FINANCE DOCKET NO. 28098 (SUB-NO. 1)[1]

THE NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY, DEBTOR (WALTER G. SCOTT, TRUSTEE)—PLAN OF LIQUIDATION

Decided December 22, 1980

1. Plans of liquidation of bankrupt rail carrier found to meet the requirements of section 77 of the Bankruptcy Act, 11 U.S.C. 205.
2. Application for a certificate authorizing the acquisition and operation of the bankrupt carrier's railroad lines pursuant to 49 U.S.C. 10901 approved.
3. Application pursuant to 49 U.S.C. 11301 to issue securities and to assume obligations approved.

Nathan Ravin and *Richard B. Honig* for the New York, Susquehanna and Western Railroad Company, debtor (Walter G. Scott, trustee).

Walter Rich and *William P. Quinn* for the New York, Susquehanna and Western Railway Corporation.

Michael R. Griffinger and *Paul R. De Filippo* for the Chemical Bank, Manufacturers Hanover Trust Company, and United States Trust Company.

John J. Degnan and *Joseph L. Yannotti* for the State of New Jersey, Department of Law and Public Safety.

John O'B Clarke, Jr., Joseph Guerrieri, Jr., and *Charles A. Spitulnik* for the Railway Labor Executives' Association.

Richard H. Kraushaar for the Brotherhood of Locomotive Engineers.

T. P. Shearer for the Pennsylvania State Legislative Board, United Transportation Union.

CERTIFICATE, DECISION AND REPORT

BY THE COMMISSION:

BACKGROUND

The New York, Susquehanna and Western Railroad Company, debtor (Walter G. Scott, trustee) (Susquehanna, trustee, or debtor) is a railroad

[1]This decision embraces Finance Docket No. 29421, The New York, Susquehanna and Western Railway Corporation—Purchase—New York, Susquehanna and Western Railroad Company, Debtor, (Walter G. Scott, Trustee) and Finance Docket No. 29422, The New York, Susquehanna and Western Railway Corporation—Securities Issuance.

serving a number of industries in northern New Jersey and northeastern Pennsylvania. It has been in reorganization under section 77 of the Bankruptcy Act (11 U.S.C. 205) since January 20, 1976, in the United States District Court for the District of New Jersey (court), No. B-76-182, *In the Matter of New York, Susquehanna and Western Railroad Company, Debtor.*

On January 2, 1980, the trustee filed an application for abandonment and discontinuance of service in accordance with section 17(a) of the Milwaukee Railroad Restructuring Act, Public Law 96-101, 93 Stat. 736 (1979) (MRRA) and the Commission's rules at 49 CFR 1121 Subpart F. Susquehanna sought to abandon its line extending from milepost 0 at Croxton Yard (Jersey City), Hudson County, NJ in a generally northwesterly direction to milepost 59.9 at Sparta Junction, Sussex County, NJ. The Susquehanna also has three branches extending from its main line which it proposed to abandon. They are the Edgewater Branch extending from Little Ferry Junction, NJ at milepost 0 to Edgewater, NJ at milepost 6.0; the Passaic Branch extending from milepost 0 at Passaic Junction, NJ at milepost 3.1; and the Lodi Branch extending from milepost 0 at Hackensack, NJ to milepost 2.4 at Lodi, NJ. Susquehanna also proposed to abandon the line owned by its subsidiary, the Susquehanna Connecting Railway Company, extending from milepost 0 at Suscon, PA to milepost 5.0 at Hillside Junction, PA (called the Suscon Branch). The Suscon Branch is currently being operated by Consolidated Rail Corporation (ConRail).

While the abandonment was pending before us, in an opinion dated May 28, 1980, the court found, after reviewing various offers to purchase Susquehanna's assets, that the offer of the Delaware Otsego Corporation (DO) would best serve the interests of the debtor's estate.

