

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

RE: MOTOR VEHICLE COMMON CARRIER OPERATION)
OF RESPONDENT, THE CITY AND COUNTY OF DENVER,)
353 CITY AND COUNTY BUILDING, DENVER, COLORADO,)
UNDER TEMPORARY APPROVAL TO CONDUCT OPERATIONS)
UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY PUC NO. 210.)

CASE NO. 5468

September 24, 1971

Appearances: Max P. Zall, Esq., Denver, Colorado, and
Brian H. Goral, Esq., Denver, Colorado,
for Respondent;
Girts Krumins, Esq., Denver, Colorado,
for the Staff of the Commission

PROCEDURE AND RECORD

BY THE COMMISSION:

On September 10, 1971, the Commission entered its Decision No. 78652 directing the City and County of Denver, Respondent herein, to appear before the Commission at 10 a.m., Wednesday, September 15, 1971, to show cause why the Commission should not take such action and issue such Order as may be appropriate but not limited to an Order to Cease and Desist, an Order prescribing increased transportation facilities pursuant to 115-4-3 CRS 1963, as amended, or an Order cancelling or revoking Certificate of Public Convenience and Necessity PUC No. 210. The grounds for this Order are more specifically set forth in the said Decision No. 78652 which is incorporated herein by reference, but generally involves allegations of inadequate service of Respondent's route 83 in violation of 115-3-1 (2) CRS 1963, as amended. Notice of the said Decision and hearing was given to all interested parties including the City and County of Denver.

On September 13, 1971, the Respondent filed a Motion for Continuance which was granted and, by Decision No. 78663, the matter was reset for hearing on Tuesday, September 21, 1971. After due and proper notice thereof to all interested parties, the matter was duly heard by the Commission on that date.

Staff Exhibits 1 through 11 and Respondent's Exhibits A and B were admitted into evidence. At the conclusion of the hearing the matter was taken under advisement.

FINDINGS OF FACT

From the record herein, the Commission finds as fact that:

1. The City and County of Denver, Respondent herein, is a home-rule municipal corporation organized and existing by virtue of Article XX of the Constitution of the State of Colorado.

2. On November 3, 1970, the electors of the City and County of Denver adopted a charter amendment identified as Charter Amendment No. 1, Ordinance No. 397-1970, authorizing the City and County of Denver to acquire a public transportation system solely within or both within and without the corporate limits of the City and County of Denver.

3. On April 13, 1971, the District Court in and for the City and County of Denver and State of Colorado, in Civil Action No. 22295, upon petition of the City and County of Denver, issued an Order for immediate possession whereby the City and County of Denver was granted possession of the properties, operating rights and public transportation system of the Denver Tramway Corporation and the Denver Tramway Charter Company as of 12:01 a.m., April 18, 1971. The operating rights of the Denver Tramway Corporation and the Denver Tramway Charter Company include Certificate of Public Convenience and Necessity PUC No. 210 and Certificate of Public Convenience and Necessity PUC No. 7099 previously granted by this Commission.

4. On April 16, 1971, the City and County of Denver jointly with the Denver Tramway Corporation and Denver Tramway Charter Company filed with the Commission Application No. 24927 requesting authority to transfer the above-mentioned Certificates from the Denver Tramway Corporation and Denver Tramway Charter Company to the City and County of Denver and further requesting temporary authority and emergency temporary authority for this transfer pending final determination. In conformity previous practice and for record-keeping purposes, the Commission assigned separate application numbers to the transfer of the two certificates, even though a single application for transfer of both certificates was filed.

Consequently, Application No. 24927 was assigned to the transfer of Certificate PUC No. 210, and Application No. 24928 was assigned to the transfer of Certificate PUC No. 7099.

5. Also on April 16, 1971, the Commission by Decision No. 77398 granted emergency temporary approval sought by the Respondent finding, inter alia, failure to immediately grant such approval may result in the destruction of, or injury to, such carrier or carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public. Such temporary approval, in accordance with the statute, would extend for a period of fifteen (15) days commencing April 18, 1971.

