds: | | | | | | | | | | | | | |
| (a) Distribution between two parts on percentage basis (see line 2) | ($3,771,641) | ---------- | ---------- | ------ | ---------- | -------- | ---------- | ($1,228,359) | ---------- | ---------- | ---------- | ---------- | 5,000,000 |
| (b) Distribution within parts | 3,771,641 | 2,000,000 | (37.97%) 1,771,641 | ------ | ---------- | -------- | ---------- | 1,228,359 | (24.23%) 1,228,359 | ---------- | ---------- | ---------- | 5,000,000 |
| 4. New income bonds: | | | | | | | | | | | | | |
| (a) Distribution between two parts on percentage basis, (see line 2) | ($3,017,313) | ---------- | ---------- | ------ | ---------- | -------- | ---------- | (982,687) | ---------- | ---------- | ---------- | ---------- | 4,000,000 |
| (b) Distribution within parts [7] | 2,894,897 | ---------- | (62.03%) 2,894,897 | ------ | ---------- | -------- | ---------- | 1,015,103 | (21.80%) 1,105,103 | ---------- | ---------- | ---------- | 4,000,000 |
| 5. Distribution of new preferred stock | ---------- | ---------- | ---------- | ------ | ---------- | -------- | ---------- | ---------- | (53.97%) 2,736,538 | (20.02%) 118,031 | (20.02%) 145,431 | ---------- | 3,000,000 |

See footnotes at end of table.

## APPENDIX A—Continued

*Method of distribution of new securities*—Continued

| | Terminal and Midland part | | | | | | | Refunding part | | Bonds wholly junior | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Terminal and Midland part total [1] | Terminal bonds | Midland bonds (including Northern and Southern Extension) | Passaic and New York division | Paterson Extension bonds | Hackensack and Lodi division | Unmortgaged assets (unsecured claims) | Refunding part total [1] | Refunding bonds | Second-mortgage bonds | General, mortgage bonds (to extent secured by pledge of second-mortgage bonds) | General mortgage bonds | System total |
| 6. Distribution of common stock: (No-par shares, stated at $100 a share): | | | | | | | | | | | | | |
| (a) To mortgage claimants | | | | | [8] $240,000 | | | | | (87.37%) 515,200 | (87.37%) 634,800 | (49.81%) 1,710,000 | 3,100,000 |
| (b) To accord recognition of unmortgaged assets | | | | | | | (16.33%) [9] $390,075 | | | | | (0.29%) [9] $9,925 | 400,000 |
| (c) Total allocation of common stock | | | | | $240,000 | | 390,075 | | | 515,200 | 634,800 | 1,719,925 | 3,500,000 |
| 7. Total new securities [10] | | $2,000,000 | $4,666,538 | | [8] $240,000 | | $390,075 | | $5,070,000 | $633,231 | $780,231 | $1,719,925 | [10] $15,500,000 |
| 8. Percent of total claims satisfied | | 100% | 100% | | [8] 109.16% | | 16.33% | | 100% | 107.39% | 107.39% | [11] 72.82% | |

[1] See discussion in prior report for detailed explanation of the method used in computing the total adjusted earnings of the Terminal and Midland part and of the refunding part and of the use of these totals. Since the separation of the entire road into two parts was made solely for the purpose of allocating new fixed interest and income bonds pro rata as between the Terminal, the Midland and the refunding bonds, the computation of the totals for such parts has been continued only through line 4 of this appendix.

[8] Back interest to be paid in full in cash.

[9] The adjusted earnings of the Passaic and New York division total $857.79. This amount is combined with unmortgaged assets and included in the figure $2,509.37 on line 1, after first deducting charges on Passaic and New York bonds, $583.33 for the 2 months. The total so combined is $274.46. The bonds have been purchased by the trustee of the debtor. It would be improper to credit the unmortgaged assets with any earnings except the excess over total bond interest, since they were not entitled to any more before the bonds were purchased by the trustee, and the purchase was made with reorganization earnings subject to the system mortgage liens. For that reason, in this appendix the sum of $583.33 representing charges on the Passaic and New York bonds has been excluded both from the Passaic and New York division earnings attributed to the unmortgaged assets and, as indicated in footnote 6, from the total system earnings used for purposes of distribution.

[4] The adjusted earnings of the Hackensack and Lodi division is a deficit of $594.19. This amount is combined with the adjusted earnings of other unmortgaged assets and is included in the figure $2,509.37 on line 1.

[5] This includes the earnings referred to in footnote 3, the deficit referred to in footnote 4, and the adjusted deficit of $2,190 resulting from passenger operations between Croxton and Jersey City shown in column 8 of the table in the report under "Segregation of earnings," but is exclusive of the net earnings of the Susquehanna Connecting which totalled $1,159 for the 2 months of June and December, 1940. The actual revenue of Susquehanna Connecting for the 2 months studied was $1,253 (derived from the Erie, which has been operating the Susquehanna Connecting since 1938 at the rate of 1 cent per ton mile). Its actual expenses for the year 1940 were $131.14 for maintenance of corporate organization

and $432.84 for taxes levied, or an average of $94 for each 2 months' period. The reasons for the exclusion of the Susquehanna Connecting's earnings from both the Terminal and Midland part and the refunding part and from total system earnings, for purposes of distribution to the Terminal, Midland and refunding bonds, are set forth in the report. For purposes of their allocation, the unmortgaged assets are entitled to credit for such earnings. The resulting deficit of the unmortgaged assets, including the Passaic and New York and Hackensack and Lodi divisions, for the 2 months' period of the formula application is $1,350.37.

[6] The reason for the $583.33 difference between this figure and the system adjusted earnings as shown in column 10 of the table in the report under "Segregation of earnings" is that this figure excludes charges on the Passaic and New York bonds for the reasons explained in footnote 3.

[7] Giving effect to transfer to refunding part of $122,416 allocated to Terminal and Midland part in excess of requirements of Midland bonds.

[8] Taken in connection with conveyance of $55,634 of noncarrier assets.

[9] Based upon the amount of unsecured claims as shown at the time of the submission of the plan, and subject to adjustment on the basis of the final determination of the amount of the unsecured claims.

[10] Exclusive of equipment obligations of $452,844.

[11] Percentage reflects allocation as to pledged second-mortgage bonds in preceding column.

D—denotes deficit.

# APPENDIX B

*Present capital structure, distribution of new securities, summary of plan (including annual charges) and distribution of new securities per $1,000 principal amount of claim*

| Obligations and stock | Principal | Total claims, including unpaid interest to Jan. 1, 1944 | Assumed | Terminal 4 percent bonds maturing Jan. 1, 1994 | First and consolidated 4 percent bonds maturing Jan. 1, 2004 | General mortgage 4½ percent income bonds maturing Jan. 1, 2019 | Preferred stock 5 percent | Common stock, no-par-value, stated at $100 a share | Total capitalization | Distribution of new securities other than the Terminal bonds, per $1,000 principal of old claim | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | First and consolidated mortgage bonds | General mortgage income bonds | Preferred stock shares | Common stock shares |
| Equipment obligations | $452,844 | $452,844 | $452,844 | | | | | | $452,844 | | | | |
| Terminal 5 percent | 2,000,000 | 2,000,000 | | $2,000,000 | | | | | 2,000,000 | | | | |
| Midland first 5's due Apr. 1, 1940 | 3,489,000 | 4,666,538 | | | (37.97%) $1,771,641 | (62.03%) $2,894,897 | | | 4,666,538 | $507.78 | $829.72 | | |
| First and refunding 5's due Jan. 1, 1937 | 3,744,000 | 5,070,000 | | | (24.23%) $1,228,359 | (21.80%) $1,105,103 | (53.97%) $2,736,538 | | 5,070,000 | 328.09 | 295.17 | 7.3091 | |
| Second 4½'s due Feb. 1, 1937 | 448,000 | 589,680 | | | | | (20.02%) $118,031 | (87.37%) $515,200 | 633,231 | | | 2.6346 | 11.50 |
| General 5's due Aug. 1, 1940 | 2,551,000 | 3,433,221 | | | | | (20.02%) [2] $145,431 | [1] (68.59%)<br>[2] $634,800<br>[3] $1,710,000<br>[5] $9,925 | 2,500,156 | | | 0.5701 | [4] 9.2306 |
| Paterson Extension first 5's due June 1, 1950 | 200,000 | 270,833 | | | | | | [6] $240,000 | 240,000 | | | | 12.00 |
| Unsecured claims | 2,388,258 | | | | | | | [7] $390,075 | 390,075 | | | | [7] 1.633 |
| Preferred stock | 13,000,000 | | (Found to have no equity; does not participate) | | | | | | | | | | |
| Common stock | 13,000,000 | | (Found to have no equity; does not participate) | | | | | | | | | | |
| | | | $452,844 | $2,000,000 | $3,000,000 | $4,000,000 | $3,000,000 | $3,500,000 | $15,952,844 | | | | |

[1] This percentage relates to the entire allotment from the three sources shown below.
[2] This stock is allotted with respect to $552,000, principal amount, of pledged second-mortgage bonds and $174,570 of interest thereon.
[3] Allotted with respect to the mortgage lien on the properties.
[4] Of this, approximately 0.0389 represents participation in the unmortgaged assets and is subject to adjustment as indicated in note 5.
[5] Allotted as share in unmortgaged assets for unsatisfied amount of principal of claim and is subject to adjustment on basis of final determination of amount of unsecured claims.
[6] In addition, these bondholders receive the beneficial interest in noncarrier property appraised at $55,634, which value added to the common stock produces 109.16 percent of claim.
[7] Based upon the amount of unsecured claims as shown at the time of the submission of the plan, and subject to adjustment on the basis of the final determination of the amount of the unsecured claims.

*Summary of plan and charges*

| | Principal amount | Initial annual charges |
|---|---|---|
| Fixed interest debt: | | |
| Equipment obligations | $452,844 | $9,623 |
| Terminal bonds, 4 percent | 2,000,000 | 80,000 |
| First and consolidated, 4 percent | 3,000,000 | 120,000 |
| Total fixed interest debt | 5,452,844 | 209,623 |
| Other obligations and charges: | | |
| Additions and betterments fund | ---------- | [1] 62,000 |
| Sinking fund | ---------- | 20,000 |
| Contingent-interest bonds 4½ percent | 4,000,000 | 180,000 |
| Total debt and charges before dividends | 9,452,844 | 471,623 |
| Stocks: | | |
| Preferred, 5 percent | 3,000,000 | 150,000 |
| Common, no par, stated at $100 a share | 3,500,000 | ---------- |
| Total capitalization and total charges through preferred stock dividends | 15,952,844 | 621,623 |

[1] The basic amount of the fund is $130,000 through May 1, 1950, and $85,000 thereafter, made up of funds esulting from charges for depreciation of roadway and structures and the remainder from available net income. The $62,000 represents the portion payable out of available net income through May 1, 1950 on the assumption that funds resulting from the depreciated charges will be approximately $68,000 a year.