By Order No. 103, dated June 30, 1980, the court required the trustee and DO to complete all filings and submissions to the Commission for termination of service on the Susquehanna and an application for authority for DO to acquire and operate the Susquehanna's lines. The Commission was also ordered to submit a report within 30 days of these filings.

By letter of July 11, 1980, the trustee updated its application for abandonment. On July 14, 1980, the New York, Susquehanna and Western Railway Corporation (NYS&W), a subsidiary of DO, filed two applications with the Commission. In one, it seeks a certificate of public convenience and necessity pursuant to 49 U.S.C. 10901 authorizing the acquisition and operation of the lines of railroad being abandoned by the

Susquehanna.[2] In the other, pursuant to 49 U.S.C. 11301, it seeks authority to issue securities.[3]

By decision served August 12, 1980, in AB-210 (Sub-No. 1), *New York, Susquehanna and Western Railroad Company and Susquehanna Connecting Railway, Debtor (Walter G. Scott, Trustee)—Abandonment,* decided August 12, 1980, we found that the Susquehanna was not profitable and that the burden of continued operations outweighed the harm to the shippers and communities on the lines. Accordingly, we recommended to the court that the trustee be permitted to abandon the Susquehanna's lines. We also found that this proceeding is governed by the MRRA and that the court has authority under section 17(a)(1) of the MRRA to impose employee protective conditions if it decides to authorize the abandonment.

In another order, Order No. 101, dated June 10, 1980, the court directed the trustee to submit its so-called Amended Plan of Liquidation to this Commission. In compliance with the court's order, the trustee filed, on September 8, 1980, the First Amended Plan of Liquidation and the Second Amended Plan of Liquidation (called the First Plan and the Second Plan, respectively). The court's order directed us to submit our comments on the trustee's Plans within 60 days after all interested parties had been served with the Plans. By Order No. 108, dated November 3, 1980, the court extended the due date for our comments to December 29, 1980.

Section 77(d) of the Bankruptcy Act provides that, after a plan of reorganization has been filed, the Commission must give notice to stockholders and creditors, hold public hearings, and render a report and order approving a plan which will meet the requirements of section 77(b) and (c) and be compatible with the public interest, or disapprove all plans. In view of the requirement of section 77(d) and the interrelationship between the trustee's Plans and NYS&W's acquisition and operation proposal and proposed securities issuance, we have consolidated the three proceedings, and requested comments from interested parties.[4]

PLANS OF LIQUIDATION

First Plan.—The First Plan supersedes the preliminary Plan of Liquidation previously filed by the trustee with the court but not with the Commission. The First Plan generally envisions the cessation of operations

[2] Assigned Finance Docket No. 29421, *The New York, Susquehanna and Western Railway Corporation—Purchase—New York, Susquehanna and Western Railroad Company, Debtor (Walter G. Scott, Trustee).*

[3] Assigned Finance Docket No. 29422, *The New York, Susquehanna and Western Railway Corporation—Securities Issuance.*

[4] This request was published in the Federal Register, at 49 F.R. 70339, on October 23, 1980.

and liquidation of the Susquehanna, but a continuance of service by a successor carrier unrelated to the debtor.

The classification of creditors and of stockholders is set out in article III, as follows:

1. Class 1.—*Interline creditors.*—These include pre- and post-petition net interline freight balances which constitute trust funds and are accorded class 1 priority.

2. Class 2.—*Administrative creditors.*—This class includes the holders of unpaid claims for costs and expenses of administration incurred in connection with this reorganization. These costs and expenses relate to allowances granted to the trustee, his counsel, accountants and other parties as allowed by section 77(c)(12). The class includes those parties who were retained by the trustee, pursuant to orders of the court during the course of the reorganization proceedings. The class does not include any other expenses incurred during the reorganization proceedings.