6. On April 30, 1971, the Commission by Decision No. 77511 granted temporary approval of the transfer sought by the Respondent of Certificate PUC No. 210 for a period of 165 days or until such time as the decision of the Commission on the corresponding permanent authority of the Applicant becomes final, whichever occurs first.

7. On June 1, 1950, by Decision No. 34881, the Commission extended Certificate of Public Convenience and Necessity PUC No. 210 then owned by the Denver Tramway Corporation, to authorize the operation of motor vehicle common carrier service for the transportation of passengers, mail, express and newspapers between Denver, Arvada, Mount Olivet and Oberon and to and from all immediate points along Colorado Highways 58, 121 and 72, and various county roads in Jefferson County, including the route denoted as route 83-Olivet. With minor changes in routing, said route 83 has been continuously operated by the Denver Tramway Corporation and since April 18, 1971, by the City and County of Denver through its agency, Denver Metro Transit.

8. On April 2, 1969, by Decision No. 72792, the Commission denied a request by the Denver Tramway Corporation to eliminate said service on said route 83, finding that any further discontinuance or

curtailment of service on this route would seriously affect public convenience and necessity as large areas of the city would be left without any transit service during the period of curtailment.

9. On June 14, 1971, the City and County of Denver by H.P. Ishmael, Resident Manager, Denver Metro Transit, an agency of the City and County of Denver, pursuant to Commission rules, filed an adoption notice with the Commission adopting and ratifying all tariffs, classifications, rules or other instruments filed with the Public Utilities Commission by the Denver Charter Company and the Denver Tramway Corporation prior to June 9, 1971. On June 16, 1971, the City and County of Denver through its agency Metro Denver Transit, filed a schedule for its Olivet route 83 to become effective June 14, 1971, which is the current schedule now in effect.

10. The City and County of Denver as far as its operation under Certificate of Public Convenience and Necessity PUC No. 210 in providing transportation service outside the territorial boundaries of the City and County of Denver are concerned, and more particularly as far as its operation of the said route 83-Olivet, between 44th and Sheridan Boulevard in the County of Jefferson, State of Colorado, and the Mount Olivet Cemetery and the Ridge Home, also in the County of Jefferson, State of Colorado, are concerned, is a common carrier and a public utility operating under the jurisdiction of the Commission.

11. Until and including August 31, 1971, the City and County of Denver and its predecessor the Denver Tramway Corporation, did provide service on route 83-Olivet between points in the County of Jefferson, as well as between points in the County of Jefferson on the one hand and points within the City and County of Denver on the other hand. Such service was provided more specifically by making stops at various street intersections as required to pick up and deliver passengers and, more particularly, such stops were made at the corner of 52nd Avenue and Carr Street in an unincorporated area in the County of Jefferson, and at the Lakeside Shopping Center, 44th and Fenton Streets, also in the County of Jefferson.

12. Effective September 1, 1971, the City and County of Denver has discontinued making stops of its transit buses for the purpose of picking up and delivering passengers on its route 83-01ivet in the unincorporated areas of the County of Jefferson and within the municipal limits of the Towns of Lakeside and Mountain View. More particularly, the bus does not and will not stop at the corner of 52nd Avenue and Carr Street and at the Lakeside Shopping Center disregarding passengers desiring to get on or off the bus.

13. No change in the route of the bus on route 83-01ivet has been made since April 18, 1971, except that the bus will not stop in the areas as heretofore described.

