(Decision No. 1965)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
* * * *

J. R. GORDON, ET AL.,

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

Defendant.

CASE NO. 288

October 27, 1928.

S T A T E M E N T

By the Commission:

At the suggestion of counsel for complainants, an order will be entered dismissing this complaint.

O R D E R

IT IS THEREFORE ORDERED, That the complaint in Case No. 288 be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Doyle S. Jones

Commissioners.

Dated at Denver, Colorado,
this 27th day of October, 1928.

(Decision No. 1966)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

THE WILEY COMMERCIAL CLUB, ET AL.,)
)
Complainants,)
)
vs.)
)
THE ATCHISON, TOPEKA AND SANTA FE) CASE NO. 289.
RAILWAY COMPANY,)
)
Defendant.)
- - - - - - - - - - - - - - - - - - -

October 27, 1928

S T A T E M E N T

By the Commission:

At the suggestion of counsel for complainants, an order will be entered dismissing this complaint.

O R D E R

IT IS THEREFORE ORDERED, That the complaint in Case No. 289 be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 27th day of October, 1928.

(Decision No. 1967)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE COLORADO CENTRAL POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE FRANCHISE RIGHTS GRANTED BY THE CITY OF GOLDEN, COLORADO.

APPLICATION NO. 1117

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado, Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On May 9, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by the applicant of the rights and privileges granted by an ordinance passed by the city council of the city of Golden.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission, distribution and sale of electrical energy for heat, light, power and other useful purposes, subject to the provisions of the Public Utilities Act. On December 6, 1926, the

applicant acquired by purchase from The Jefferson County Power and Light Company all of the latter's right, title and interest in and to a certain franchise theretofore granted to said The Jefferson County Power and Light Company on February 4, 1921. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and own within the said city of Golden and any additions thereto electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said city of Golden. Said franchise was granted for a period of twenty-five years from February 4, 1921.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

The evidence shows that said The Jefferson County Power and Light Company was never advised or knew prior to the said sale to the applicant herein that the law requires a public utility to which a franchise has been granted to secure authority from this Commission to exercise the rights and privileges granted in and by said franchise and that the applicant herein never knew of such requirement until immediately before filing of the application herein.

The evidence shows further that immediately upon learning of the requirement of the law in the respect stated the applicant did file its said application. The failure to apply for a certificate sooner thus appears not to have been caused by any intention to evade or disobey the law.

No other similar utility is serving the said city of Golden. The capital investment of the applicant in said city is approximately $150,000.00. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining

reasonable rates.

The applicant appears to be financially able adequately to serve the public in Golden.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the future will require the exercise by the applicant of said franchise rights by ordinance granted originally to The Jefferson County Power and Light Company by the said city of Golden as aforesaid.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of said franchise rights by ordinance granted originally to The Jefferson County Power and Light Company by the said city of Golden, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1968)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE COLORADO CENTRAL POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE FRANCHISE RIGHTS GRANTED BY THE TOWN OF MORRISON, COLORADO.

APPLICATION NO. 1118

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado, Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On May 9, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by the applicant of the rights and privileges granted by an ordinance passed by the board of trustees of the town of Morrison.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission, distribution and sale of electrical energy for heat, light, power and other useful purposes, subject to the provisions of the Public Utilities Act. On December 6, 1926, the applicant acquired by purchase from The Jefferson County Power and Light Company all of the latter's right, title and interest in and to a certain franchise theretofore granted

to said The Jefferson County Power and Light Company on August 3, 1925. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and own within the said town of Morrison and any additions thereto electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said town of Morrison. Said franchise was granted for a period of twenty-five years from August 3, 1925.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

The evidence shows that said The Jefferson County Power and Light Company was never advised or knew prior to the said sale to the applicant herein that the law requires a public utility to which a franchise has been granted to secure authority from this Commission to exercise the rights and privileges granted in and by said franchise and that the applicant herein never knew of such requirement until immediately before filing of the application herein.

The evidence shows further that immediately upon learning of the requirement of the law in the respect stated the applicant did file its said application. The failure to apply for a certificate sooner thus appears not to have been caused by any intention to evade or disobey the law.

No other similar utility is serving the said town of Morrison. The capital investment of the applicant in said town is approximately $9,000.00. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining reasonable rates.

The applicant appears to be financially able adequately to serve the public in Morrison.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the future will require the exercise by the applicant of said franchise rights by

ordinance granted originally to The Jefferson County Power and Light Company by the said town of Morrison as aforesaid.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of said franchise rights by ordinance granted originally to The Jefferson County Power and Light Company by the said town of Morrison, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1969)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE COLORADO CENTRAL POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE FRANCHISE RIGHTS GRANTED BY THE CITY OF ENGLEWOOD, COLORADO.

APPLICATION NO. 1119

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado, Vice-President of the Applicant.

STATEMENT

By the Commission:

On May 9, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by the applicant of the rights and privileges granted by an ordinance passed by the city council of the city of Englewood.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission, distribution and sale of electrical energy for heat, light, power and other useful purposes, subject to the provisions of the Public Utilities Act. On December 6, 1926, the applicant acquired by purchase from The Arapahoe Electric Light and Power Company all of the latter's right, title and interest in and to a certain franchise theretofore granted to said The Arapahoe Electric Light and Power Company on

October 11, 1920. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and own within the said city of Englewood and any additions thereto, electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said city of Englewood. Said franchise was granted for a period of twenty-five years from October 11, 1920.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

The evidence shows that said The Arapahoe Electric Light and Power Company was never advised or knew prior to the said sale to the applicant herein that the law requires a public utility to which a franchise has been granted to secure authority from this Commission to exercise the rights and privileges granted in and by said franchise and that the applicant herein never knew of such requirement until immediately before filing of the application herein.

The evidence shows further that immediately upon learning of the requirement of the law in the respect stated the applicant did file its said application. The failure to apply for a certificate sooner thus appears not to have been caused by any intention to evade or disobey the law.

No other similar utility is serving the said city of Englewood. The capital investment of the applicant in said city is approximately $400,000.00. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining reasonable rates.