3. Class 3.—*Operating creditors.*—This class includes all costs and expenses other than administrative costs covered in class 2, above, incurred by the debtor or the trustee in the normal course of operating the Susquehanna's businesss during this reorganization, including, without limitation the following items:

a. Trustee's certificates.

b. Claims of Federal, State and local tax authorities for taxes and interest, exclusive of penalties, from January 20, 1976, to the date of confirmation of the Plans of Liquidation.

c. Unpaid employee wage and pension accruals subject to court approval from January 20, 1976, to the date of cessation of operations.

d. Post-petition nonfreight interline balances.

e. Satisfaction of personal injury and property damage claims from January 20, 1976, to the date of cessation of operations.

f. Payments in satisfaction of prepetition personal injury and property damage claims approved previously by the court.

4. Class 4.—*Six-month claims.*—These creditors include those entitled to priority status accorded by section 77(b) for necessary services rendered during the 6 months preceding the filing of the petition in bankruptcy.

5. Class 5.—*Prepetition New Jersey Tax creditors.*—These claims include State and local claimants for taxes and interest, exclusive of penalties as of January 20, 1976.

6. Class 6.—*Secured creditors.*—These are claims of holders of certain secured debts.[5]

[5] Series A First and Consolidated Mortgage 4-percent bonds; Terminal First Mortgage 4-percent bonds; Series A General Mortgage 4 1/2-percent Income Bonds; and a Small Business Administrative Loan.

7. Class 7.—*Federal taxes.*—These are taxes and interest due the Federal Government exclusive of penalties as of January 20, 1976.

8. Class 8.—*General unsecured creditors.*—This class consists of holders of general unsecured claims incurred prior to the filing of the petition for reorganization, including those creditors in class 6 to the extent their claims are not fully satisfied from the sale of the debtor's property which secures their claims.

9. Class 9.—*Claims of stockholders of the debtor.*—This last includes holders of the issued and outstanding stock of the debtor, in accordance with priorities established in the charter and bylaws of the debtor.

Provision is made in article IV of the First Plan for payment and treatment of creditors and stockholders. The treatment of all creditors is to be governed by the so-called "absolute priority rule" whereby the senior class of claimants set out in article III are entitled in full compensatory treatment for the senior rights before any distribution or allocation may be made to junior creditors or to equity interests. Such senior rights includes a right to fixed charges as defined in, and required by, section 77(b)(3). If the funds available are insufficient to satisfy the creditors, they shall be paid pro rata, except for class 6 where the property in payment is specifically delineated.

Article V provides for altering or modifying the rights of creditors. The provision assures the creditors in classes 1-8 that they shall retain all rights except as modified by the express consent of the parties or by an order of the court.

Article VI sets out a continuation of the debtor railroad's operations through a successor carrier. The trustee will accept the best offer from a party, not related to the debtor, who will acquire all of the physical assets of the Susquehanna and who will provide service over the Susquehanna's tracks, serving all of the railroad's current shippers. All railroad employees other than a "skeleton" office staff will be terminated and no employee protection is contemplated since the railroad is being abandoned. The proceeds of the sale attributable to assets subject to mortgages, liens, and security interests shall be placed in a special account for distribution to those secured creditors.

The Plan describes in general outline the means for its execution,but does not specifically set out the terms and conditions of execution. Generally, the trustee is empowered to supervise the consummation of the Plan subject to the approval of the court. The trustee is empowered specifically to take such steps as may be advisable to effect execution of the Plan.