## APPENDIX C

*Supplemental order entered at a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of March, A. D. 1945*

Further investigation of the matters and things involved in this proceeding having been made upon petitions filed, and this Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, and a full statement of the reasons for the conclusions, which report, together with the prior report herein of the Commission, by division 4, approving a plan of reorganization, is hereby referred to and made a part hereof:

*It is ordered*, That the report and order of July 19, 1944, of this Commission, by division 4, approving a plan of reorganization for the New York, Susquehanna and Western Railroad Company, debtor, be, and they are hereby, modified so as to approve the following plan of reorganization:

### I. EFFECTIVE DATE

The effective date of the plan shall be January 1, 1944. The effective date shall determine the extent to which the claims of present creditors shall be capitalized in new securities, but the plan shall not affect creditor's claims until the new securities are actually issued (or existing securities are actually extended) by the reorganized company under the plan, and the carrying out of the plan, even though after January 1, 1944, shall not require any retroactive change in the operations of the trustee of the debtor, or in his accounts, or in the reports made to the Interstate Commerce Commission, hereinafter referred to as the Commission, or in any other reports or returns for the period prior to the date when such new securities are issued or existing securities are extended. Subject to the approval of the court, the reorganization managers may cause any issue of new securities to be dated, or the existing Terminal bonds to be extended, as of another date than January 1, 1944, but only if the creditors who receive such issue of new securities, or whose existing Terminal bonds are extended, shall receive through payments in respect of the old securities or otherwise the same

amounts in cash and the same rights in respect of accruals of interest and accumulations of interest and dividends as if such issue of new securities had been dated, or the existing Terminal bonds had been extended, as of January 1, 1944.

II. NEW CAPITALIZATION

The capitalization of the reorganized company, upon consummation of the plan, as of its effective date, shall consist of approximately the following:

| | *Amount* |
|---|---|
| Equipment obligations | $452,844 |
| Terminal first-mortgage, 4-percent bonds | 2,000,000 |
| First and consolidated mortgage, 4-percent bonds, series A | 3,000,000 |
| General-mortgage 4½-percent income bonds, series A | 4,000,000 |
| Preferred stock 5 percent | 3,000,000 |
| Common stock, no par value, 35,000 shares, taken at $100 a share | 3,500,000 |
| Total | 15,952,844 |

III. THE REORGANIZED COMPANY

All or substantially all properties held by the trustee of the debtor, except certain noncarrier lands subject to the mortgage of the Paterson Extension Railroad Company hereinafter referred to, and all moneys held by the trustees under the debtor's Terminal first mortgage, the first mortgage of Midland Railroad Company of New Jersey, the debtor's first and refunding mortgage, the debtor's second mortgage, the debtor's general mortgage, and the first mortgage of the Paterson Extension Railroad Company, hereinafter referred to as the Terminal, the Midland, the refunding, the second, the general, and the Paterson Extension mortgages, respectively, are to be conveyed to the reorganized company, which, in the discretion of the reorganization managers may be either the debtor, with its articles of incorporation appropriately amended, or a new company (herein, in either event, called the reorganized company). Any such conveyance shall be made free of lien of any mortgage and of any equipment obligation except the rights of American Locomotive Company and its assignees under equipment obligations, and except, in the discretion of the reorganization managers, the rights of any vendor or lessor of equipment acquired by the trustee of the debtor. The noncarrier lands subject to the Paterson Extension Railroad Company mortgage, referred to in court order No. 251 of January 6, 1943, appraised, with the approval of the court, at $55,634.50, for the purposes of the plan, shall be conveyed free of the lien of any mortgage to a new corporation or to a trustee, as the reorganization managers shall determine, for the purposes of sale and the distribution of the proceeds ratably among the holders of the bonds of the Paterson Extension Railroad Company.

In the discretion of the reorganization managers, all or substantially all, the properties now held by any of the following subsidiaries of the debtor are to be either retained by the present owner thereof or conveyed to any other of such subsidiaries or to the reorganized company or to any newly formed subsidiary of the reorganized company: The Hackensack and Lodi Railroad Company; The Lodi Branch Railroad Company; Passaic and New York Railroad Company; and Susquehanna Connecting Railroad Company.

In addition to their above-mentioned powers with respect to all, or substantially all, the properties now held by the trustee of the debtor (except the noncarrier lands subject to the Paterson Extension mortgage above referred to)

or by any of the afore-mentioned subsidiaries, the reorganization managers may, in their discretion, cause any part or parts of said properties to be retained by or conveyed to any of such subsidiaries or be conveyed to the reorganized company or to any newly formed subsidiary of the reorganized company. The foregoing sentence is intended to confer expressly upon the reorganization managers power to cause transfers of such parts of said properties to be made, to the extent which in their opinion may be necessary or desirable in effectuating the purposes of the plan. It is not intended to enable them to use the corporate entity of any of the afore-mentioned subsidiaries as the reorganized company. The reorganization managers may, in their discretion, dissolve any subsidiary of the debtor or the debtor itself. If any subsidiary is not dissolved, the reorganized company shall hold all the stock therein now held by the debtor or its trustee. In the event that, under the provisions of this paragraph or of the next preceding paragraph, title to any of said properties shall not become vested in the reorganized company, the title to such properties shall be so held and securities so pledged that the liens of the new mortgages hereinafter described shall attach directly or indirectly to all of the properties.

IV. DEBT REDUCTION PRIOR TO CONSUMMATION OF PLAN

In the event that part or all of any claim in respect of which new securities are to be issued under the plan, including interest up to the effective date of the plan as well as principal is satisfied prior to the consummation of the plan, the capitalization shall remain unchanged, and the additional securities thereby made available for distribution in respect of other claims shall be distributed in accordance wth a reapplication of the methods prescribed in the plan, except that, to the extent that the principal amount of Terminal bonds outstanding is reduced prior to the consummation of the plan, the total principal amount of new Terminal bonds and the total principal amount of new first and consolidated bonds, series A, to be reserved for the conversion of the new Terminal bonds shall each be reduced, and the total principal amount of new first and consolidated bonds, series A, to be issued at the time of the effectuation of the reorganization shall be increased to the same extent. Additional new common stock made available for distribution, representing mortgaged property, shall be allocated to the holders of general-mortgage bonds to the extent that the amount of common stock so made available makes such allocation practicable in the opinion of the reorganization managers, with appropriate adjustments of their participation with the unsecured creditors in the unmortgaged properties.

V. NEW SECURITIES; GENERAL

Subject to the approval of the court, the new securities shall be in such form as shall be determined by the reorganization managers, provided that they include, in addition to provisions usual under the circumstances, appropriate provisions to effect the aims hereinbelow indicated. The new securities may be issued in temporary form in the first instance, or interim certificates therefor may be issued.

Scrip may be issued and distributed in lieu of fractional bonds or shares of stock. Such scrip will not entitle the holder to any interest or dividend payment or to any voting rights but shall be exchangeable, on or before January 2, 1949, for new securities (and for such interest and dividends in respect thereto as may be determined by the reorganization managers), when presented in proper multiples on terms and conditions approved by the reorganiza-



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tion managers. After January 2, 1949, such scrip shall be void. Such adjustments as may be necessary to avoid the issuance of scrip in too small fractions may be made by the reorganization managers as they in their discretion shall determine.

In the interest of simplicity and economy, the reorganization managers shall have authority to offer to the creditors who would receive small amounts of scrip entitling them to fractional amounts of new securities, the election to accept the proceeds of the sale of such scrip at the market price of the bonds and stock and, if not listed on an exchange, at a price to be approved by the court. The managers shall have power to appoint such agents as may, in their judgment, be necessary for the above purpose who would also be permitted to sell such scrip as may be desired by participating creditors.

### VI. NEW TERMINAL-MORTGAGE BONDS

The words "new Terminal mortgage" are used herein to refer either to a new Terminal first mortgage or to the existing Terminal mortgage as extended, assumed, and amended by the extension agreement hereinafter mentioned. The words "new Terminal bonds" are similarly used herein. The word "issue" as used herein with respect to the new Terminal bonds, shall include the extension and assumption of the existing Terminal bonds.

A new Terminal first mortgage shall be executed to secure an issue of $2,000,000 principal amount of 50-year 4-percent bonds, which, subject to the provisions of article IV hereof, shall be issued in exchange for Terminal bonds now outstanding, or, at the option of the reorganization managers, an extension agreement shall be executed whereby the existing Terminal mortgage, as modified by the extension agreement, shall be assumed by the reorganized company, the maturity of the existing Terminal bonds shall be extended to January 1, 1994, the interest rate shall be reduced to 4 percent per annum, and such other changes shall be made in conformity with the provisions and purposes of the new Terminal mortgage herein described, as to the reorganization managers shall appear appropriate.

Subject to the provisions of article I hereof, the Terminal mortgage and bonds shall be dated as of the effective date of the plan and shall mature January 1, 1994, or 50 years from the date as of which issued, in the discretion of the reorganization managers. The bonds shall be fully registered or in coupon form registerable as to principal, or both, as may be determined by the reorganization managers. Interest thereon at the rate of 4 percent per annum shall be paid semiannually on January 1 and July 1, beginning July 1, 1944. The bonds shall be redeemable in whole or in part at any time, on 60 days' notice by publication, at their principal amount plus accrued and unpaid interest plus a premium of 3 percent if redeemed on or before January 1, 1952, 2½ percent if redeemed thereafter and on or before January 1, 1960, 2 percent if redeemed thereafter and on or before January 1, 1968, 1½ percent if redeemed thereafter and on or before January 1, 1976, 1 percent if redeemed thereafter and on or before January 1, 1984, one-half percent if redeemed thereafter and on or before January 1, 1992, and no premium if redeemed thereafter, provided that bonds called for redemption out of the sinking fund shall be redeemed at their principal amount plus accrued and unpaid interest. The bonds shall be convertible, at the option of the holders, at any time (in case of redemption, at any time prior to the date fixed for redemption) into an equal amount of first and consolidated mortgage 4-percent bonds, series A.