The applicant appears to be financially able adequately to serve the public in Englewood.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the future will require the exercise by the applicant of said franchise rights by ordinance granted originally to The Arapahoe Electric Light and Power Company by the said city of Englewood as aforesaid.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of said franchise rights by ordinance granted originally to The Arapahoe Electric Light and Power Company by the said city of Englewood, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 29th day of October, 1928.

Commissioners.

(Decision No. 1970)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE COLORADO CENTRAL POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE FRANCHISE RIGHTS GRANTED BY THE TOWN OF LITTLETON, COLORADO.

APPLICATION NO. 1120

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado, Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On May 9, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by the applicant of the rights and privileges granted by an ordinance passed by the board of trustees of the town of Littleton.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission, distribution and sale of electrical energy for heat, light, power and other useful purposes, subject to the provisions of the Public Utilities Act. On December 6, 1926, the applicant acquired by purchase from The Arapahoe Electric Light and Power Company all of the latter's right, title and interest in and to a certain franchise heretofore granted to said The Arapahoe Electric Light and Power Company on October 4,1920.

Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and own within the said town of Littleton and any additions thereto, electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said town of Littleton. Said franchise was granted for a period of twenty-five years from October 4, 1920.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

The evidence shows that said The Arapahoe Electric Light and Power Company was never advised or knew prior to the said sale to the applicant herein that the law requires a public utility to which a franchise has been granted to secure authority from this Commission to exercise the rights and privileges granted in and by said franchise and that the applicant herein never knew of such requirement until immediately before filing of the application herein.

The evidence shows further that immediately upon learning of the requirement of the law in the respect stated the applicant did file its said application. The failure to apply for a certificate sooner thus appears not to have been caused by any intention to evade or disobey the law.

No other similar utility is serving the said town of Littleton. The capital investment of the applicant in said town is approximately $200,000.00. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining reasonable rates.

The applicant appears to be financially able adequately to serve the public in Littleton.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the

future will require the exercise by the applicant of said franchise rights by ordinance granted originally to The Arapahoe Electric Light and Power Company by the said town of Littleton as aforesaid.

ORDER

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of said franchise rights by ordinance granted originally to The Arapahoe Electric Light and Power Company by the said town of Littleton, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 29th day of October, 1928.

Commissioners.

(Decision No. 1971)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF THE COLORADO CENTRAL POWER)
COMPANY FOR A CERTIFICATE OF PUB-)
LIC CONVENIENCE AND NECESSITY TO) APPLICATION NO. 1121
EXERCISE FRANCHISE RIGHTS GRANTED)
BY THE TOWN OF SHERIDAN, COLORADO.)

- - - - - - - - -
October 29, 1928.
- - - - - - - - -

Appearance: E. A. Phinney, Golden, Colorado,
Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On May 9, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by the applicant of the rights and privileges granted by an ordinance passed by the board of trustees of the town of Sheridan.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission, distribution and sale of electrical energy for heat, light, power and other useful purposes, subject to the provisions of the Public Utilities Act. On December 6, 1926, the applicant acquired by purchase from The Arapahoe Electric Light and Power Company all of the latter's right, title and interest in and to a certain franchise there-

tofore granted to said The Arapahoe Electric Light and Power Company on April 2, 1924. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and own within the said town of Sheridan and any additions thereto, electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said town of Sheridan. Said franchise was granted for a period of twenty-five years from April 2, 1924.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

The evidence shows that said The Arapahoe Electric Light and Power Company was never advised or knew prior to the said sale to the applicant herein that the law requires a public utility to which a franchise has been granted to secure authority from this Commission to exercise the rights and privileges granted in and by said franchise and that the applicant herein never knew of such requirement until immediately before filing of the application herein.

The evidence shows further that immediately upon learning of the requirement of the law in the respect stated the applicant did file its said application. The failure to apply for a certificate sooner thus appears not to have been caused by any intention to evade or disobey the law.

No other similar utility is serving the said town of Sheridan. The capital investment of the applicant in said town is approximately $15,000.00. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining reasonable rates.

The applicant appears to be financially able adequately to serve the public in Sheridan.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the

future will require the exercise by the applicant of said franchise rights by ordinance granted originally to The Arapahoe Electric Light and Power Company by the said town of Sheridan as aforesaid.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of said franchise rights by ordinance granted originally to The Arapahoe Electric Light and Power Company by the said town of Sheridan, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dyer S. Jones

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1972)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
* * *

IN THE MATTER OF THE APPLICATION OF THE COLORADO CENTRAL POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE FRANCHISE RIGHTS GRANTED BY THE TOWN OF JOHNSTOWN, COLORADO.

APPLICATION NO. 1122

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado, Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On May 9, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by the applicant of the rights and privileges granted by an ordinance passed by the board of trustees of the town of Johnstown.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission, distribution and sale of electrical energy for heat, light, power and other useful purposes, subject to the provisions of the Public Utilities Act. On December 6, 1926, the applicant acquired by purchase from The Fort Lupton Light and Power Company all of the latter's right, title and interest in and to a certain franchise

originally granted to William C. Sterne in and by an ordinance passed by the board of trustees of the town of Johnstown on July 27, 1914, and subsequently sold, transferred and assigned by said Sterne to The Fort Lupton Light and Power Company. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and own within the said town of Johnstown and any additions thereto, electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said town of Johnstown. Said franchise was granted for a period of twenty-five years from July 27, 1914.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

The evidence shows that said The Fort Lupton Light and Power Company was never advised or knew prior to the said sale to the applicant herein that the law requires a public utility to which a franchise has been granted to secure authority from this Commission to exercise the rights and privileges granted in and by said franchise and that the applicant herein never knew of such requirement until immediately before filing of the application herein.

The evidence shows further that immediately upon learning of the requirement of the law in the respect stated the applicant did file its said application. The failure to apply for a certificate sooner thus appears not to have been caused by any intention to evade or disobey the law.

No other similar utility is serving the said town of Johnstown. The capital investment of the applicant in said town is approximately $20,000.00. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining reasonable rates.