14. Mr. H. P. Ishmael, Manager of Denver Metro Transit, an agency of the City and County of Denver, stated that the reasons for discontinuance of bus stops to pick up and deliver passengers in the unincorporated areas of Jefferson County and within the corporate limits of the Towns of Lakeside and Mountain View were as follows:

- (a) Bus service outside the City and County of Denver was provided at a financial loss.
- (b) The City and County of Denver could not continue to provide such service at a loss.
- (c) To avoid such losses, the City and County of Denver had sought to enter into certain contracts with other governmental units including the County of Jefferson and the towns of Mountain View and Lakeside. According to witness, such contracts would provide for financial assistance by such local governments to offset the losses involved in providing service within the respective territorial boundaries.
- (d) No response was received from either the County of Jefferson or the towns of Lakeside and Mountain View and therefore the City and County of Denver on

September 1, 1971 discontinued the service within those areas on route 83, such discontinuance being effected by simply not making the necessary stops.

15. The contracts referred to by the witness and described in the finding above have not been filed with the Commission and the record does not reveal the nature of these contracts except as stated herein, nor has the Respondent filed any tariff provisions providing for increased rates and charges for service outside the corporate limits of the City and County of Denver which may not be compensatory under existing fares. Any tariff provision involving rates, rules or regulations regarding service as well as any contract affecting rates and charges, must be filed with the Commission pursuant to 115-3-3 CRS 1963, as amended.*

16. There is a public need for continued service on Respondent's route 83-Olivet under the same conditions as existed prior to September 1, 1971. Members of the public residing near route 83-Olivet in Jefferson County have no other public transit available to them and the failure to stop the buses in the proper places renders the service between points in the County of Jefferson and between points in the County of Jefferson on the one hand and points elsewhere on the Denver Metro Transit System on the other hand, completely inadequate. In particular, the failure to stop at the corner West 52nd Avenue and Carr Street and at or near Lakeside Shopping Center, renders such service inadequate, as the record reveals

* It should be noted that the exercise of jurisdiction by the Commission over the public transit operations of the City and County of Denver outside its corporate limits does in no way compel the city to provide non-compensatory service and in effect subsidize the public outside its corporate limits. No common carrier can be compelled by the Commission to operate the large segment of its transportation system if there is no possible way to make such operation compensatory. Likewise, the City and County of Denver is not limited to rates and charges collected solely by the payment of fares by individual passengers. The Commission could not prevent and would in fact encourage negotiations with other local governments to share any financial burden that may exist. The exercise of the Commission's jurisdiction in this respect, simply means that rates and charges in whatever form, whether they be individual fares or other charges made as a condition of service, would be filed with the Commission, open to public inspection, subject to protest, and subject to Commission authorization as being just and reasonable. In effect then, the jurisdiction of the Commission provides a forum in which these matters can be expeditiously handled in the public interest.

that there are members of the public who have relied on the public transportation system furnished by the City and County of Denver and its predecessor, the Denver Tramway Corporation as the system was operated prior to September 1, 1971, and who require that the bus stop at those locations as above-described for the transportation system to be useful to them.

CONCLUSIONS

From the Findings of Fact hereinabove, the Commission concludes that:

1. The City and County of Denver is a common carrier and a public utility under the jurisdiction of the Commission with respect to operations of the bus transit system acquired from the Denver Tramway Corporation insofar as its operations under Certificate of Public Convenience PUC No. 210 outside the corporate limits of the City and County of Denver are concerned; that its route 83-Olivet operates in part outside such corporate limits; that in the operation of said route 83 outside of corporate limits, the City and County of Denver does not stop its buses at proper places in the County of Jefferson and has not done so since September 1, 1971; that prior to September 1, 1971, the said buses did stop at the proper places; that the mere fact that the service may be non-compensatory does not in itself permit a common carrier to render inadequate service; that a proper remedy if a service is not compensatory is to seek authority to impose higher fares or other charges whether paid by individual passengers or governmental units and that it is the duty of a public utility to seek such authorization from the Commission if adequate service cannot otherwise be provided; but, that the Respondent has failed to do so. The Commission further concludes that the following Order should be entered prescribing increased transportation facilities pursuant to 115-4-3 CRS 1963, as amended.