The mortgage shall constitute a lien on substantially the same property as is now subject to the lien of the existing Terminal mortgage, and with sub-

stantially the same priorities. It shall contain an after-acquired property clause which shall grant substantially the same rights in after-acquired property as are now granted by the existing Terminal mortgage, including a right to a first lien under circumstances where the existing Terminal mortgage would be entitled to a first lien, and a right to only a junior lien under circumstances where the existing Terminal mortgage would be entitled to only a junior lien. Said after-acquired property clause shall contain such provisions as the reorganization managers may determine to safeguard or clarify it in the event of consolidation, merger, sale, or lease.

On May 1 in each year, beginning with May 1, 1945, so long as any Terminal bonds are outstanding, the reorganized company shall pay to the Terminal mortgage trustee the sum of $20,000 as a sinking fund for the retirement of the new Terminal bonds. Moneys in the sinking fund shall be applied by the mortgage trustee to the purchase or redemption at public or private sale or upon calls for tenders of Terminal bonds. Bonds purchased or redeemed by the use of the fund shall be deposited in the fund and shall continue to draw interest at the rate provided in the mortgage securing the bonds, which interest shall be added to the fund and used for the purposes thereof, provided that after all of the Terminal bonds shall have been purchased for the benefit of the reorganized company or redeemed, through the operation of the fund or otherwise, the Terminal bonds deposited in the fund shall be canceled. If, during the preceding calendar year, the reorganized company shall have made any charges for depreciation of roadway and structures, the amounts so charged shall be used to make said annual payments for the sinking fund to the extent permitted by law or by applicable government regulation and to the extent said amounts shall exceed the amounts to be applied to the additions and betterments fund as herein required, and the charge out of available net income for the sinking fund shall be reduced accordingly.

The new Terminal mortgage shall contain provisions, in such form and substance as may be determined by the reorganization managers with the approval of the court, that, notwithstanding any other provision of the mortgage, the mortgage may at any time with the approval of the Commission or such other regulatory body as may at the time have jurisdiction in the premises, be modified by the concurrent action of the reorganized company and of the holders of not less than 75 percent in principal amount of all bonds of the mortgage outstanding at the time of such vote, so as to postpone the time or times of payment of any interest, either before or after the interest is due, or the principal of bonds of the mortgage, either before or after maturity, which at such time may be outstanding, provided that the payment of the principal of the bonds may not be postponed for a longer period than 20 years from the maturity date designated in the bonds and that the maturity of interest on the bonds may not be postponed for a longer period than 5 years, but in no event beyond the maturity date of the principal of the bonds designated in the bonds unless such maturity be postponed, in which event the maturity of interest on the bonds may not be postponed beyond the extended maturity date of the principal.

The Terminal mortgage shall contain appropriate provisions relative to the requirements of the additions and betterments fund as described in article IX hereof and to the determination and application of available net income described in article X hereof, and shall contain the following miscellaneous covenants:

(1) Such provisions, if any, as may be necessary or proper in the judgment of the reorganization managers, with due regard for the rights of the holders of new Terminal bonds in order to enable the board of directors to dispose of property in connection with coordination and pooling arrangements with other carriers.

(2) Providing that no consolidation or merger, and no sale or lease of substantially all the properties of the reorganized company as an entirety, shall be made by the reorganized company except on the condition that the corporation which will thereafter operate said properties shall assume said mortgage and all covenants thereof and all the debts, obligations, and duties of the reorganized company with respect to the new Terminal bonds outstanding thereunder.

(3) Providing, within conditions and limitations to be therein prescribed, for the modification or alteration, at any time, of said new Terminal mortgage and of any and all supplements thereto and of the rights and obligations thereunder of the reorganized company and of the holders of the new Terminal bonds by the concurrent action of the reorganized company and of the holders of not less than two-thirds in aggregate principal amount of the new Terminal bonds then outstanding; and, in the event that the reorganized company shall be unified with any other corporation by consolidation, merger, sale, lease, or otherwise, such modification or alteration may specifically include procedural provisions for ascertaining available net income without the maintenance of separate books of account; provided that no such modification or alteration shall (*a*) alter or impair the obligation of the reorganized company to pay the principal of, or interest on, any new Terminal bond at the time and place and at the rate and in the currency provided therein without the consent of the holder of such bond, or (*b*) permit the creation by the reorganized company of any mortgage or lien in the nature of a mortgage ranking prior to or *pari passu* with the lien of the new Terminal mortgage, except as may be in the new Terminal mortgage otherwise expressly provided, unless the creation of such mortgage or lien be consented to by the holders of all outstanding bonds, or (*c*) modify or alter such other provisions of said mortgage as may be prescribed by the reorganization managers, or (*d*) without the approval of this Commission or such other regulatory body as may at the time have jurisdiction in the premises, change or alter any provision of the mortgage relative to sinking funds.

(4) The mortgage shall contain the usual additional provisions regarding maintenance, replacements, releases, insurance, payment of taxes, and the like.

### VII. NEW FIRST AND CONSOLIDATED MORTGAGE BONDS

A new first and consolidated mortgage shall be executed to secure an issue of $7,000,000 principal amount of bonds, issuable in series, of which approximately $3,000,000 principal amount of series A bonds shall be issued at reorganization. The series A bonds shall bear interest at the rate of 4 percent per annum, shall, subject to the provisions of article I hereof, be dated as of the effective date of the plan, shall mature January 1, 2004, or 60 years from the date as of which issued, in the discretion of the reorganization managers, shall be in such denominations, and shall be fully registered or in coupon form registerable as to principal, or both, as may be determined by the reorganization managers. Series A bonds shall be redeemable at any time, on 60 days' notice by publication, at their principal amount plus accrued and unpaid interest plus a premium of 4 percent if redeemed on or before January 1, 1951, 3½ percent if redeemed thereafter and on or before January 1, 1958, 3 percent if redeemed thereafter and on or before January 1, 1965, 2½ percent if redeemed thereafter and on or before January 1, 1972, 2 percent if redeemed thereafter and on or before January 1, 1979, 1½ percent if redeemed thereafter and on or before January 1, 1986, 1 percent if redeemed thereafter and on or before January 1, 1993, one-half percent if redeemed thereafter and on or before January 1, 2000, and no premium

if redeemed thereafter, provided that bonds called for redemption out of the sinking fund shall be redeemed at their principal amount plus accrued and unpaid interest. Series of such bonds, subsequent to series A, which may be issued as hereinafter provided shall be issued as of such date or dates, to mature on such date or dates, bear interest at such rate or rates and at such times, in such denominations and form, fully registered or in coupon form, or both, with such provisions as to redemption, with such conversion rights, if any, and with such provisions for sinking funds, if any, all as may be determined by the board of directors of the reorganized company, subject as to sinking funds to the provisions hereinafter stated with respect to first and consolidated mortgage bonds issued to cover the cost of equipment or for emergency purposes.

This mortgage shall constitute a first lien (subject only to the lien of the new Terminal mortgage and the rights of American Locomotive Company and its assignees in the Diesel switching units purchased by the debtor's trustee, and, in the discretion of the reorganization managers, the rights of any vendor or lessor of equipment acquired by the debtor's trustee) on all property of whatever nature, including, without limiting the generality of the foregoing, securities, equipment, and equities in equipment, owned by the debtor or its trustee, as such, at the time of the effectuation of the plan, except, however, such cash, accounts receivable, and other current assets as customarily are not subject to the lien of a railroad first mortgage, and such properties or assets not necessary for the operation of the railroad as the reorganization managers may determine should not be so subject. The mortgage shall also constitute a first lien, in such manner and with such exceptions as the reorganization managers may determine, upon all property of whatever nature acquired by the reorganized company after the effectuation of the plan, subject only to the lien of the new Terminal mortgage by virtue of its after-acquired property clause to the extent that the new Terminal mortgage is thereby entitled to priority over this mortgage and to such encumbrances or purchase-money liens as may exist or be created at the time of acquisition, with such provisions as the reorganization managers may determine to safeguard or clarify the after-acquired property clause in the event of consolidation, merger, sale, or lease.

The mortgage shall contain appropriate provisions relative to the requirements of the additions and betterments fund as described in article IX hereof and to the determination and application of available net income described in article X hereof, and shall contain covenants similar to those hereinbefore outlined in the four paragraphs relating to the miscellaneous covenants to be inserted in the new Terminal mortgage and a covenant substantially to the effect that the aggregate principal amount of all first and consolidated bonds which at any one time may be under pledge by the reorganized company shall not exceed the amount of all indebtedness so secured by more than 10 percent of the aggregate principal amount of first and consolidated bonds then authenticated and not canceled.

Subject to the provisions of article IV hereof, series A bonds under this mortgage shall be issued at the time of the effectuation of the reorganization in the principal amount of approximately $3,000,000. Subject also to the provisions of article IV hereof, an additional principal amount of approximately $2,000,000 of series A bonds shall be reserved for the conversion of new Terminal bonds, except that to the extent that the principal amount of new terminal bonds outstanding is reduced by refunding, as hereinafter in this article provided, or by redemption or otherwise, the aforesaid approximately $2,000,000 principal amount of series A bonds reserved shall be reduced and the approximately $2,000,000

principal amount of first and consolidated bonds described in the following paragraph shall be increased.

The remaining approximately $2,000,000 principal amount of authorized first and consolidated bonds, subject to the approval of the Commission, may be issued as additional series A bonds, or in such other series, subject to such limitations and restrictions, as may be specified in the first and consolidated mortgage, to mature on such date or dates (not earlier than the maturity of series A bonds except where issued to cover the cost of equipment or for emergency purposes as hereinafter provided), to bear such rates of interest and to contain such provisions regarding redemption, conversion, sinking funds, and other matters as may be determined by the board of directors of the reorganized company, but with respect to the lien of this mortgage all equally secured. Such bonds shall be issued only with the approval of this Commission and only for the following purposes and subject to the following conditions:

(*a*) To refund any new Terminal bonds or any first and consolidated bonds or any obligations which at any time may constitute a lien on any part of the system prior to the lien of the first and consolidated mortgage.