The applicant appears to be financially able adequately to serve

the public in Johnstown.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the future will require the exercise by the applicant of said franchise rights by ordinance granted originally to William C. Sterne by the said town of Johnstown as aforesaid.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of said franchise rights by ordinance granted originally to William C. Sterne by the said town of Johnstown, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Jack S. Jones

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1973)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE COLORADO CENTRAL POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE FRANCHISE RIGHTS GRANTED BY THE TOWN OF PLATTEVILLE, COLORADO.

APPLICATION NO. 1123

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado,
Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On May 9, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by the applicant of the rights and privileges granted by an ordinance passed by the board of trustees of the town of Platteville.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission, distribution and sale of electrical energy for heat, light, power and other useful purposes, subject to the provisions of the Public Utilities Act. On December 6, 1926, the applicant acquired by purchase from The Fort Lupton Light and Power Company all of the latter's right, title and interest in and to a certain franchise

originally granted to The Western Light and Power Company in and by an ordinance passed by the board of trustees of the town of Platteville on July 6, 1915, and subsequently sold, transferred and assigned by said The Western Light and Power Company to The Fort Lupton Light and Power Company. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and own within the said town of Platteville and any additions thereto, electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said town of Platteville. Said franchise was granted for a period of twenty-five years from July 6, 1915.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

The evidence shows that said The Fort Lupton Light and Power Company was never advised or knew prior to the said sale to the applicant herein that the law requires a public utility to which a franchise has been granted to secure authority from this Commission to exercise the rights and privileges granted in and by said franchise and that the applicant herein never knew of such requirement until immediately before filing of the application herein.

The evidence shows further that immediately upon learning of the requirement of the law in the respect stated the applicant did file its said application. The failure to apply for a certificate sooner thus appears not to have been caused by any intention to evade or disobey the law.

No other similar utility is serving the said town of Platteville. The capital investment of the applicant in said town is approximately $10,000.00. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining reasonable rates.

The applicant appears to be financially able adequately to serve the public in Platteville.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the future will require the exercise by the applicant of said franchise rights by ordinance granted originally to The Western Light and Power Company by the said town of Platteville as aforesaid.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of said franchise rights by ordinance granted originally to The Western Light and Power Company by the said town of Platteville, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1974)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF THE COLORADO CENTRAL POWER)
COMPANY FOR A CERTIFICATE OF PUB-)
LIC CONVENIENCE AND NECESSITY TO) APPLICATION NO. 1124
EXERCISE FRANCHISE RIGHTS GRANTED)
BY THE TOWN OF HUDSON, COLORADO.)

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado,
Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On May 9, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by the applicant of the rights and privileges granted by an ordinance passed by the board of trustees of the town of Hudson.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission, distribution and sale of electrical energy for heat, light, power and other useful purposes, subject to the provisions of the Public Utilities Act. On December 6, 1926, the applicant acquired by purchase

from The Fort Lupton Light and Power Company all of the latter's right, title and interest in and to a certain franchise originally granted to William C. Sterne in and by an ordinance passed by the board of trustees of the town of Hudson on June 5, 1919, and subsequently sold, transferred and assigned by said Sterne to The Fort Lupton Light and Power Company. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and own within the said town of Hudson and any additions thereto, electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said town of Hudson. Said franchise was granted for a period of twenty-five years from June 5, 1919.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

The evidence shows that said The Fort Lupton Light and Power Company was never advised or knew prior to the said sale to the applicant herein that the law requires a public utility to which a franchise has been granted to secure authority from this Commission to exercise the rights and privileges granted in and by said franchise and that the applicant herein never knew of such requirement until immediately before filing of the application herein.

The evidence shows further that immediately upon learning of the requirement of the law in the respect stated the applicant did file its said application. The failure to apply for a certificate sooner thus appears not to have been caused by any intention to evade or disobey the law.

No other similar utility is serving the said town of Hudson. The capital investment of the applicant in said town is approximately $18,000.00. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining reasonable rates.

The applicant appears to be financially able adequately to serve the public in Hudson.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the future will require the exercise by the applicant of said franchise rights by ordinance granted originally to William C. Sterne by the said town of Hudson as aforesaid.

ORDER

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of said franchise rights by ordinance granted originally to William C. Sterne by the said town of Hudson, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1975)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
* * *

IN THE MATTER OF THE APPLICATION OF THE COLORADO CENTRAL POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE FRANCHISE RIGHTS GRANTED BY THE TOWN OF KEENESBURG, COLORADO.

APPLICATION NO. 1125

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado, Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On May 9, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by the applicant of the rights and privileges granted by an ordinance passed by the board of trustees of the town of Keenesburg.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission, distribution and sale of electrical energy for heat, light, power and other useful purposes, subject to the provisions of the Public Utilities Act. On December 6, 1926, the applicant acquired by purchase

from The Fort Lupton Light and Power Company all of the latter's right, title and interest in and to a certain franchise originally granted to William C. Sterne in and by an ordinance passed by the board of trustees of the town of Keenesburg, on April 13, 1925, and subsequently sold, transferred and assigned by said Sterne to The Fort Lupton Light and Power Company. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and own within the said town of Keenesburg and any additions thereto, electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said town of Keenesburg. Said franchise was granted for a period of twenty-five years from April 13, 1925.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

The evidence shows that said The Fort Lupton Light and Power Company was never advised or knew prior to the said sale to the applicant herein that the law requires a public utility to which a franchise has been granted to secure authority from this Commission to exercise the rights and privileges granted in and by said franchise and that the applicant herein never knew of such requirement until immediately before filing of the application herein.

The evidence shows further that immediately upon learning of the requirement of the law in the respect stated the applicant did file its said application. The failure to apply for a certificate sooner thus appears not to have been caused by any intention to evade or disobey the law.

No other similar utility is serving the said town of Keenesburg. The capital investment of the applicant in said town is approximately $12,000.00. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining reasonable rates

The applicant appears to be financially able to adequately serve the public in Keenesburg.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the future will require the exercise by the applicant of said franchise rights by ordinance granted originally to William C. Sterne by the said town of Keenesburg as aforesaid.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of said franchise rights by ordinance granted originally to William C. Sterne by the said town of Keenesburg, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1976)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
* * *

IN THE MATTER OF THE APPLICATION)
OF THE COLORADO CENTRAL POWER)
COMPANY FOR A CERTIFICATE OF PUB-)
LIC CONVENIENCE AND NECESSITY TO) APPLICATION NO. 1132
EXERCISE FRANCHISE RIGHTS GRANTED)
BY THE TOWN OF MILLIKEN, COLORADO.)