O R D E R

THE COMMISSION ORDERS THAT:

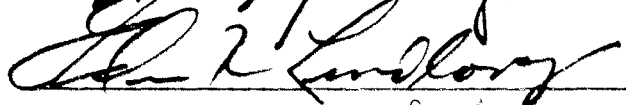
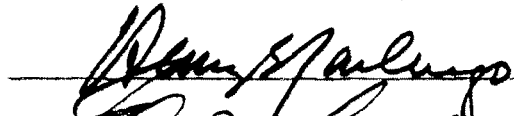
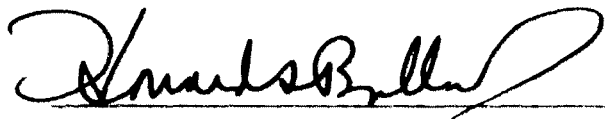
1. The Respondent, the City and County of Denver be, and hereby is, ordered to restore the operation of its route 83-01ivet outside the corporate limits of the City and County of Denver under Certificate of Public Convenience and Necessity PUC No. 210, to the same type, level and manner of service as existed immediately prior to September 1, 1971.

2. Any change in the aforesaid operation of route 83-01ivet shall be made by the Respondent only upon the authorization by the Commission, or in any other manner permitted and provided for by the Public Utilities Law and the Rules and Regulations of the Commission.

3. In rendering the service as prescribed in paragraph one of this Order, Respondent shall commence stopping its buses to permit passengers to board and leave the buses on route 83-01ivet in the County of Jefferson at the same places as was done during the period April 18, 1971, to August 31, 1971, as soon as the same can be reasonably implemented, but in any event not later than within twenty (20) days from the effective date of this Order.

This Order shall be effective forthwith.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



Commissioners

Dated at Denver, Colorado,
this 24th day of September, 1971.
hbp

this Order should be transferred to the City and County of Denver in order to prevent unjust enrichment to the Denver Tramway Corporation.

11. Denver Tramway Corporation and the City and County of Denver have requested the Commission to set a date when redemption of the tokens will cease; however, no satisfactory reason was presented for establishing a termination date for the redemption of outstanding tokens.

12. The public transportation system of the City and County of Denver, under the jurisdiction of the Commission, should continue to accept or redeem the tokens issued by Denver Tramway Corporation for an indefinite period of time, since in taking the property and rights of Denver Tramway Corporation under its Certificate of Public Convenience and Necessity, it should also assume its obligations under such Certificate.

13. The City and County of Denver has established passenger rates for its mass transportation system by Ordinance No. 139, dated April 12, 1971, and Ordinance No. 155, dated April 26, 1971. (Exhibit No. 13)

14. The operation of a transportation system by the City and County outside of Denver is a matter of state-wide concern and is not a local and municipal matter.

15. The Commission only has jurisdiction over the public transportation owned by the City and County of Denver which performs charter bus service into and out of Denver from and to points in the State of Colorado and that portion of the mass transportation system which is without the geographical limits of the City and County of Denver.

16. The City and County of Denver has the technical knowledge, financial ability and physical facilities required to operate the public transit system authorized by Certificates of Public Convenience and Necessity PUC No. 210 and PUC No. 7099.

17. Pursuant to CRS 1963, 115-9-10, the City and County of Denver has submitted satisfactory evidence as to adequate liability insurance. (Exhibit No. 9)

18. The purchase price to be paid for the Certificates and property of Denver Tramway Corporation and Denver Tramway Charter Co. by the City and County of Denver will necessarily be a fair price determined by condemnation proceedings.

19. Public convenience and necessity will be furthered by the transfer of Certificates of Public Convenience and Necessity PUC No. 210 and PUC No. 7099 from Denver Tramway Corporation to the City and County of Denver, with deletions of authority as hereinafter set forth.

20. The Commission should delete from Certificates of Public Convenience and Necessity PUC No. 210 and PUC No. 7099 the portions of the authority previously granted over which it no longer has jurisdiction, namely, the authority to operate the mass transit system authorized under Certificate of Public Convenience and Necessity PUC No. 210 within the City and County of Denver and that portion of the special charter bus service authorized by Certificate of Public Convenience and Necessity PUC No. 7099 which operates within the City and County of Denver.