(*b*) To cover the not exceeding 75 percent of the net cost of additions and betterments made after January 1, 1944, (net cost to mean the cost minus the amount required by the Commission's accounting classification to be credited to capital accounts by reason of the retirement of any property replaced by property for or in respect of which any such expenditures shall have been made), or the acquisition of additional property, including fixed property as defined below, or equipment, or substantially all the securities of corporations owning the same, to the extent of 75 percent of such cost, excluding the amount of existing and continuing prior liens on the property being acquired except to the extent of the actual cost of acquisition of any such liens, provided that

(*i*) No first and consolidated bonds shall be issued to cover the cost of equipment or to refund equipment-trust obligations or any obligations for the deferred or serial payment of the purchase price of equipment unless the term of such bonds shall not exceed the expected remaining efficient service life of the equipment, in any case not more than 15 years, unless a sinking fund be created with payments at an annual rate sufficient to retire such bonds in full at or prior to their respective maturities and unless, in the event of such a refunding, the entire issue of any equipment obligations being refunded is retired; and

(ii) No first and consolidated bonds shall be issued for the purpose of acquiring equipment which is also to be under equipment-trust obligations or under any obligations for the deferred or serial payment of the purchase price of equipment and

(*iii*) No application shall be made to the Commission for authority to issue first and consolidated bonds for any purpose specified in this clause (b) in respect of any item of cost more than 18 months after the close of the calendar year in which the reorganized company shall have paid such cost. All such bonds which may be authorized by the Commission to be issued for any such purpose not sold or pledged within 36 months after the close of the calendar year in which the reorganized company shall have paid such cost shall be canceled, and no other first and consolidated bonds shall be issued in lieu thereof or for any items of cost in respect of which the same were authorized.

Fixed property shall include all lands, buildings, roadbeds, tracks, structures, machinery attached to and forming part of real property, switches, signal towers, bridges, and the like, which have a life expectancy of at least 25 years with reasonable maintenance, replacements, and repairs, but shall not include property

with a lesser life expectancy, or movables such as office furniture and office equipment, hand tools, and the like.

(*c*) First and consolidated bonds shall not be issued on the basis of additional property or additions and betterments acquired to the extent that such additional property or additions and betterments are acquired by the use of the additions and betterments fund, except as in the mortgage otherwise provided.

(*d*) Upon requisite authorization by the Commission, first and consolidated bonds may be issued from time to time, up to a principal amount of $500,000 at any one time outstanding without regard to the restrictions on the issue of additional first and consolidated bonds hereinbefore stated, except the restrictions as to the total amount of bonds to be issued under the mortgage, if the reorganized company shall have contracted forthwith to sell or pledge such bonds and the board of directors of the reorganized company, by resolution adopted by two thirds of the entire number of directors, shall have determined that an emergency, which term may be defined in the first and consolidated mortgage, exists requiring such issue. The fact that such bonds shall theretofore have been issued for emergency purposes and thereafter canceled shall not at any given time affect the right of the reorganized company then to issue first and consolidated bonds for emergency purposes up to the afore-mentioned maximum principal amount of $500,000 at any one time outstanding. The amount of first and consolidated bonds issuable for other than emergency purposes shall be reduced by the aggregate principal amount of bonds theretofore issued for emergency purposes less the principal amount thereof which shall theretofore have been canceled. First and consolidated bonds may be issued for emergency purposes on such other terms and conditions as may be determined by the reorganization managers and set forth in the first and consolidated mortgage.

In the event that all of the $2,000,000 of new Terminal bonds are redeemed, refunded, converted, or otherwise retired, then the sinking fund herein provided in article VI for the benefit of the new Terminal bonds shall be continued and applied for the benefit of the first and consolidated bonds, series A, under the same terms and conditions specified in article VI, as though the sinking fund has been initially provided for application to the first and consolidated bonds, series A, and the first and consolidated mortgage shall so provide.

The new first and consolidated mortgage shall contain provisions, in such form and substance as may be determined by the reorganization managers with the approval of the court, that, notwithstanding any other provision of the mortgage, the mortgage may at any time, with the approval of the Commission or such other regulatory body as may at the time have jurisdiction in the premises, be modified by the concurrent action of the reorganized company and of the holders of not less than 75 percent in principal amount of all bonds of the mortgage outstanding at the time of such vote, so as to postpone the time or times of payment of any fixed interest or accumulations of contingent interest, either before or after the interest is due, or the principal of any or all series of bonds of the mortgage either before or after maturity, whether bearing fixed or contingent interest, which at such time may be outstanding, provided that the payment of the principal of the bonds may not be postponed for a longer period than 20 years from the maturity date designated in the bonds, and that the maturity of interest on the bonds may not be postponed for a longer period than 5 years but in no event beyond the maturity date of the principal of the bonds designated in the bonds unless such maturity be postponed, in which event the maturity of interest on the bonds may not be postponed beyond the extended maturity date of the principal.

VIII. NEW GENERAL-MORTGAGE INCOME BONDS

The new general mortgage, hereinafter sometimes called the income mortgage, shall contain no limitation upon the amount of bonds issuable under it. Approximately $4,000,000 principal amount of series A bonds shall be issued under it at reorganization. These series A bonds shall, subject to the provisions of article I hereof, be dated as of the effective date of the plan, shall mature January 1, 2019, or 75 years from the date as of which they are issued, in the discretion of the reorganization managers, shall be in such denominations and form, and fully registered or in coupon form registerable as to principal or both, as may be determined by the reorganization managers.

These series A bonds shall bear contingent interest at the rate of 4½ percent per annum, payable on the 1st day of May in each year beginning with May 1, 1945. Said interest shall be paid, if covered by available net income, pursuant to article X hereof, and if not fully covered thereby, to the extent so covered in multiples of one-eighth of 1 percent, except that if the amount so available is less than one-fourth of 1 percent such amount shall not be payable until the amount thereof, together with interest payable in respect of said series A income bonds in any succeeding year, shall equal or exceed one-fourth of 1 percent. To the extent that interest at the rate of 4½ percent for any income period is not paid, the deficiency shall be cumulative to a maximum amount at any one time of 13½ percent of the principal amount of the series A bonds then outstanding. Accumulations of interest shall not bear interest.

Interest on the series A income bonds accruing for each calendar year shall, up to a maximum amount at any one time accruing for prior years of 13½ percent of the principal amount of the series A income bonds then outstanding plus interest on such bonds for the current calendar year to the extent payable out of available net income, become owing as a debt on December 31 in such year, but shall be payable as herein provided. Such interest shall be mandatorily payable only out of available net income of the reorganized company pursuant to article X hereof, in respect of the preceding calendar year, or (in the case of accumulations of interest) out of available net income in respect of such preceding calendar year or subsequent calendar years. For the purposes of the preceding sentence, payments of interest shall be considered as applied to interest accrued for the last preceding calendar year before being applied to accumulations. The board of directors of the reorganized company in its discretion may cause the payment of interest on said series A income bonds out of any fund whatever that may be lawfully available therefor and permitted under the terms of the income mortgage.

When the principal of any of the series A income bonds shall become payable, whether at maturity or upon redemption or by acceleration, or in any other manner, or a permanent or confirmed appointment shall be made of any trustee or receiver for the reorganized company or its property, (*a*) interest on such bonds at the rate of 4½ percent per annum for the next preceding calendar year, to the extent unpaid, (*b*) any other interest accumulated on the next preceding May 1, to the extent unpaid, and (*c*) interest at the rate of 4½ percent per annum from the last preceding December 31st shall become immediately and absolutely payable regardless of earnings.

Series A income bonds shall be redeemable in whole or in part at any time on 60 days' notice by publication at their principal amount plus (*a*) interest at the rate of 4½ percent per annum for the next preceding calendar year to the extent unpaid on the redemption date, and (*b*) any other interest accumulated on the next preceding May 1 to the extent unpaid on the redemption date, and

(c) interest at the rate of 4½ percent per annum from the last preceding December 31st to the redemption date.

The income mortgage shall constitute a lien upon all property from time to time subject to the lien of the first and consolidated mortgage, subject only to the lien of the new Terminal mortgage and the first and consolidated mortgage and any liens that may at any time be prior to either of said mortgages. The mortgage shall contain appropriate provisions similar to those in the new Terminal mortgage in respect of the additions and betterments fund.

The income mortgage shall contain appropriate provisions relative to the requirements of the additions and betterments fund as described in article IX hereof and to the determination and application of available net income described in article X hereof, and shall contain covenants similar to those hereinbefore outlined in the four paragraphs relating to the miscellaneous covenants to be inserted in the new Terminal mortgage (the words sinking funds as used in paragraph (3) of said four paragraphs to include for the purposes of this mortgage any security-retirement fund at the time in effect and applicable to this mortgage) and a covenant substantially to the effect that the aggregate principal amount of all income-mortgage bonds which at any one time may be under pledge by the reorganized company shall not exceed the amount of all indebtedness so secured by more than 10 percent of the aggregate principal amount of income-mortgage bonds then authenticated and not canceled. The income mortgage shall also contain a covenant or other provision to the effect that the holders of series A income bonds issued at the time of the effectuation of the reorganization, and no others shall be entitled to elect or designate, in such manner as lawfully may be provided in said income mortgage, one director of the reorganized company. Such covenant or provision shall also state that such director shall likewise be a member of any executive committee and of any other committee exercising general or financial powers of the board of directors.

Income bonds of series A, in addition to the $4,000,000 principal amount to be issued at the reorganization, may be issued subject to the approval of the Commission and to such limitations as may be specified in the income mortgage. Subject to the approval of the Commission, income bonds of other series may be issued under the income mortgage, subject to such limitations and restrictions as are set forth herein or as may be specified in the income mortgage, to mature on such date or dates (not earlier than the maturity of series A income bonds except where issued to cover the cost of equipment or for emergency purposes as hereinafter provided), to bear such rates of interest (except that interest may not be commutable into fixed interest, and fixed-interest bonds may not be issued under the income mortgage) and to contain such provisions regarding accumulations of interest, redemption, conversion, sinking funds, denominations, form (fully registered or in coupon form registerable as to principal, or both), and other matters, as may be determined by the board of directors of the reorganized company, but with respect to the lien of the income mortgage all equally secured. Such additional income bonds of series A or of other series may be issued only for the following purposes and subject to the following conditions:

(a) To refund any new Terminal bonds or any first and consolidated bonds or any series A income bonds or any obligations which at any time may constitute a lien on any part of the system prior to the lien of the income mortgage.

(b) To cover the cost of additions and betterments, or the acquisition of additional property, in a manner similar to that to be provided in the first and consolidated mortgage with respect to the issuance of additional first and consolidated bonds and subject to the limitations therein to be set forth.

(*c*) Income bonds shall not be issued on the basis of additional property or additions and betterments acquired to the extent that such additional property or additions and betterments are acquired by the use of the additions and betterments fund, except as herein otherwise provided.