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado,
Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On May 19, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by it of the rights and privileges granted by an ordinance passed by the board of trustees of the town of Milliken, Colorado.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission and distribution of electrical energy for heat, light, power and other useful purposes, and to engage in the business of generating and selling electrical energy subject to the provisions of the Public Utilities Act.

The franchise granted to the applicant by the board of trustees of

the town of Milliken is dated March 12, 1928, and is for a period of twenty-five years from that date. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and organize within the said town of Milliken and any additions thereto electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said town of Milliken.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

No other similar utility is serving the said town of Milliken. The capital investment of the applicant in said town is approximately $12,000.00. However, this amount shall not be binding upon the Commission in any valuation hearing held for the purpose of determining reasonable rates.

The applicant appears to be financially able adequately to serve the public in Milliken.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the future will require the exercise by the applicant of the franchise rights by ordinance granted to it by the said town of Milliken.

ORDER

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of the franchise rights by ordinance granted to it by the town of Milliken, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dana S. Jones

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1977)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
* * *

IN THE MATTER OF THE APPLICATION OF THE COLORADO CENTRAL POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXERCISE FRANCHISE RIGHTS GRANTED BY THE TOWN OF FORT LUPTON, COLORADO.) APPLICATION NO. 1153

October 29, 1928.

Appearance: E. A. Phinney, Golden, Colorado,
Vice-President of the Applicant.

S T A T E M E N T

By the Commission:

On June 27, 1928, Colorado Central Power Company, a Delaware corporation having authority to do business in the State of Colorado, filed its application in which it prays for a certificate of public convenience and necessity authorizing the exercise by it of the rights and privileges granted by an ordinance passed by the board of trustees of the town of Fort Lupton, Colorado.

The hearing was had in the Hearing Room of the Commission on October 29, 1928. No objection to the application was made.

The applicant is now and ever since December 4, 1926, has been authorized and empowered by the State of Colorado (by filing its articles of incorporation and receiving a certificate of authority from the Secretary of State) to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation, transmission and distribution of electrical energy for heat, light, power and other useful purposes, and to engage in the business of generating and selling electrical energy subject to the provisions of the Public Utilities Act.

The franchise granted to the applicant by the board of trustees of

the town of Fort Lupton is dated April 4, 1928, and is for a period of ten years from that date. Said franchise grants the right, privilege and authority to establish, construct, maintain, operate and organize within the said town of Fort Lupton and any additions thereto electrical transmission lines, substations, generating plant and distribution system for the generation, supply and sale of electrical energy for light, heat, power and other useful purposes to all persons, associations and corporations either public or private residing or doing business in the said town of Fort Lupton.

The applicant is not generating any electricity. It buys electrical energy at wholesale and distributes and sells the same.

No other similar utility is serving the said town of Fort Lupton. The capital investment of the applicant in said town is approximately $90,000.00. However, this amount shall not be binding upon the Commission in any valuation hearing held for the purpose of determining reasonable rates.

The applicant appears to be financially able adequately to serve the public in Fort Lupton.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does now and in the future will require the exercise by the applicant of the franchise rights by ordinance granted to it by the said town of Fort Lupton.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant, Colorado Central Power Company, of the franchise rights by ordinance granted to it by the town of Fort Lupton, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That nothing herein shall be construed as authorizing the construction, without further authority from this Commission, of any power plant for generating electrical energy.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dwight S. Jones

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1978)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION)
OF THE WYOMING-NEBRASKA MOTOR WAY,)
INC. FOR A CERTIFICATE OF PUBLIC) APPLICATION NO. 1159
CONVENIENCE AND NECESSITY.)
- - - - - - - - - - - - - - - - - - -)

- - - - - - - - -
October 29, 1928.
- - - - - - - - -

Appearances: E. G. Knowles, Esq., Denver, Colorado, for
Union Pacific Railroad Company;
J. Q. Dier, Esq., Denver, Colorado, for
The Colorado and Southern Railway Company.

S T A T E M E N T

By the Commission:

This application was set down for hearing in the Hearing Room of the Commission, State Office Building, Denver, Colorado, on October 29, 1928, at 2:00 o'clock P. M.. No appearance was made by the applicant. Under these circumstances, an order will be entered dismissing the application.

O R D E R

IT IS THEREFORE ORDERED, That the application of the Wyoming-Nebraska Motor Way, Inc., No. 1159, be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1928.

(Decision No. 1979)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE EXHIBITORS FILM DELIVERY & SERVICE COMPANY, A CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1009

November 2, 1928.

Appearance: D. W. Dunbar and Frank E. Hickey, Esqs., Denver, Colorado, attorneys for applicant.

S T A T E M E N T

By the Commission:

On August 7, 1928, the Commission entered an order in which it stated that on December 17, 1927, the applicant herein had filed its application in which it took the position that the service being rendered by it to motion picture or film exhibitors is not that of a common or "motor vehicle carrier" as defined in the Colorado statute, but praying "that in the event the Commission determines that the proposed service will constitute that of a motor vehicle carrier, it be granted a certificate of public convenience and necessity authorizing the operation of a system of exhibitors film delivery service." The Commission further stated that when the case came on for hearing the applicant asked the Commission in the event that it should decide that the service being rendered by it is that of a common carrier it should not pass on the question of public convenience and necessity or issue a certificate of any kind. A hearing was had, evidence being taken as to the nature of applicant's operations. The Commission held in an order thereafter made that the applicant's operations are those of a motor vehicle carrier and ordered it to cease and desist from such operations unless and until it should have procured a certificate of public convenience

and necessity.

On August 17 the applicant filed a petition for rehearing. On August 22 it filed an amended application in which it asks for a certificate.