Second Plan.—The Second Plan amends the First Plan in several respects. First, it adds post-petition interest on prepetition taxes owing to

class 5 claimants; second, it changes the proposed date for termination of operations; and third, it establishes that within 6 months of the commencement of the interim occupancy agreement between the trustee and the NYS&W, the trustee will file with the court a list of Susquehanna's executory contracts to be rejected. (The First Plan required a 90-day time frame for such filing.) Additionally, the Second Plan indicates that the trustee has entered into an agreement with DO and its wholly owned subsidiary NYS&W, whereby the NYS&W will acquire the physical assets of the Susquehanna and will operate rail freight service over its lines subject to regulatory approval.[6]

Comments of parties on the Liquidation Plans.—The Railway Labor Executives' Association (RLEA) objects to the trustee's Plans on two grounds. First, RLEA argues that the accrued unpaid wage increases and pension benefits owing to the employees of the Susquehanna under the 1975 and 1978 national wage agreements should be *entitled* to the highest priority within the scheme of classification of the Susquehanna's creditors, and that those accrued unpaid increases should share the same priority level as all other administrative expenses, citing *In re Chicago, Rock Island and Pacific Railway Co.*, 90 F. 2d 312 (7th Cir. 1927), *cert. denied* 302 U.S. 717 (1938). RLEA requests that the employees' wage claims now in class 3 be elevated to class 2.

Second, RLEA argues that we should condition the Liquidation Plans, as well as the acquisition of the Susquehanna's line by the NYS&W, to require employee protection specified in the MRRA and 49 U.S.C. 11347. It contends that those protections require negotiation with labor organizations for the preferential hiring of employees of the abandoned line. Adverse effects on employees include loss of employment, reduction in earnings, and less desirable working conditions. RLEA argues that this proceeding is governed by section 17(b) of the MRRA, and that employee protections must be imposed at least as protective as those specified in 49 U.S.C. 11347. RLEA maintains that section 17(b) makes no distinction among situations where the purchaser is a carrier or a noncarrier (as here) or where the sale is immediately preceded by a total cessation of the operations over the lines involved. RLEA suggests that although the sale to NYS&W is being presented to the Commission under the cloak of liquidation plan, the transaction in reality is one which will trigger the obligations to impose protections consonant with section 17(b).

The Department of Law and Public Safety of the State of New Jersey (DPSNJ) submitted a statement of objections which was filed on behalf

[6] A petition filed by DO in Finance Docket No. 29444, *Delaware Otsego Corporation, Control of New York, Susquehanna & Western Railway Corporation—Petition for Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343-11347* is pending before the Commission.

of the State of New Jersey with the court in connection with the hearing on the trustee's liquidation plan. Essentially, it requests a modification to give preferential creditor status to the State of New Jersey with regard to the payment of State's deferred post-petition taxes. DPSNJ also requests that the plans more specifically define certain terms such as "costs of administration" and "administration claimant."

The Chemical Bank, Manufacturers Hanover Trust Company, and *United States Trust Company of New York* (called Indenture Trustees) submitted a joint pleading in opposition to RLEA's verified statement. Indenture Trustees assert that the plans are "fair and equitable" to the interests of the former employees of the debtor, and are not incompatible with the public interest as defined by section 17(e) of the Bankruptcy Act. They argue that the term "fair and equitable" is a term of art meaning that senior creditor interests are entitled to full priority over junior interests in any distribution plan. *Ecker* v. *Western P. R. Corp.*, 318 U.S. 448 (1943). They assert that these plans fully comply with the absolute priority rule in bankruptcy proceedings since the First Plan provides that distribution of proceeds from the liquidation of the debtor shall go to classes of creditors in numerical order, as their claims may be allowed. With regard to the imposition of the labor protective conditions sought by RLEA, the Indenture Trustees contend that the matter is moot inasmuch as the Commission has already determined in AB-210 (Sub-No. 1), *supra,* that this proceeding is governed by section 17(a) of the MRRA and, as such, the court can impose labor protection conditions if warranted. *Accord* AB-46 (Sub-No. 22). *Chicago, R. I. and P. R. Co. Abandonment,* 363 I.C.C. 150 (1980). The Indenture Trustees point out that the court had held a hearing on the Liquidation Plan and the desirability of imposing labor conditions. In its opinion dated November 18, 1980, the court denied all labor protection to former employees and reaffirmed the Commission's conclusion in AB-210 (Sub-No. 1), *supra,* that this proceeding is governed by section 17(a) of the MRRA and not section 17(b).