(*d*) No income bonds (except additional series A income bonds, or income bonds of any series, issued for emergency purposes as hereinafter permitted) shall be issued with interest ranking prior to interest on series A income bonds issued at reorganization and no income bonds (except additional series A income bonds, or income bonds of any series, issued for emergency purposes or to cover the cost of equipment as herein permitted) shall be issued with a sinking fund if no sinking fund exists for the series A income bonds issued at reorganization or with a sinking fund ranking prior to any sinking fund for the series A income bonds issued at reorganization. No interest shall be mandatorily payable on income bonds of any Series (except at maturity, or upon redemption, as hereinabove in this article provided) except that of available net income.

(*e*) Upon the authorization of the Commission, income bonds may be issued from time to time, up to a principal amount of $500,000 at any one time outstanding, without regard to the restrictions on the issue of additional income bonds hereinbefore stated, if the reorganized company shall have contracted forthwith to sell or pledge such bonds and the board of directors of the reorganized company by resolution adopted by two-thirds of the entire number of directors, shall have determined that an emergency, which term may be defined in the income mortgage, exists requiring such issue. The fact that income bonds shall theretofore have been issued for emergency purposes and thereafter canceled shall not at any given time affect the right of the reorganized company then to issue income bonds for emergency purposes, up to the afore-mentioned maximum principal amount of $500,000 at any one time outstanding. Income bonds may be issued for emergency purposes on such other terms and conditions as may be determined by the reorganization managers and set forth in the income mortgage.

The new general mortgage shall contain provisions, in such form and substance as may be determined by the reorganization managers with the approval of the court, that, notwithstanding any other provision of the mortgage, the mortgage may at any time with the approval of the Commission or such other regulatory body as may at the time have jurisdiction in the premises, be modified by the concurrent action of the reorganized company and of the holders of not less than 75 percent in principal amount of all bonds of the mortgage outstanding at the time of such vote, so as to postpone the time or times of payment of any accumulations of contingent interest, either before or after the interest is due, or the principal of any or all series of bonds of the mortgage either before or after maturity, which at such time may be outstanding, provided that the payment of the principal of the bonds may not be postponed for a longer period than 20 years from the maturity date designated in the bonds and that the maturity of interest on the bonds may not be postponed for a longer period than 5 years but in no event beyond the maturity date of the principal of the bonds designated in the bonds unless such maturity be postponed, in which event the maturity of interest on the bonds may not be postponed beyond the extended maturity date of the principal.

### IX. ADDITIONS AND BETTERMENTS FUND

The mortgages shall contain appropriate provisions to require the board of directors of the reorganized company, on or before May 1 of each year beginning

with 1945, to set aside and segregate from other funds an additions and betterments fund in an amoount which shall be equal to 2 percent of total railway operating revenues (as defined by the Commission's classification of income, profit and loss, and general balance sheet accounts for steam roads, account No. 501, or such substituted account or accounts of the Commission as at the time may be in effect) of the reorganized company in such preceding calendar year, or $85,000 whichever shall be greater, plus through May 1, 1950, $45,000 per annum. The additions and betterments fund shall be derived from (1) funds resulting from charges for depreciation of roadway and structures and credited to the depreciation reserve during the preceding calendar year to the extent that such funds are earned and are adequate therefor and (2) funds from available net income (as defined in article X hereof) of the preceding calendar year, prior to interest on the general-mortgage income bonds and prior to sinking-fund payments, to the extent the funds resulting from charges for depreciation of roadway and structures are inadequate to make up the required amount of the fund. If and to the extent that the available net income of any calendar year shall not be sufficient to set aside for the additions and betterments fund in respect of such year the amount provided above, the amount of such deficiency shall be made up out of the available net income of subsequent years before any of such available net income shall be applied to the payment of any contingent or accumulated contingent interest or of any sinking-fund installments or of any dividends, provided, however, that the total of such deficiencies to be made up on May 1 of any year, exclusive of such deficiencies made up in previous years and exclusive of the amount to be set aside for the additions and betterments fund in respect of the preceding calendar year, shall never exceed $150,000, and provided further, that no deficiency shall be made up on any May 1 which was incurred more than 28 months prior thereto.

Sums in the additions and betterments fund shall be applied, as from time to time shall be determined by the board of directors of the reorganized company, either to provide for, or to reimburse the treasury of the reorganized company for, all or any part of the cost in any calendar year of capital investments, as hereinafter defined. Such capital investments shall be as defined by the Commission's classification of income profit and loss and general balance sheet accounts for steam roads, accounts Nos. 701, investment in road and equipment, 702, improvements on leased property, and 705, miscellaneous physical property, or advances to subsidiaries for expenditures which, if made directly by the reorganized company in respect of its owned and leased property, would be charged to said accounts, or such substituted accounts of the Commission as may at the time be in effect. To the extent that capital investments are provided for or reimbursed out of the fund, the reorganized company shall not thereafter have the right to issue any bonds or other evidences of indebtedness to capitalize or to reimburse it for any such investments; provided, however, that such investments, if for purposes for which first and consolidated bonds or income bonds may be issued, may be used, within such limits, if any, as may be specified in the first and consolidated mortgage or the income mortgage, to supply in whole or in part the excess of capital expenditures required to be certified under either of such mortgages over the principal amount of the bonds that may be issued under the terms thereof.

To the extent that the additions and betterments fund is not, in the discretion of the board of directors of the reorganized company, required for such capital investments, the fund or any part thereof may be applied by said board of directors, in its discretion, to the payment of interest on fixed interest debt of the reorganized company. To the extent that the fund is so applied it shall be reim-

bursed out of the available net income of subsequent years before any of such available net income shall be applied to the payment of any contingent or accumulated contingent interest or of any sinking-fund installments or of any dividends.

Whenever, prior to 1951, the amount of the additions and betterments fund shall exceed $165,000 or whenever, in 1951 or thereafter, such amount shall exceed $120,000, such excess over $165,000 or over $120,000, as the case may be, may be applied by the board of directors of the reorganized company, in its discretion, to the purchase or redemption, at public or private sale or upon calls for tenders of any new Terminal bonds and, after all of such bonds have been retired or converted, of first and consolidated bonds and income bonds, in the order named, at such time outstanding. Bonds so purchased or redeemed shall be canceled.

All moneys in the additions and betterments fund which shall not be applied as above provided during the calendar year in which they are credited, shall be carried over in the fund to the next calendar year in addition to the regular annual credit to the fund. If, however, on May 1 in any year the amount in the fund is equal to or in excess of $200,000, no contribution shall be made to the fund in such year, and the "then remaining available net income" to which reference is made in article X subdivision 3 (*c*) hereof for the preceding year shall be deemed to be increased by the amount which would otherwise have been payable into the fund on said May 1.

### X. DETERMINATION AND APPLICATION OF AVAILABLE NET INCOME

1. Available net income, as that term is used herein, shall be "income after fixed charges," determined in accordance with the accounting rules of the Commission or, to the extent not governed by such accounting rules, in accordance with sound accounting practice, provided, however, that there shall be excluded from the computation of net income available for contingent interest and the additions and betterments fund and the sinking-fund requirements provided for in the plan, that part of the charges to operating expenses representing the service value (ledger value less value of salvage, if any) of nondepreciable roadway property retired and not replaced.

2. Available net income shall be determined for each calendar year within 4 months after the termination thereof, beginning with the calendar year 1944 and continuing thereafter so long as any funded debt remains outstanding, provided, however, that (1) if in any calendar year the reorganized company shall fail to earn its fixed charges, such deficit shall be added to the fixed charges in the next succeeding year or years, and (2) adjustments necessary to correct the income or expense accounts of any prior year (but not any year prior to 1944) shall be made by appropriate entries, either in the accounts of the current year, or (unless such adjustment would be in violation of applicable orders, rules, and regulations of the Commission), in the discretion of the board of directors of the reorganized company, in whole or in part in the accounts of any subsequent year or years. Any such adjusting entries made in the accounts of any year to adjust the income or expense accounts of prior years shall be treated, for the purpose of this article, as income for the year in which entered on the books, whether cleared through income or profit and loss accounts.

3. Available net income for each calendar year shall, subject to the following provisions and subject to such modifications thereof (including rearrangement of the priority of payment) as the reorganization managers may deem desirable in connection with the sinking funds created for bonds which may be issued to cover the cost of equipment or for emergency purposes, be applied during the next succeeding calendar year to the following purposes and in the following order:

(*a*) Available net income shall on May 1 be set aside to the extent, but only to the extent, required (when added to the credit, if any, from roadway and structures depreciation reserve as set forth in article IX hereof) for the additions and betterments fund as hereinbefore provided.

(*b*) Any then remaining available net income shall on May 1 be set aside to make up any deficiency not exceeding $150,000 in the amounts credited in the preceding 28 months to the additions and betterments fund, and to reimburse said fund for moneys that may have been taken from said fund and used for the payment of interest on fixed-interest debt.

(*c*) Any then remaining available net income shall on May 1 be applied to provide for the payment to the sinking fund provided in articles VI and VII hereof first for the benefit of the new Terminal bonds, and second, in the event all of the new Terminal bonds are redeemed, refunded, converted, or othewise retired, for the benefit of the first and consolidated bonds, series A.

(*d*) Any then remaining available net income shall on May 1 be applied to provide any amount which may be necessary to service any sinking funds which may be created in connection with any future issues of first and consolidated bonds.

(*e*) Any then remaining available net income shall on May 1 be applied to the payment of any contingent interest on income bonds accruing during the last preceding calendar year and of any accumulated unpaid interest thereon.

(*f*) Any then remaining available net income shall on May 1 be applied to provide any amount which may be necessary to service any sinking funds for the benefit of income bonds.

(*g*) Any then remaining available net income may be applied as the board of directors may determine to general corporate purposes or dividends on the several classes of stock in the order of their priority, provided that no dividends on the common stock shall be declared, set aside, or paid unless and until amounts equal to 20 percent of such dividends intended to be declared, set aside, and paid shall be paid into a fund, to be known as the security-retirement fund, to be used and applied in the manner of a sinking fund for the retirement of general-mortgage income bonds, series A, and, after retirement of all of such bonds, to the retirement of the preferred stock.

### XI. PREFERRED STOCK AND PREFERRED-STOCK VOTING TRUST

Approximately 30,000 shares of preferred stock, having a par value of $100 a share shall be authorized, approximately all of which shall be issued in the reorganization.