The case was duly set for hearing and was heard in the Hearing Room of the Commission on October 19. At the hearing there was no appearance made by or on behalf of American Railway Express Company, Rocky Mountain Motor Company and Colorado Motor Way, Inc., the protestants who had filed written objections against the granting of the certificate under the amended application.

The applicant asked at the hearing that its petition for rehearing be considered as withdrawn. It is, therefore, so considered.

The evidence shows that the applicant renders various services to the motion picture film exchanges and exhibitors in Denver throughout daylight hours. At night its trucks are used in transporting films, advertising matter, etc. from the Denver motion picture distributors or exchanges to the various motion picture houses or exhibitors north and south of Denver. One of applicant's trucks leaves Denver in the evening daily for Cheyenne, Wyoming, making deliveries to the motion picture exhibitors in Fort Lupton, Platteville, Greeley, Eaton, Ault, Nunn, Colorado, and Cheyenne, Wyoming. This truck returns from Cheyenne the same night, making its deliveries in Wellington, Fort Collins, Loveland, Berthoud, Longmont, Boulder, Louisville and Lafayette, Colorado. The truck on this route arrives back in Denver at about 6:30 A. M. It performs a similar service daily except Sunday with another truck serving the motion picture houses in Littleton, Castle Rock, Colorado Springs, Fountain and Pueblo, Colorado. The truck on this route gets back in Denver about 5 A. M. The applicant's drivers have keys to the various motion picture houses. Their deliveries are made at late hours at night. At the time of making deliveries they pick up the films used that evening and return the same to Denver or to some other theatres on the route, as they are directed by the exchanges.

The applicant performs also many personal services. It receives

frequent telephone calls,and has orders left with the films by the exhibitors, asking that certain advertising matter be procured and delivered to them and that certain films be booked and transported. The applicant does not then merely request the exchanges for the films, advertising matter, etc. desired, but goes to the exchange offices and gets the same. Moreover, the exhibitors furnish to the applicant copies of their bookings. The applicant checks the bookings with the shipments to make sure that the proper films and the total number desired are furnished by the distributors, and sees that no mistake or error of any sort has been made. The applicant devotes itself to the exclusive service of film exchanges and exhibitors.

The evidence shows therefore that the service rendered by the applicant is not only more dependable and expeditious but broader and more inclusive than that rendered by any other carrier.

The value of motion picture films does not last long. It is necessary that the films be used as frequently as is possible during the first ninety days after they are offered for exhibition. By the applicant's system of collecting the films from the theatres the night they are used, frequently twenty-four hours time is saved in getting those films to the next exhibitor. Many of the films are put in use in Denver theatres by 10 or 11 o'clock A. M. of the day on which they are returned to Denver. They are shipped out also on early morning trains to points not served by the applicant.

Most motion picture houses run until rather late in the evening. Without the service of the applicant the proprietor or some other person connected with the theatre is required to get up early in the morning and get the films off on the first train or motor bus. With the system of the applicant all the exhibitor has to do is to sit the cases containing the films at a certain place in his office after the show has been finished. When he returns to the theatre the next morning he finds that the films have been taken and others left.

The exchanges in all cases require either that the exhibitor

pay in advance for the films delivered or that he pay on delivery. When c. o. d. shipments are made by the applicant the latter makes payment of the rental of such films even though it cannot on the particular day in question collect the money from the exhibitor, who may have closed his theatre several hours before the shipment is delivered. Where shipment is made by any other carrier the exhibitor must make the c. o. d. payment before obtaining the film. Moreover, he must, in the small towns, go to the express or other office to get his shipments.

The evidence shows in our opinion that no other service available to the exchanges and exhibitors is comparable with that rendered by the applicant.

After careful consideration of all of the evidence the Commission is of the opinion and so finds that the public convenience and necessity requires the motor vehicle operation of the applicant for the transportation by it of motion picture films, advertising matter, etc. from exchanges to exhibitors on the routes herein described.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle operation of the applicant, The Exhibitors Film Delivery & Service Company, for the transportation by it of motion picture films, advertising matter, etc. from exchanges to exhibitors on the routes herein described and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedule filed with this

Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bock

Daniel S. Jones

Commissioners.

Dated at Denver Colorado,
this 2nd day of November, 1928.

(Decision No. 1980)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF DWIGHT CHAPIN, JR., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE) APPLICATION NO. 1072
AND NECESSITY.)

November 2, 1928.

Appearance: D. F. Reynolds, Esq., Springfield, Colorado, for applicant.

S T A T E M E N T

By the Commission:

This application was set down for hearing in the Court House, Lamar, Colorado, on October 23, 1928. It developed at that time that the applicant had sold his plant in the town of Springfield, Colorado, to the Highland Utilities Company. Counsel for applicant therefore moved that the application be dismissed.

O R D E R

IT IS THEREFORE ORDERED, That the application of Dwight Chapin, Jr., be and the same is hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 2nd day of November, 1928.

(Decision No. 1981)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF HIGHLAND UTILITIES COMPANY, A)
CORPORATION, FOR A CERTIFICATE OF) APPLICATION NO. 1127
PUBLIC CONVENIENCE AND NECESSITY.)

November 2, 1928.

Appearance: Loyal D. Hunt, Esq., 412 Foster Building, Denver, Colorado, for applicant.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity, authorizing the construction and operation of a light and power plant, and a distributing system, in the town of Springfield, Colorado, and for the right to exercise the privileges granted under an ordinance by the board of trustees of the town of Springfield.

No protest was filed. The application was set down for hearing in the Court House, Lamar, Colorado, on October 23, 1928, at which time evidence in support of the same was received.

The testimony shows that one Dwight Chapin, Jr., on or about January 1, 1927, constructed a light and power plant at Springfield, Colorado; that prior to that time the town was being served in a very crude way by a private plant owned by the Mayor of the city. On or about April 1, 1928, the Highland Utilities Company, a Colorado corporation, purchased from Dwight Chapin, Jr. the light and power plant, distributing system and an ice plant. The purchase price paid by the applicant was $56,000, which includes the ice plant, and for which a valuation was placed at approximately $12,000. According to the

testimony a reasonable valuation of the properties obtained from Chapin on a reproduction new valuation amounts to approximately $63,000. However, this amount shall not be binding on the Commission in any valuation hearing held for the purpose of determining reasonable rates.