Susquehanna filed a reply in opposition to RLEA's objections to placing the wage claims of former Susquehanna employees into class 3. In formulating the classification of creditors (article III of the First Plan), Susquehanna urges that it considered and followed the existing statutory and case law precedent in matters of this kind. For example, "interline freight balances" are generally held to constitute trust funds and are properly accorded class I priority. Class 2 status is always accorded to allowances to a trustee (as had been done here), his counsel, and accountants. Class 2 then represents expenses of parties who were retained by the trustee during reorganization. All other administrative expenses

are considered class 3, and have been so classified under these plans, and are considered administrative operating expenses. These include unpaid wage claims of employees. Susquehanna argues that if unpaid wage claims were to be elevated to class 2, as requested by RLEA, the remaining class 3 creditors could argue successfully that they were being unfairly discriminated against. Accordingly, Susquehannna believes that the Plans have properly and fairly established creditor status against the estate of the debtor.

NYS&W also filed a reply to RLEA's pleading. It adopts the arguments presented by the Indenture Trustees with regard to the undesirability of imposition of employee protective conditions and asserts that Susquehanna's employees have been fairly treated both prior to and subsequent to the debtor's cessation operations. NYS&W points to the steps taken by the debtor from about mid-1979 as a result of a report made to the debtor by L. E. Peabody and Associates. The actions taken are outlined in depth in the court's opinion of November 18, 1980, *supra*. These include reducing the total work force (the task started in June 1979) to 25 as of August 29, 1980. The reduction was accomplished through attrition in the clerical area, additional mechanization within the track maintenance department, and a general decline in business. Of the 25 persons employed by the debtor on August 29, 1980, 23 were hired by NYS&W. One employee died. Consequently, only one of the people employed by the trustee on the date operations ceased was not hired by NYS&W. That person is receiving benefits from DO. Former employees of the debtor are being given priority in filling positions on the NYS&W which may be required in the future in connection with rehabilitation of the lines. Accordingly, NYS&W contends that the treatment accorded employees of the debtor was eminently fair, and employee protection is not warranted.

Discussion and conclusions.—The record before us establishes an appropriate basis for recommending to the Bankruptcy Court that the First and Second Amended Plans of Liquidation meet the requirements of subsection (b) of section 77 of the Bankruptcy Act, and that they are compatible with the public interest. The Plans contain provisions for the continued preservation of the Debtor's rail services by a successor entity. *Penn Central Transportation Company Reorganization,* 347 I.C.C. 45, 82 (1973). As required by subsection (b)(1), the Plans contain provisions for modifying or altering the rights of creditors. They also contain provisions for adequate means of execution of the Plans. Inasmuch as the Susquehanna is being liquidated, there will be no fixed charges from probable prospective earnings.

We note also that the Plans comply with the requirements of the Bankruptcy Act for a fair and equitable settlement of all claimants and

creditors. The Plans afford due recognition to the rights of each class of creditors or stockholders inasmuch as all senior claims will be paid in full prior to the unsecured claims. We disagree with RLEA's request that unpaid wage claims be placed in class 2. Such wage claims are properly categorized as operating administrative expenses. Further, no valid reason was presented by RLEA to afford a higher category for these wage claims.

We are not in accord with the claims presented by DPSNJ for preferential treatment for the payment of the State's deferred taxes and accrued interest. The Plans now provide class 3 status for New Jersey's claims on taxes from January 20, 1976, to the date of confirmation of the Plans. Prepetition State and local taxes are accorded class 5 status. This appears to us a reasonable allocation in view of the debtor's last annual report on file with the Commission for the year ending December 31, 1978. That report shows that the debtor's balance sheet as of the end of 1978 had only $1,360,632 in current liabilities, including monies owed to the State of New Jersey for unpaid taxes and interest. Assuming that the debtor's balance sheet posture has not changed *materially* from that date, it would appear that DPSNJ will encounter no problem in collecting current liabilities owed to it by the debtor, since NYS&W's payment will be $5 million for debtor's assets. The yearend balance sheet for 1978 does, however, show an additional $7,759,904 in liabilities. Further, no good reason has been presented by New Jersey for preferential treatment in the claim allocation. In the circumstances, we believe the liquidation Plans will not hinder the ability of New Jersey to recover taxes and interest owing it.