The holders of preferred stock shall be entitled to receive, or to have declared and set apart for payment, dividends out of available net income as provided in article X hereof, when and as declared by the board of directors, at the rate of 5 percent per annum in respect of each calendar year before any dividends shall be paid or declared and set apart for payment on the common stock. Such dividends of 5 percent per annum on the preferred stock shall be cumulative to the extent earned in respect of any calendar year and not paid but shall not be otherwise cumulative. Dividends on the preferred stock shall be deemed to have been earned in respect of any year to the extent covered by available net income pursuant to article X hereof after deducting the amounts to be applied out of available net income pursuant to subparagraphs (*a*) to (*f*), inclusive, of paragraph 3 of article X hereof. In the event that the reorganized company shall be unified with any other corporation by consolidation, merger, sale, lease, or otherwise, then by vote or consent of the holders of at least two-thirds in par value of the preferred stock then outstanding, procedural provisions may be

made for ascertaining available net income without the maintenance of separate books of account, and such provision shall be binding on all the holders of preferred stock.

In any liquidation or winding up of the reorganized company, whether voluntary or involuntary, the preferred stock shall be entitled to receive out of the assets of the reorganized company, its par value, plus any accumulated and unpaid dividends thereon, before any distribution shall be made on the common stock, but shall not be entitled to any further participation in such assets. The preferred stock shall be redeemable, in whole or in part, at any time, on 60 days' notice by publication, at $100 per share plus any accumulated unpaid dividends. The holders of the preferred stock shall have no conversion rights and shall not have any preemptive right to subscribe to any additional issues of stock of any class or of securities convertible into stock of any class.

Holders of the preferred stock shall be entitled to one vote per share upon all matters except to the extent that provision is made herein for the election of one director by holders of income bonds and except to the extent that the right of the holders of preferred stock to vote for members of the board of directors of the reorganized company is limited as hereinafter provided. Voting separately as a class, the holders of the preferred stock shall be entitled to elect one-half (if one-half involves a fraction, then the next larger whole number) of the membership of the board of directors of the reorganized company less one, and one of the directors so elected shall be a member of any executive committee and of any other committee exercising general or financial powers of the board of directors of the reorganized company, provided that this right of the preferred stockholders to elect one-half less one of the board of directors shall not apply after all of the general-mortgage income bonds have been retired through operation of the security-retirement fund or otherwise. Holders of the preferred stock, voting as a class, shall have the right to elect not less than two directors after default of the equivalent of six quarterly dividends, whether or not such dividends are earned and whether or not the defaults are consecutive. The affirmative vote of at least two-thirds of the preferred stock shall be required as a prerequisite to any charter or bylaw amendment altering materially any existing provision of such preferred stock.

All shares of preferred stock shall be deposited under a voting-trust agreement and preferred-stock voting-trust certificates shall be issued to persons otherwise entitled to receive such preferred stock under the plan.

There shall be three voting trustees under such trust, whose appointments, whether initial or to fill vacancies, shall be subject to the approval of the court. Subject to such approval, the trustees under the existing Terminal and Midland mortgages shall appoint the trustee for the first position, the trustee under the existing first and refunding mortgage jointly with the New York Life Insurance Company, the Prudential Insurance Company of America, and the Mutual Benefit Life Insurance Company of New Jersey shall appoint the trustee for the second position, and the trustees under the existing second and general mortgages jointly shall appoint the trustee for the third position, provided, however, that in case of a vacancy in any of the positions after the initial trustees have been approved by the court and the voting trust certificates issued, an appointment to fill a vacancy in the first position shall be made by the trustee under the new general mortgage, an appointment to fill a vacancy in the second position shall be made by the holders of the preferred stock voting-trust certificates which are not so owned, controlled, or held that instructions as to voting trusteed stock represented thereby would have to be disregarded pursuant to subsequent

provisions herein, and an appointment to fill a vacancy in the third position shall be made by the holders of the common stock voting-trust certificates which are not so owned, controlled, or held that instructions as to voting trusteed stock represented thereby would have to be disregarded pursuant to subsequent provisions herein, and provided further, that should any of the parties or interests fail to make appointment of a trustee, either the initial trustee, or to fill a vacancy, within such time as the court shall consider reasonable, the court shall appoint such trustee. Should such occasion for the filling of a vacancy by the court or for the approval of an appointment by the court under the provisions of this paragraph arise after the termination of these reorganization proceedings, the appointment or the approval shall be made by the senior judge of the United States District Court of the district in which these proceedings are now pending.

The terms of the voting-trust agreement shall be determined by the reorganization managers and approved by the court but shall include appropriate provisions to effect the following purposes:

(*a*) The period of the trust shall be 5 years beginning as of the date of the order of court directing consummation of the plan; it shall, however, terminate upon the sale in accordance with the terms of the trust of at least 51 percent of the stock held in the trust and may be terminated at any time by the voting trustees with the consent of the holders of a majority in interest of the preferred-stock voting-trust certificates then outstanding and with the consent of the voting trustees under the common-stock voting trust;

(*b*) The voting trustees shall have power in their sole discretion (but only with the approval of the Commission and the consent of the holders of a majority in interest of the preferred-stock voting-trust certificates then outstanding and the consent of the voting trustees under the common-stock voting trust hereinafter referred to) to sell 51 percent or more (but not less than 51 percent) of the stock held in the trust at any time prior to the termination of the trust for such consideration as they may deem expedient (as a part of which consideration they may take into account any agreements which the purchaser or purchasers may make by way of traffic agreements, guaranties, offers of exchange of securities, or otherwise, which in the judgment of the voting trustees will be of value to the holders of bonds issued in reorganization or of the preferred-stock voting-trust certificates); provided, however, that the purchaser or purchasers shall be required, for a reasonable period after the termination of the preferred-stock voting trust, to purchase such additional shares of preferred stock theretofore held under the trust as may be tendered at the same "price per share of preferred stock" as was paid in respect of said 51 percent or more of said preferred stock (the phrase "price per share of preferred stock" as used in this article XI being intended to relate only to that part of the aforesaid consideration which reasonably may be and shall be intended to be divided and distributed among the holders of preferred-stock voting-trust certificates, including in particular, but without limiting the generality of the foregoing, cash and securities); and provided further, that the purchaser or purchasers shall be required, as a part of the same transaction, to buy 51 percent or more (but not less than 51 percent) of the common stock of the reorganized company and to make an offer to buy all of said common stock as will be set forth in the common-stock voting-trust agreement and holders of all preferred-stock voting-trust certificates shall be bound by the terms of sale.

(*c*) In the event that the sale of 51 percent or more of said trusteed preferred stock shall be effected prior to the termination of the trust, that part of the consideration which is the basis for determining the price per share of preferred

stock, as defined in subdivision (*b*) *supra*, and the balance of the trusteed stock, if any, shall be distributed pro rata to the holders of preferred-stock voting-trust certificates against the surrender of said certificates;

(*d*) The voting trustees shall possess and shall be entitled to exercise all rights and powers of absolute owners of the preferred stock held in the trust, including the right (1) to vote in respect thereof for every purpose and to consent to any corporate act of the reorganized company, it being expressly stipulated that, except as herein specified, no voting right shall pass by or under the preferred-stock voting-trust certificates or by or under any agreement express or implied, and (2) to sell, exchange, or otherwise dispose of such preferred stock, all subject to the provisions of the voting-trust agreement.

The voting-trust agreement shall provide in substance that a copy of every notice of a stockholders' meeting of the reorganized company shall be mailed to each registered holder of a preferred-stock voting-trust certificate and that in case the voting trustees shall receive from the holder of a preferred-stock voting-trust certificate, within such reasonable number of days prior to the date of the meeting as shall be set forth in such notice, a written request to vote in the manner stated in such request at any such meeting upon any matters to come before such meeting, the voting trustees shall vote at such meeting in accordance with such request in respect of the number of full shares of preferred stock represented by said voting-trust certificate, except that the voting trustees shall disregard any instructions as to voting the shares of preferred stock represented by the preferred-stock voting-trust certificate, if the written request to vote does not expressly state that the preferred-stock voting-trust certificate with respect to which request to vote is made is not owned or controlled by, or held for the benefit of, a person, firm, association, or corporation which owns or operates, or controls a corporation which owns or operates, or is controlled by a corporation which owns or operates, or is in any way directly or indirectly, affiliated with a corporation which owns or operates, a line or lines of railroad, or by two or more such persons, firms, associations, and/or corporations acting jointly.

The voting trustees, in determining whether or not they have been authorized by the consent of the holders of a given percentage in interest of the preferred-stock voting-trust certificates then outstanding, in any case where such consent is required, (*a*) shall treat as not outstanding preferred-stock voting-trust certificates so owned, controlled, or held that instructions as to voting trusteed stock represented thereby would have to be disregarded pursuant to the next preceding paragraph, and (*b*) shall disregard any such consent by any holder or holders of such preferred-stock voting-trust certificates.

(*e*) The preferred stock held in the trust shall not be voted in favor of the merger or consolidation of the reorganized company with or into any other corporation or the sale or lease of all or substantially all of the assets of the reorganized company before obtaining the consent thereto of the holders of a majority in interest of the preferred-stock voting-trust certificates then outstanding and of the voting trustees under the common-stock voting trust.

(*f*) Whenever the consent of the voting trustees under the preferred-stock voting trust is required under the plan as a condition precedent to action by the voting trustees under the common-stock voting trust hereinafter described, such consent may be given only with the favorable vote or consent of the holders of a majority in interest of the preferred-stock voting-trust certificates then outstanding.

(*g*) The reasonable expenses of such voting trustees, including counsel fees, shall be paid by the reorganized company.

(*h*) The voting trustees shall act in accordance with the vote of a majority of said trustees.

### XII. COMMON STOCK AND COMMON-STOCK VOTING TRUST

There shall be authorized approximately 35,000 shares of common stock without par value, approximately all of which shall be issued at reorganization.

Holders of common stock shall be entitled to one vote per share on all matters except (1) to the extent that provision is made herein for the election of one director by holders of series A income bonds, with the right of such director to be a member of any executive committee and of any other committee exercising general or financial powers of the board of directors, (2) to the extent that provision is made herein that, voting separately as a class, the holders of the preferred stock until all of the general-mortgage income bonds have been retired shall be entitled to elect one-half of the membership of the board of directors less one and that one of the directors so elected shall be a member of any executive committee and of any other committee exercising general or financial powers of the board of directors, and (3) to the extent that provision is made herein that the preferred stock, voting as a class, shall have the right to elect not less than two directors after default of the equivalent of six quarterly dividends whether or not earned and whether or not the defaults are consecutive, and that the affirmative vote of at least two-thirds of the preferred stock shall be required as a prerequisite to any charter or bylaw amendment altering materially any existing provision of such preferred stock. The holders of common stock shall not have any preemptive right to subscribe to any additional issues of stock of any class or of securities convertible into stock of any class.