O R D E R

THE COMMISSION ORDERS:

1. That Denver Tramway Corporation shall redeem the tokens received by the City and County of Denver from April 18, 1971, until the effective date of this Order.

2. That within thirty (30) days from the effective date of this Order, Denver Tramway Corporation shall transfer to the City and County of Denver any sums it has received for tokens which remain unredeemed on that date.

3. That the City and County of Denver shall accept or redeem tokens sold by Denver Tramway Corporation for an indefinite period of time.

4. The motion made by the City and County of Denver on September 21, 1971, to withdraw its application for the transfer of Certificate of Public Convenience and Necessity PUC No. 210 be, and hereby is, denied.

5. That authority under Certificate of Public Convenience and Necessity PUC No. 210 as set forth in Decision Nos. 1097, dated February 16, 1927; 3026, dated September 2, 1930; 3712, dated October 23, 1931; 4320, dated May 20, 1932; 17610, dated September 9, 1941; 18158, dated January 20, 1942; 18278, dated February 5, 1942; 20207, dated December 16, 1942; 21102, dated July 1, 1943; 28753, dated July 31, 1947; 32089, dated February 3, 1949; 34694, dated April 21, 1950; 34828, dated May 15, 1950; 34881, dated June 1, 1950; 36262, dated March 14, 1951; 37176, dated August 3, 1951; 40823, dated June 30, 1953; 41419, dated October 21, 1953; 45741, dated May 4, 1956; 52054, dated April 8, 1959; 56476, dated May 18, 1961; 64505, dated February 3, 1965; 65201, dated June 16, 1965; 70479, dated November 28, 1967; 70634, dated January 3, 1968; 72792, dated April 2, 1969; 73965, dated December 5, 1969; 74773, dated April 24, 1970; 74883, dated May 13, 1970; 76396, dated December 3, 1970; and 76547, dated December 24, 1970, which are adopted herewith by reference thereto, is amended to delete the authority to operate within the City and County of Denver.

6. That the transfer of the authority under Certificate of Public Convenience and Necessity PUC No. 210, as amended by this Order, transferred to the City and County of Denver, be, and hereby is, authorized and approved.

7. That the authority under Certificate of Public Convenience and Necessity PUC No. 7099 is amended to delete the authority to operate from point-to-point within the City and County of Denver.



8. That the transfer of the authority under Certificate of Public Convenience and Necessity PUC No. 7099, as amended by this Order, to the City and County of Denver, be, and hereby is, authorized and approved.

9. The Denver Tramway Corporation and Denver Tramway Charter Co. rates, tariffs and regulations shall upon proper adoption notice become and remain those of the City and County of Denver public transportation system under the jurisdiction of the Commission, until changed according to law and the rules and regulations of the Commission.

10. That the City and County of Denver shall operate that portion of its public transit system which is under the jurisdiction of the Commission in accordance with the rules, regulations and orders of the Commission.

11. That this Order shall become effective twenty-one (21) days from this date.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



Commissioners

COMMISSIONER HENRY E. ZARLENGO SPECIALLY
CONCURRING.

Dated at Denver, Colorado, this
24th day of September, 1971.

hj/vjr

COMMISSIONER HENRY E. ZARLENGO SPECIALLY CONCURRING:

In my judgment the Commission:

(a) does not have jurisdiction over that transportation between points entirely within the City and County of Denver,

(b) has jurisdiction over that transportation between points entirely outside the City and County of Denver;

(c) has jurisdiction over that transportation between points within the City and County of Denver, on the one hand, and points outside the City and County of Denver, on the other hand.

I concur that the request to withdraw application for authority to transfer Certificate of Public Convenience and Necessity PUC No. 210 to the City and County of Denver should be denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



Commissioner

Dated at Denver, Colorado, this
24th day of September, 1971.
vjr