We disagree with RLEA's assertion that the liquidation Plans, as well as the authority to be granted in the acquisition and operation application filed by NYS&W should include employee protective provisions. RLEA's argument, in brief, is based on its analysis that section 17(b) of the MRRA applies to the proceedings here because this is a situation where the transaction involves the "sale or transfer of a line of railroad to the use in continued rail operations * * *." RLEA argues that section 17(b) makes no distinction whether the sale is preceded by a cessation of rail operations, but that the significant triggering fact is that the sale or transfer concerns *continued* [emphasis supplied], uninterrupted rail operations. If such is the case, then the court must impose labor protective conditions similar to those required under 49 U.S.C. 11347.

We have previously stated in AB-210 (Sub-No. 1), *supra* that:

> As this proceeding is governed by the MRRA the court has the authority, under section 17(a)(1) of the act, to impose employee protection conditions when it decides whether to authorize the abandonment.

In approving the abandonment, the court in its discretion has decided that no employee protective conditions would be authorized. Pursuant to section 17(b) it is the court's duty to impose labor protective conditions required by 49 U.S.C. 11347. The Commission has previously determined that the protective conditions promulgated in *New York Dock Ry.—Control—Brooklyn E.D.T.*, 360 I.C.C. 60 (1979), affirmed *sub nom, New York Dock Ry.* v. *United States,* 609 F. 2d 183 (2d Cir. 1979), constitutes the minimum level of protection required by 49 U.S.C. 11347. Asuming *arguendo* that the instant proceeding is governed by section 17(b), the Commission is still not *required* to impose any labor protective conditions since that responsibility rests with the court.

Further, with respect to the acquisition and operation application filed pursuant to 49 U.S.C. 10901, no obligation was placed on the Commission to impose labor protective conditions on a section 10901 application. Section 221 of the Staggers Rail Act of 1980, Public Law 96-448, October 14, 1980, amended 49 U.S.C. 10901 (49 U.S.C. 10901(e)) to give the Commission *discretion* to impose labor protection conditions. However, the record before us fails to show how employees of the Susquehanna will be harmed by DO's acquisition.

We have another, more compelling reason for not imposing labor protective conditions in the section 10901 application proceeding. As we stated in Finance Docket No. 29237, *State of Wisconsin—Acquisition of Certain Lines of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,* served August 12, 1980, we must act to promote continued rail service while providing protection for adversely affected employees, if any. In F.D. No. 29237, as well as in the instant proceeding, a new carrier/operator would acquire and operate the bankrupt carrier's lines. Imposition of employee protective conditions on new operators would be counterproductive. These operators are frequently new business enterprises, as is NYS&W, attempting to make a going business concern over lines that have been operationally uneconomical. To maintain a favorable revenue-to-cost ratio, the expenses of these new carriers must be kept to a minimum. If we were to impose employee protective conditions here, the result could be even more railroad employees out of work. Accordingly, we decline to impose employee protective conditions.

We believe it to be especially appropriate to our approval of the Liquidation Plans that provision is made therein for a successor entity to acquire the physical assets and to continue rail oeprations of the debtor. Based on the filing made in F. D. No. 29422, discussed below, NYS&W, as the successor carrier, has demonstrated the financial ability to acquire the assets and to commence operations of the debtor's railroad. In view of all these factors, we conclude that the Plan of Liquidation meet all the

requirements of section 77(b) of the Bankruptcy Act and should be approved by the court.