All shares of common stock shall be deposited under a voting-trust agreement and common-stock voting-trust certificates shall be issued to the persons otherwise entitled to receive such common stock under the plan.

There shall be three voting trustees under such trust, all designated in the same manner and subject to the same approval as in the case of the preferred-stock voting trustees.

The terms of the voting-trust agreement shall be determined by the reorganization managers and approved by the court but shall include appropriate provision to effect the following purposes:

(*a*) The period of the trust shall be 5 years beginning as of the date of the order of court directing consummation of the plan; it shall, however, terminate upon the sale in accordance with the terms of the trust of at least 51 percent of the stock held in the trust and may be terminated at any time by the voting trustees with the consent of the holders of a majority in interest of the common-stock voting-trust certificates then outstanding and with the consent of the voting trustees under the preferred-stock voting trust.

(*b*) The voting trustees shall have power in their sole discretion (but only with the approval of the Commission and the consent of the holders of a majority in interest of the common-stock voting-trust certificates then outstanding and the consent of the voting trustees under the preferred-stock voting trust) to sell 51 percent or more (but not less than 51 percent) of the stock held in the trust at any time prior to the termination of the trust for such consideration as they may deem expedient (as a part of which consideration they may take into account any agreement which the purchaser or purchasers may make by way of traffic agreements, guaranties, offers of exchange of securities, or otherwise, which in the judgment of the voting trustees will be of value to the holders of bonds issued in reorganization or of the preferred-stock voting-trust certificates or of the common-stock voting-trust certificates); provided, however, that the purchaser



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or purchasers shall be required, for a reasonable period after the termination of the common-stock trust, to purchase such additional shares of common stock theretofore held under the trust as may be tendered at the same "price per share of common stock" as was paid in respect of said 51 percent or more of said common stock (the phrase "price per share of common stock" as used in this article XII being intended to relate only to that part of the aforesaid consideration which reasonably may be and shall be intended to be divided and distributed among the holders of common-stock voting-trust certificates, including in particular, but without limiting the generality of the foregoing, cash and securities); and provided, further, that the purchaser or purchasers shall be required, as part of the same transaction, to buy 51 percent or more (but not less than 51 percent) of the preferred stock of the reorganized company and to make an offer to buy all of said preferred stock as will be set forth in the preferred-stock voting-trust agreement; and holders of all common-stock voting-trust certificates shall be bound by the terms of sale;

(*c*) In the event that the sale of 51 percent or more of said trusteed common stock shall be effected prior to the termination of the trust, that part of the consideration which is the basis for determining the price per share of common stock, as defined in subdivision (*b*) *supra*, and the balance of the trusteed stock, if any, shall be distributed pro rata to the holders of common-stock voting-trust certificates against the surrender of said certificates;

(*d*) The voting trustees shall possess and shall be entitled to exercise all rights and powers of absolute owners of the common stock held in the trust, including the right (1) to vote in respect thereof for every purpose and to consent to any corporate act of the reorganized company, it being expressly stipulated that, except as herein specified, no voting right shall pass by or under the common-stock voting-trust certificates or by or under any agreement express or implied, and (2) to sell, exchange, or otherwise dispose of such common stock, all subject to the provisions of the voting-trust agreement.

The voting-trust agreement shall provide in substance that a copy of every notice of a stockholders' meeting of the reorganized company shall be mailed to each registered holder of a common-stock voting-trust certificate and that in case the voting trustees shall receive from the holders of a common-stock voting-trust certificate, within such reasonable number of days prior to the date of the meeting as shall be set forth in such notice, a written request to vote in the manner stated in such request at any such meeting upon any matter to come before such meeting, the voting trustees shall vote at such meeting in accordance with such request in respect of the number of full shares of common stock represented by such voting-trust certificate, except that the voting trustees shall disregard any instructions as to voting the shares of common stock represented by the common-stock voting-trust certificate, if the written request to vote does not expressly state that the common-stock voting trust certificate with respect to which the request to vote is made is not owned or controlled by, or held for the benefit of, a person, firm, association, or corporation which owns or operates, or controls a corporation which owns or operates, or is controlled by a corporation which owns or operates, or is in any way, directly or indirectly, affiliated with a corporation which owns or operates, a line or lines of railroad, or by two or more such persons, firms, associations, and/or corporations acting jointly.

The voting trustees, in determining whether or not they have been authorized by the consent of the holders of a given percentage in interest of the common-stock voting-trust certificates then outstanding, in any case where such consent is required, (*i*) shall treat as not outstanding common-stock voting-trust certificates so owned, controlled or held that instructions as to voting trusteed stock

represented thereby would have to be disregarded pursuant to the next preceding paragraph, and (*ii*) shall disregard any such consent by any holder or holders of such common-stock voting-trust certificates.

(*e*) The common stock held in the trust shall not be voted in favor of the merger or consolidation of the reorganized company with or into any other corporation or the sale or lease of all or substantially all of the assets of the reorganized company before obtaining the consent thereto of the holders of a majority in interest of the common-stock voting-trust certificates then outstanding and of the voting trustees under the preferred-stock voting trust.

(*f*) Whenever the consent of the voting trustees under the common-stock voting trust is required under the plan as a condition precedent to action by the voting trustees under the preferred-stock voting trust hereinbefore described, such consent may be given only with the favorable vote or consent of the holders of a majority in interest of the common-stock voting-trust certificates then outstanding.

(*g*) The reasonable expenses of such voting trustees, including counsel fees, shall be paid by the reorganized company.

(*h*) The voting trustees shall act in accordance with the vote of a majority of said trustees.

### XIII. TREATMENT OF EXISTING SECURITIES AND CLAIMS

Equipment obligations shall remain undisturbed and shall be assumed by the reorganized company.

Holders of the existing Terminal bonds shall receive for each $1,000 principal amount thereof new Terminal bonds in a like principal amount, together with interest accruing on the existing bonds to January 1, 1944, in cash. Interest paid on the existing Terminal bonds for any period or periods subsequent to the effective date of the plan shall be applied to and treated as payments of interest on the new Terminal bonds.

Holders of the existing bonds of the Midland Railroad Company of New Jersey shall receive for each $1,000 bond and all unpaid interest thereon to the effective date of the plan approximately $507.78 of new first and consolidated mortgage bonds, series A, and $829.72 of new general-mortgage income bonds, series A.

Holders of the existing first and refunding bonds of the debtor shall receive for each $1,000 bond and all unpaid interest thereon to the effective date of the plan approximately $328.09 of new first and consolidated mortgage bonds, series A, $295.17 of new general-mortgage income bonds, series A, and $730.91 par amount of new preferred stock.

Holders of the existing second-mortgage bonds of the debtor shall receive for each $1,000 bond and all unpaid interest thereon to the effective date of the plan approximately $236.46 par amount of new preferred stock and $1,150.00 of new no-par value common stock, stated at $100 a share.

Holders of the existing general-mortgage bonds of the debtor shall receive for each $1,000 bond and all unpaid interest thereon to the effective date of the plan approximately $57.01 par amount of new preferred stock and $919.17 of new no-par-value common stock, stated at $100 per share, plus the non-par-value common stock representing the participation of such bonds in the stock allotted in respect of the unmortgaged assets.

Holders of the existing bonds of The Paterson Extension Railroad Company shall receive for each $1,000 bond and all unpaid interest thereon to the effective date of the plan $1,200 of new no-par-value common stock, stated at $100 a share, in addition to their pro rata share in the noncarrier lands (appraised

for the purposes of the plan, with the approval of the court, at $55,634.50) subject to the mortgage of the Paterson Extension Railroad Company, which are to be conveyed to a new company or to a trustee for sale and the proceeds distributed to the Paterson Extension bondholders. Unpaid amounts which became due on coupons prior to June 1, 1937, aggregating about $8,287.50, shall be paid in cash at reorganization or by the reorganized company. To the extent that claims are filed and allowed on outstanding first and refunding mortgage bond-scrip certificates in the principal amount of $533 and coupon obligations of first-mortgage bonds due in 1895 in the amount of $30, such claims shall be classified in accordance with the court's classification and be satisfied in cash or new securities on the same basis as other claims in the same class or be disposed of otherwise as the court shall direct.

The holders of unsecured claims against the debtor's estate allowed by the court, including the principal of the claim of the general mortgage bondholders to the extent not satisfied through the distribution of new preferred stock and no-par-value common stock allotted to the mortgaged assets, both taken at $100 a share, shall each receive the proportion of the 4,000 shares of no-par-value common stock allotted to the unmortgaged assets which his claim bears to the total of such claims.

The bonds of the Passaic and New York Railroad Company held by the debtor's trustee shall be canceled.

XIV. MEANS OF CARRYING OUT THE PLAN, PAYMENT AND ASSUMPTION OF CERTAIN CLAIMS, CONTRACTS, TAXES, AND EXPENSES OF REORGANIZATION, CLAIMS NOT AFFECTED BY THE PLAN, ET CETERA

There shall be three reorganization managers who shall supervise the carrying out of the plan. Subject to the approval of appointments by the court, the trustees under the existing Terminal and Midland mortgages jointly shall appoint the manager for the first position, the trustee under the existing first and refunding mortgage jointly with the New York Life Insurance Company, the Prudential Insurance Company of America, and the Mutual Benefit Life Insurance Company of New Jersey shall appoint the manager for the second position, and the trustees under the existing second and general mortgages jointly shall appoint the manager for the third position. In case appointment for any of such positions is not made within such time as the court shall deem reasonable, the court shall appoint such manager.

The reorganization managers shall have the following powers, in addition to those hereinbefore granted to them under the terms of the plan.

1. To cause the debtor or the reorganized company to make such agreements and arrangements as they may deem necessary or desirable in order to carry out the plan.

2. To pass upon and determine the amendments to be made to the articles of consolidation and bylaws of the debtor and the changes to be made in its corporate structure, if they decide that it is to be the reorganized company, or to cause a new corporation to be organized as the reorganized company, and to pass upon and determine the form and provisions of its charter and bylaws; in either case to determine the number, which must be an odd number, and terms of office of the directors, and to select the individuals who shall constitute the directors to be in office until the first annual meeting after the consummation of the plan.

3. To pass upon and determine the manner of carrying out, and to supervise, the transfer of the properties of the debtor and its subsidiaries and of any

other property as provided for in the plan, and to incorporate such other corporations as they may deem advisable.

4. To pass upon and determine the form and provisions of the new mortgages, bonds, coupons, stock certificates, scrip, voting-trust agreements, voting-trust certificates, agreements, acceptances, assets, and any other documents they may deem necessary or appropriate in connection with the carrying out of the plan.