No other utility is serving this community at this time. There are 191 consumers who have separate meters. The population of Springfield is approximately 1,000.

On February 13, 1928, a franchise granting the right to construct, maintain and operate an electric light plant, to manufacture, generate, transmit, distribute and sell electricity for light, heat and power, and other useful purposes, was given by the board of trustees of Springfield to Dwight Chapin, Jr., which franchise is designated as Ordinance No. 44. This franchise was assigned to the applicant, Highland Utilities Company on or about April 1, 1928.

Highland Utilities Company has a capital stock of $500,000. All of this stock, except that held to qualify the directors, is controlled by the North Continent Utilities Corporation, a Delaware company. The Delaware company controls various operating utilities in a number of sections in the United States. The applicant company has recently entered the utility field in Colorado, and is about to take over and operate in several towns in this state.

After a careful consideration of all the evidence introduced at this hearing, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the construction and operation of the electric light and power plant, and distributing system, in the town of Springfield, County of Baca, State of Colorado, and authority to exercise the rights and privileges granted in a certain ordinance, designated as Ordinance No. 44, by the board of trustees of the town of Springfield, Baca County, Colorado.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the construction and operation of the electric light and power plant and distributing system by the applicant, Highland Utilities Company, in the town of Springfield, County of Baca, State of Colorado, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the public convenience and necessity requires the exercise by the applicant, Highland Utilities Company, of the franchise rights granted in a certain ordinance, designated as Ordinance No. 44, by the board of trustees of the town of Springfield, Baca County, Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant shall file its tariffs of rates, rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bock

John S. Jones

Commissioners.

Dated at Denver, Colorado,
this 2nd day of November, 1928.

(Decision No. 1982)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF THE COUNTY OF MESA FOR THE OPENING OF A PUBLIC HIGHWAY CROSSING ACROSS THE RIGHT-OF-WAY AND UNDER THE MAIN LINE TRACK OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY IN THE SE¼ OF THE SW¼ OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 1 EAST, UTE P. M. TWP 1 So., R 1 E, UTE PM	APPLICATION NO. 216

- - - - - - - - -
November 5, 1928.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises out of the application of the Board of County Commissioners of Mesa County, Colorado, filed with the Commission on August 9, 1922 in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the authorization of the opening and establishment of a public highway crossing, below grade, across the right-of-way and under the main line track of The Denver and Rio Grande Western Railroad Company at a point in the SE¼ of the SW¼ of Section 1, Township 1 South, Range 1, East, Ute P. M.

The application alleges that the highway at this point having been designated as being in the primary system by reason of its importance as a main artery of travel, the matter of safety to the heavy travel over it requires a separation of the grade at this point.

This application has now been pending for more than six years and has been the subject of much correspondence and consideration. A copy of the application was duly served on The Denver and Rio Grande Western Railroad Company and on the 29th of August, 1922, the company, through its attorney, made answer thereto denying the power of the Commission to order the establish-

ment of a public highway crossing at this point, and that the public interest did not require or demand the establishment of a highway crossing, or of a grade separation at the point referred to in the application. A copy of this answer was sent to the county commissioners of Mesa County and they advised that the route of the highway, upon which improvements were to be made, and particularly at the point where it was proposed to construct the underpass, had been duly opened in 1883 and that the grade crossing at this point had been in use for more than fifteen years. The matter then remained in abeyance until April 7, 1926 when it was set down for hearing at Grand Junction on April 26, 1926. On April 23, 1926, the attorney for the railroad company advised the Commission that the matter of the construction of the underpass had been under consideration by the engineering departments of the railroad company and the State Highway Department, and the general plans for the crossing had been agreed upon. He requested permission to withdraw the answer of the railroad company to the application and the vacation of the setting for the hearing, as it was believed the details of the plans for construction of the underpass could be worked out to the satisfaction of all concerned. This request was granted and the negotiations for the agreement were continued but were delayed because of the lack of state funds to enter upon any construction of the underpass.

Some years ago Federal Aid Project No. 208 was authorized covering the improvement of 8.1 miles of main highway No. 11 from Palisade westward. This project was divided into sections A, B, and C. Section "A", west of the grade crossing herein referred to, was completed on March 5, 1923, and Section "C" east of the crossing was completed on May 27, 1924. The work on Section "B", on which the proposed underpass was located, was deferred because of lack of available state funds. These funds became available this year. In the meantime, further engineering investigations developed that an underpass crossing was not desirable because of the drainage feature of the structure, and so it was finally decided to construct an overhead bridge structure instead of the underpass. So in accordance with this plan, a general plan of which is attached hereto and made a part of this proceeding, the negotiations for the construction of the overhead structure were continued between the Highway Department and the railroad company. An agreement in regard to the construction of the overhead

bridge at Mile Post 441 plus 4757 feet to replace the grade crossing at Mile Post 441 plus 4034 feet, heretofore referred to in the application in this case, between the railroad company, Mesa county and the State Highway Department has finally been concluded. This agreement, copy of which has been filed with the records in this case, provides that the state shall construct a viaduct over the tracks of the railroad at the point heretofore given at an angle of 60 degrees with the center line of the railroad and to have a clearance of 24 feet over the rails of the track of said railroad, the railroad company to contribute the sum of $12,000 towards the cost of the construction of the viaduct. The maintenance of the viaduct to be borne by the State thereafter. A supplemental agreement between the State Highway Department and the county of Mesa provides that if the present plans of state maintenance of Federal Aid Projects should be changed to the participation of the maintenance of such roads by counties, then the county would bear its proportion of maintenance of the viaduct.

The Commission takes cognizance of the fact that this viaduct or overhead crossing will eliminate a dangerous grade crossing because of the heavy motor travel at that point, and also that a suitable separation of grades at points where crossings are required by the public is the only permanent and complete method for the elimination of the present great dangers to life and person at these crossings. Such efforts as these are to be encouraged. Therefore, in accordance with the power conferred upon it by law, the Commission will now issue its order granting this application as revised.