RELATED APPLICATIONS—ACQUISITION AND SECURITIES ISSUE

On July 14, 1980, NYS&W filed an application for a certificate of public convenience and necessity permitting the acquisition and operation of all of the abandoned lines of the Susquehanna. The proposed acquisition and operation are governed by 49 U.S.C. 10901, and the Commission's regulations appearing in 49 CFR Part 1120. Statements in opposition to this application were filed by RLEA, the Brotherhood of Locomotive Engineers, which adopted RLEA's comments, and the Pennsylvania State Legislative Board, United Transportation Union (UTU).

NYS&W also filed an application under 49 U.S.C. 11301 for authority to issue 500 shares of common stock at a value of $2,000 per share for a total of $1 million to be secured by a first mortgage bond in the amount of $4,500,000, to be issued on the New Jersey Economic Development Authority or sold to a bank with a guarantee by the Federal Economic Development Agency. NYS&W also seeks to issue this bond without competitive bidding.

NYS&W, a subsidiary of DO, was incorporated on March 17, 1980, under the laws of the State of New Jersey, for the express purpose of acquiring and operating the abandoned lines of the Susquehanna.

The total mileage of main line proposed to be acquired and operated is 59.9 miles, extending from Croxton to Sparta Junction. As noted before, the Susquehanna has three branches extending from its main line: The Edgewater Branch has 6.0 miles of track; the Passaic Branch has 3.1 miles of track; and the Lodi Branch has 2.4 miles of track. The Suscon Branch of Susquehanna Connecting Railway Company (operated by ConRail) extends 5.0 miles.

The area in which the tracks are located is heavily industrial. Many of the industries have no alternate means of shipping or receiving freight except by rail. Although the areas are heavily industrialized, applicant states that there is tremendous potential for additional rail traffic, and states that DO's offer to acquire the abandoned lines was accepted by the court over three competing offers.

The sale agreement between the trustee and NYS&W covers all real property and tangible and intangible personal property of the Susquehanna. The purchase price is $5 million to be paid, as follows: (1) the sum of $100,000 was deposited with the trustee on June 4, 1980; (2) an additional $100,000 shall be paid by DO to the trustee within 10 days following the issuance of an order by the court approving the sale agreement; (3) at closing NYS&W shall pay to the trustee the balance of $4,800,000

in cash or certified check, subject to a reduction on account of any credits referred to in certain clauses of the sale agreement.

With regard to the securities application, NYS&W's articles of incorporation authorize it to issue 1,000 shares of common stock. The stock will have no par value. It will have voting rights of one vote per share, but will have no preferences, conversion privileges, or call provisions. The shares will have full liquidation rights and will be nonassessable. The expense of issuance is estimated to be $40,000. As noted above, the security for the stock will be a first mortgage bond, in the amount of $4,500,000 to be issued to the New Jersey Economic Development Authority (NJEDA) or guaranteed by the Federal Economic Development Authority.

By letter-petition filed December 9, 1980, NYS&W has amended its original securities application. As a result of discussions with NJEDA and the United States Economic Development Administrative (EDA). NJEDA has now filed an application with EDA seeking a title IX grant pursuant to 42 U.S.C. 3241 *et seq.* Funds granted NJEDA will be deposited in a revolving loan fund and loaned to applicant.

NYS&W now proposed to issue to NJEDA a bond or series of bonds secured by a general mortgage on NYS&W's assets. The principle amount of the bond will be $7,300,000 and the term 30 years. The principal will be amortized over the term of the bond except that no principal will be due during the first 2 years. The bond is expected to be dated no later than September 2, 1980, to provide applicant with funds for the purchase price of the debtor's assets. (The bond may be issued as early as the first quarter of 1981). The proceeds of the loan to be secured by the bond will be applied as follows:

Purchase price of trustee's assets	$5,000,000
Equipment for railroad	200,000
Track rehabilitation	2,100,000
	7,300,000

Protests.—In its protest to NYS&W's application, UTU states that satisfactory service to the patrons on the Suscon Branch will not be provided after the proposed transfer of ownership because "the proposed owner does not have the resources and knowledge" possessed by the present owner-operator. No supportive evidence is submitted for the general allegation.