5. To employ counsel and agents and such other persons as they deem necessary in the carrying out of their functions and to delegate to them any powers given to the reorganization managers hereunder; and to fix the compensation of the persons so employed, subject to the approval of the court, and if required by law, subject to the approval of the Commission.

6. After confirmation of the plan by the court, to pass upon and determine the method by which creditors shall participate in the plan and shall exchange their present securities for those provided in the plan.

7. To take or cause the reorganized company to take any other action which they may deem necessary or desirable in order to carry out the plan, including the making of financial and other arrangements and the making of any application to the court or the Commission or any other public authority.

The reorganization managers shall exercise all the foregoing powers in their discretion, in order to carry out the purposes of the plan, subject to approval by the Commission or by the court where such approval is required by law or is desired by the managers. The managers shall serve without compensation. They may act through a majority either at a meeting or by actions in writing without a meeting. They shall not be liable for any action taken by them in good faith or by any person employed by them in good faith, except that any reorganization manager may be liable for his individual malfeasance or willful neglect. The managers shall incur no personal liability for any of the expenses incurred in the carrying out of the plan.

If deemed desirable and so ordered by the court, the plan, after it has been found fair and equitable by the court, may be executed by the sale or sales, at not less than fair upset prices to be fixed by the court, of all or any part of the property of the debtor and its subsidiaries, all on such conditions and in such manner as the court may direct. Upon any such sale, the property and assets offered for sale may be purchased for the benefit of the reorganized company by the reorganization managers, and in that event there shall be applied on account of the purchase price the distributive share of the proceeds of such sale of all securities the holders of which shall have assented to the plan, and of all securities (although the particular holders thereof shall not have assented to the plan) of all classes which shall have accepted the plan or shall have become bound thereby. If physical properties of the debtor used in the service of transportation so offered for sale shall be sold to others than the reorganization managers, the court shall determine the extent, if any, to which the plan shall be deemed inoperative.

In the event of a sale of any of the properties of the debtor to the reorganization managers, they may in their discretion sell all or any portion of the new securities distributable under the plan to holders of existing securities, if neither such security holders nor the class to which such security holders belong shall have accepted, or become bound by, the plan; provided that security holders in a class which shall not have accepted, or become bound by, the plan, and who themselves shall not have accepted the plan, shall have the right, if they shall so notify the reorganization managers within a period of 30 days after the confirmation of such sale, to assent to the plan and receive the securities allocated

to them under the plan in lieu of their aliquot share of the proceeds of such sale of the properties. The proceeds of any such sale of securities, and, with the approval of the court, any other funds which, in the judgment of the reorganization managers, are available among the assets of the debtor's estate or of the reorganized company and are not necessary for the working capital requirements of the reorganized company or to pay any of the obligations under the plan, may be used to pay the portion of the purchase price of property acquired payable in cash on any such sale.

The reorganized company shall be deemed to have assumed the obligations under existing executory contracts and leases which by their terms do not terminate at or prior to the conclusion of these proceedings and which shall not have been disaffirmed by the trustee of the debtor prior to the consummation of the plan, and the reorganized company shall also assume any executory contracts and leases made by the trustee of the debtor, with the approval or authorization of the court, which by their terms do not terminate at or prior to his discharge.

Claims in classes 1, 2, and 3 of the court's classification of claims to the extent filed and allowed shall, in the discretion of the reorganization managers, either be paid in cash in connection with the reorganization or, to the extent unpaid at the date of the consummation of the plan, be assumed by the reorganized company and paid in the usual course of business with the same relative priority as they now have with respect to other obligations of the debtor. Claims, other than those of the United States, for taxes levied, assessed, or accrued against the trustee of the debtor, when determined, and liabilities and obligations incurred by the trustee during these proceedings, to the extent unpaid at the date of the consummation of the plan, shall be assumed by the reorganized company and paid in the usual course of business with the same relative priority as they now have with respect to obligations of the debtor and other obligations of the trustee. The reorganized company shall assume the liability for, and pay in full in due course, any and all taxes due to the United States from the debtor or its trustee for any taxable period prior to the date of his discharge without requiring proof thereof in this proceeding, and without prejudice by reason of not having been proved herein, subject, however, to the statute of limitations normally applicable to the assessment and collection of such taxes; provided, however, that the liability of the reorganized company for any taxes, whether to the United States or to a State or to any subdivision of a State, which are the subject of litigation on the date of the confirmation of the plan, or which may become the subject of litigation on any date thereafter, and prior to the expiration of the applicable statute of limitations, shall be determined pursuant to law, and provided further that nothing in the plan shall be deemed to preclude either the debtor, its trustee, the reorganized company, or any other party from contesting the merits of any such taxes in the manner provided by law.

All costs of administration, and all other allowances made or to be made by the judge in the reorganization proceedings, including allowances provided for in section 77 (c) (12) of the Bankruptcy Act, within maximum limits approved by the Commission where such approval is necessary, shall be assumed by the reorganized company as prior liabilities and promptly paid in full in cash, in any event not later than 3 months after the date of the final decree in the reorganization proceedings.

The claims and the interests of parties to executory contracts and leases described in the three immediately preceding paragraphs, when treated as described in those paragraphs, will not be adversely and materially affected by the plan.

The equity of the holders of the debtor's preferred and common stock has no value.

The debtor, as reorganized, or the transferee of the property of the debtor, in connection with any settlement of transportation accounts between the United States and the debtor or the reorganized company, shall be required to recognize and pay or allow for any and all sums, determined through audit, adjustment, compromise, or litigation, as due the United States by virtue of the provisions of section 322 of the Transportation Act of 1940, 54 Stat. L. 955, for overpayments made prior to the date of confirmation of a plan of reorganization, without requiring proof thereof in this reorganization proceeding and without prejudice by reason of such sums not having been proved herein, with the same relative priority as they now have with respect to other obligations of the debtor.

### XV. MISCELLANEOUS PROVISIONS

No inaccuracy contained in the plan or omission therefrom shall constitute the basis for any claim for rescission of any assent or approval to the plan or of acceptance of any new securities or for damages.

Acceptance of the plan shall include acceptance of the provisions of the new bonds, mortgages, stock certificates, scrip, voting-trust agreements, voting-trust certificates, and all instruments necessary and appropriate to the carrying out of the plan, other than the orders of the court and of the Commission, with the same effect as though the terms of such instruments were set forth in the plan in full.

The construction of the plan by the court shall be final and conclusive. The court may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as may be necessary or expedient in order to carry out the plan effectively.

In case of any changes in the law applicable to the plan, any approvals which may become unnecessary under such law shall be dispensed with.

A court finding, after the submission of the plan to creditors, that for any reason any one or more of its provisions are invalid shall not prevent its consummation without resubmission to creditors, with such modification on account of such invalidity as the reorganization managers, with the court's approval, may determine, provided the court shall find that such resubmission is not required by law.

Nothing contained herein with respect to limitations on total authorized issues of new securities or total capitalization of the reorganized company or otherwise shall prohibit the issue by the reorganized company of equipment trust obligations upon the purchase of equipment, pursuant to appropriate approval by the Commission where required.

Unless otherwise provided in any order or orders of the court, whenever notice shall be required or permitted to be given under or pursuant to the plan, such notice shall be deemed to have been duly and properly given if a copy thereof shall have been published once in each week on any secular day in each such week for 2 successive weeks in one newspaper published and of general circulation in the Borough of Manhattan, City of New York, and in one newspaper published and of general circulation in the city of Newark, N. J.

The term "reorganized company" as used herein shall be deemed to include the successor or assigns of such reorganized company. The term "Commission" as used herein shall mean the Interstate Commerce Commission and shall be deemed to include any successor to the Interstate Commerce Commission or any other Federal regulatory body having jurisdiction.

The carrying out of the plan shall be as provided in the Bankruptcy Act.

*It is further ordered,* That the authorzation and approval herein granted by this Commission are upon the condition that the journal entries covering the necessary accounting adjustments under the order will be submitted to this Commission for approval before they are recorded on the books of the reorganized company under the plan of reorganization herein approved.

*It is further ordered,* That nothing herein contained shall be, or be construed as, a grant of authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's properties, or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, until further action by this Commission upon confirmation of the plan by the court.

*It is further ordered,* That, except as stated in the accompanying report and as reflected in the plan of reorganization herein approved, the petitions for modification of the plan approved July 19, 1944, are hereby, denied.

*And it is further ordered,* That the order entered herein by division 4 on July 19, 1944, be, and it is hereby, revoked and superseded by this order.

261 I. C. C.

FINANCE DOCKET No. 13170

# FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

*Submitted December 8, 1944. Decided January 8, 1945*

Upon further hearing, the plan of reorganization for the Florida East Coast Railway Company, pursuant to section 77 of the Bankruptcy Act, as amended, further modified and approved.[1]

Appearances as in prior reports and also *Shelton Pitney*, *J. Henry Blount*, *Charles Cook Howell*, *F. K. Conn*, *E. N. Claughton*, *Thomas H. Anderson*, *Edward J. Kenn*, *Louis Kurz*, *William A. W. Stewart*, *W. E. Brownback*, *Alfred F. Tokar*, *Thomas O'G. FitzGibbon*, *H. Plant Osborne*, *Richard B. Gwathmey*, and *John C. Donnally*.

## SECOND SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

By report and order of April 6, 1942, 252 I. C. C. 423, this Commission, division 4, approved pursuant to the provisions of section 77 of the Bankruptcy Act, 11 U. S. C. 205, a plan of reorganization for the Florida East Coast Railway Company. A certified copy of the report and order was filed in the District Court of the United States, Southern District of Florida, in which court proceedings for the reorganization of the debtor herein are pending. This court hereinafter will be referred to as the court. By our supplemental report and order of August 10, 1942, 252 I. C. C. 731, upon petitions filed by various parties in interest, we modified the order of April 6, 1942, *supra*, in certain particulars and filed in the court a certified copy of the supplemental report and order. Thereafter, a hearing was held before the court on objections to the plan. By order entered October 19, 1943, the judge (*a*) sustained an objection to the plan that the existence of unallocated cash on hand at the time of his order renders the plan inequitable, (*b*) sustained an objection of Florida National Building Corporation, an intervener in the proceeding, that its present security holdings entitle it to designate a reorganization manager and (*c*) decreed that a new effective date should be designated. The court

[1] Previous reports, 252 I. C. C. 423 and 731, and 254 I. C. C. 865.