O R D E R

IT IS THEREFORE ORDERED, In accordance with Section 29 of the Public Utilities Act, as amended April 16, 1917, that a public highway crossing, above grade, be and the same is hereby permitted to be constructed and established over and across the main line track or tracks and right-of-way of The Denver and Rio Grande Western Rrilroad Company at a point at Mile Post 441 plus 4757 feet of said railroad, conditioned, however, that prior to the opening of said crossing or viaduct to public travel, it shall be constructed in accordance with plans mutually agreed upon between the parties concerned and with due regard to the safety and convenience of the public.

IT IS FURTHER ORDERED, That when the overhead crossing or viaduct is

constructed and ready for public use the present grade crossing at Mile Post 441 plus 4034 feet of The Denver and Rio Grande Western Railroad, said crossing being in the SE¼ of the SW¼ of Section 1, Township 1 South, Range 1, East, Ute P. M., shall be permanently abandoned and closed.

IT IS FURTHER ORDERED, That the expense for the construction of the aforesaid viaduct shall be apportioned in accordance with the agreement entered into by the State Highway Department, the County of Mesa, State of Colorado, and The Denver and Rio Grande Western Railroad Company, dated May 11, 1928, and the expense of maintenance thereafter shall be borne by the State Highway Department, or by the State Highway Department and the County of Mesa, as set out in the supplemental agreement between said State Highway Department and Mesa County, dated August 25, 1928.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado, this
5th day of November, 1928.

Commissioners.

(Decision No. 1983.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

IN THE MATTER OF THE APPLICATION OF)
JAMES BROWN, DOING BUSINESS AS THE)
FORT LYON TAXI, FOR A CERTIFICATE OF) APPLICATION NO. 1201.
PUBLIC CONVENIENCE AND NECESSITY.)

- - - - - - - - - -

November 5, 1928.

- - - - - - - - - -

Appearances: Byron G. Rogers, Esq., Las Animas, Colorado, for applicant;
A. C. Johnson, Esq., Las Animas, Colorado, for W. J. Brown, protestant.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing a motor vehicle service for the transportation of passengers between Las Animas and Fort Lyon, a distance of approximately eight miles. The Board of County Commissioners of Bent County filed a statement with the Commission to the effect that in their opinion two taxi lines between Las Animas and Fort Lyon are necessary and should be continued. Protest was filed by W. J. Brown, to whom this Commission granted a certificate for the transportation of passengers over the same territory some time ago.

This application was set down for hearing in the Court House, Lamar, Colorado, on October 24, 1928, at which time and place evidence in support of and in opposition thereto was received.

The applicant has been conducting a passenger service between Fort Lyon and Las Animas for approximately ten years, with some interruptions during that period. The last interruption of this service was a few months ago, for a period of about five weeks. During that time W. J. Brown alone served the public in question. There was some testimony to the effect that during that time W. J. Brown gave satisfactory and adequate service.

The Commission, however, upon this record, prefers not to base its finding upon the adequacy of service of the present certificate holder.

The testimony shows that the applicant operates a Graham Paige Sedan, valued at approximately $1160. This sedan does not belong to the applicant, but is in the name of his wife, whose property it is according to the applicant's testimony. The testimony further shows that his financial credit is not very good. Under these circumstances the Commission does not feel itself warranted in issuing a certificate to the applicant. One operating a motor vehicle transportation system for passengers must carry public liability insurance, and it is our understanding that no such insurance issues unless the equipment belongs to the certificate holder. Furthermore, the public interest requires that a motor vehicle operator have some financial standing. An order will, therefore, be entered denying the certificate.

O R D E R

IT IS THEREFORE ORDERED, That the application of James Brown, doing business as the Fort Lyon Taxi, No. 1201, be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 5th day of November, 1928.

(Decision No. 1984)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF)
CLAUDE R. McKENNEY FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY.)
- -)

APPLICATION NO. 1091

- - - - - - - - -
November 5, 1928.
- - - - - - - - -

Appearances: Gordon & Gordon, Lamar, Colorado, attorneys for applicant.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing an irregular motor vehicle operation for the transportation of freight. Protest was filed against this application by The Atchison, Topeka and Santa Fe Railway Company. The same was set down for hearing in the Court House, Lamar, Colorado, on October 23, 1928, at which time and place evidence in support of this application was received.

The testimony shows that the applicant has a one-ton Graham truck, valued at approximately $1200. By far the major portion of his transportation business is for the Denver Alfalfa Milling and Products Company, which operates approximately twenty-three mills in the Arkansas Valley, commencing at Fowler and extending as far east as Garden City, Kansas. Undoubtedly this is a very convenient service for the Milling Company. It is the duty of the Commission, however, to make a finding of public convenience and necessity. The territory involved herein covers approximately 180 miles. To make a finding of public convenience and necessity over such an extensive territory for such an operation solely on this evidence, showing a convenience to one shipper, would, in our opinion, be unwarranted, because it is only the convenience of the Milling

Company that is involved. While we fully appreciate the great convenience to the Milling Company, it would seem to us that the only way such a service can be conducted is either by trucks belonging to the Milling Company, or by private contract.

In connection with the transporting of freight for the Milling Company, which is all a one-way haul, it was the desire of the applicant for the return haul to transport livestock to Lamar from the same territory. The Commission is granting a certificate for this purpose over a very large territory surrounding Lamar to one Glen Light. The evidence shows also that quite a number of farmers do their own trucking of livestock. The record is not sufficiently complete to make a finding of public convenience and necessity for the transportation of this livestock to Lamar, and therefore feels the Commission is not warranted in granting a certificate for such an operation.

The applicant desires also to do an intracity trucking business within Lamar. Having in mind the population of Lamar, and the fact that there is a need for considerable intracity trucking, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the applicant's service in that operation.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle system for the transportation of freight by Claude R. McKenney, applicant herein, to any point within the city of Lamar, and this order shall shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That in all other respects the application be, and the same is hereby, denied.

IT IS FURTHER ORDERED, That the applicant shall file tariffs of rates, rules and regulations as required by the Rules and Regulations of this Commission Governing motor vehicle carriers within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That this order is made subject to compliance by the applicant with the rules and regulations now in force or to be hereafter

adopted by the Commission with respect to motor vehicle carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Doug L. Jones

Commissioners.