RLEA repeats its previous argument requesting that employee protective conditions be imposed on any authority granted here. We have previously disposed of this issue and have concluded that no employee protective conditions are warrranted.

There were no protests filed to the securities application.

Discussion and conclusions.—We believe the public convenience and necessity requires the granting of the application of NYS&W to acquire and operate the Susquehanna's lines. No meaningful opposition has been raised to either the acquisition application and none to the securities issuance request. As we observed before, it appears that the NYS&W will have the financial resources to consummate the acquisition and have sufficient funds to start up operations over the abandoned lines. Moreover, granting the application will serve a useful public service in that shippers will continue to have rail service available to them and that there will be no interruption of such service when the debtor liquidates its assets.

In the circumstances, we believe the acquisition application and the securities issuance application should be granted.

We find:

1. In Finance Docket No. 28098 (Sub-No. 1), the First and Second Amended Plans of Liquidation meets the requirments of subsection (b) of section 77 of the Bankruptcy Act, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, will conform to the requirements of the law regarding participation of the various classes of creditors and stockholders, and will otherwise meet the requirements of subsection (b) and (e) of section 77 of the Bankruptcy Act, and will be compatible with the public interest.

2. In Finance Docket No. 29421, the proposed acquisition and operation of the lines of railroad previously owned and operated by the Susquehanna by the NYS&W (a) is necessary to insure the continued rail service to shippers along the lines; and (b) contains terms that are just and reasonable.

3. In Finance Docket No. 29422, the proposed issuance of 500 shares of common stock at a value of $2,000 per share for a total of $1 million by NYS&W (a) is for a lawful object within its corporate purpose and appropriate for that purpose; (b) is compatible with the public interest; (c) is appropriate for or consistent with the proper performance by application of service to the public as a common carrier; and (d) will not impair the financial ability of the carrier to provide the service.

4. This decision will not significantly affect either energy consumption or the quality of the human environment.

It is certified:

In Finance Docket No. 29421, the present and future public convenience and necessity require the proposed acquisition and operation by the NYS&W of the lines of railroad described above.

It is ordered:

1. In Finance Docket No. 28098 (Sub-No. 1), the First and Second Amended Plans of Liquidation should be approved.

2. In Finance Docket No. 29421:

(a) Applicant shall file with this Commission schedules establishing rates and charges applicable to the line with appropriate reference to this proceeding.

(b) If the authority granted is exercised, applicant shall, within 60 days after consummation, submit for consideration by the Commission, two copies of all journal entries required to record the transaction and, within 15 days after comencement of operations, shall give the Commission written notice of the dates when the acquisition was consummated and operations over the lines were commenced.

(c) Unless this authority is exercised within 1 year from the effective date, this certificate and decision shall be of no further effect.

3. In Finance Docket No. 29422:

(a) NYS&W is authorized to issue not exceeding 500 shares of common stock having a value of $2,000 per share for a total of $1 million upon the terms and for the purposes stated.

(b) Except as authorized by this decision, the stock shall not be sold, pledged, repledged or otherwise disposed of by the applicant until approved by this Commission.

(c) Applicant shall report to the Commission as required by 49 CFR 1115.6.

(d) The Commission reserves the right under 49 U.S.C. 11301 to issue any supplemental decisions in this matter as it deems necessary.

(e) Nothing in this certificate and decision shall be construed to imply any guaranty or obligation as to the stock or dividends on the part of the United States.

4. This decision shall become effective on the date of service.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Clapp was absent and did not participate in the disposition of this proceeding.