Dated at Denver, Colorado, this
5th day of November, 1928.

(Decision No. 1985)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF)
GLEN LIGHT FOR A CERTIFICATE OF) APPLICATION NO. 1094
PUBLIC CONVENIENCE AND NECESSITY.)
-)

- - - - - - - - -
November 5, 1928.
- - - - - - - - -

Appearances: Todd & Underwood, Lamar, Colorado, attorneys for applicant.

D. A. Maloney, Esq., Denver, Colorado, attorney for Camel Truck Line.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing a motor vehicle system for the transportation of freight within the City of Lamar, from the surrounding territory of Lamar to Lamar, and also between Lamar and Denver.

Protest was filed against this application by the Atchison, Topeka and Santa Fe Railway Company, and by the Board of County Commissioners of the County of Arapahoe.

This application was set down for hearing in the Court House, Lamar, Colorado, on October 23, 1928, at which time and place evidence in support of the same was received.

The testimony shows that the applicant has been in the trucking business in and around Lamar for the past seven years; that he has three Dodge or Graham trucks, the valuation of which is approximately $6,000. His equipment is larger than the combined truck operations of others in and around Lamar. He transports considerable traffic from the freight depot of the rail carrier

to points within the City of Lamar, and livestock from a large territory surrounding Lamar, as indicated by Exhibit No. 1.

Mr. Hayes Williams appeared as a witness for the applicant, and testified that he is in the livestock business in Lamar; that he makes a specialty of shipping medium sized hogs to California points by rail; that in the past year he shipped approximately 250 cars of hogs to that territory, and a considerable quantity not quite so large to eastern points. These hogs are purchased from farmers in the territory described in Exhibit No. 1, f. o. b. Lamar, and it is very important, therefore, that the farmers have transportation facilities to ship these hogs by motor truck to Lamar. The territory served by the applicant in transporting livestock is approximately 75 miles south of Lamar, 40 miles west, 36 miles east and 35 miles north.

It appears from the evidence that the applicant has been serving this territory very satisfactorily in that capacity, and it would seem, therefore, that he should be authorized to transport livestock from the territory described to Lamar, mainly as a feeder to the rail carrier. It is assumed, of course, that the applicant will so conduct these operations in this so-called livestock territory as not to interfere with the authorized operation of other motor vehicle carriers.

The applicant transported also considerable livestock, poultry and eggs, and some household goods to Denver, but not between any intermediate points. The farmers in the vicinity of Lamar seem to desire to ship to the Denver market cattle in small quantities. Motor vehicle transportation is the only way that the farmer can thus market his livestock. The Commission, in other cases, has taken a broad viewpoint on this public convenience and necessity to the farmers in the shipment of livestock to stockyards. There is also some shipment of household goods, poultry and eggs. A witness, who is in the wholesale poultry and egg business in Lamar, testified to the public convenience and necessity as it relates to those commodities.

After a careful consideration of all the evidence introduced in this hearing, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the proposed motor vehicle system for the transportation of freight by the applicant within the City of Lamar; for the transportation of agricultural products, including livestock and building material from the territory described in Exhibit No. 1, to-wit, 75 miles south, 40 miles west, 36

miles east and 35 miles north to Lamar, and from Lamar to said territory; for the transportation of livestock, household furniture, poultry and eggs from Lamar to Denver, and from Denver to Lamar, but not to any intermediate points.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle system for the transportation of freight by Glen Light, applicant herein, within the city of Lamar; for the transportation of agricultural products, including livestock and building material only from the following described territory: Seventy-five miles south, forty miles west, thirty-six miles east and thirty-five miles north to Lamar, and from Lamar to said territory; for the transportation of livestock, household furniture, poultry and eggs only from Lamar to Denver and from Denver to Lamar, but not to or from any intermediate points, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant shall not operate on regular schedule in the territory described above.

IT IS FURTHER ORDERED, That the applicant herein shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission Governing Motor Vehicle Carriers within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedules filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions, and this order is made subject to compliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bock

Mayo S. Jones

H. W. Wilson

Commissioners.

Dated at Denver, Colorado, this
5th day of November, 1928.

(Decision No. 1986)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
* * *

IN THE MATTER OF THE APPLICATION)
OF HARTWELL PILLOUD FOR A CERTI-)
FICATE OF PUBLIC CONVENIENCE AND) APPLICATION NO. 960
NECESSITY.)

November 5, 1928.

Appearance: Herschel Horn, Esq., Lamar, Colorado,
for applicant.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing a motor vehicle system for the transportation of freight between Two Buttes and Lamar, Walsh, Vilas and Springfield, Colorado, and intermediate points. No protest was filed against this application. The same was set down for hearing in the Court House, Lamar, Colorado, on October 23, 1928, at which time and place evidence in support of said application was received.

The applicant has a one-ton truck, valued at $800.00; he has been operating as a motor vehicle carrier for the past three years in the territory in question. Two Buttes is an inland town in the northeast corner of Baca County, Colorado, and enjoys no method of transportation except by trucks. Applicant's operation affords the only motor vehicle transportation between the points in question. Two Buttes has a population of about one hundred people, and has a postoffice, one merchandise store, one hotel, one bank, three restaurants and one garage. Between Lamar and Two Buttes the applicant proposes a regular service on Tuesdays and Fridays of each week; between Walsh, Vilas and Springfield the demand for motor

vehicle transportation is not sufficient to justify a regular scheduled operation, and, therefore, the applicant proposes to serve those points from Two Buttes only when freight is offered for transportation.

The applicant desires also to transport livestock within a radius of five miles of Two Buttes to Lamar.

After a careful consideration of all the evidence introduced at the hearing, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the proposed motor vehicle system for the transportation of freight on regular schedule twice a week between Two Buttes and Lamar, and intermediate points; between Two Buttes and Walsh, Vilas and Springfield, not on regular schedule but whenever freight is offered for transportation; and also livestock within a radius of five miles from Two Buttes to Lamar, it being expressly understood, however, that the applicant will not operate between Springfield and Lamar.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle system for the transportation of freight by Hartwell Pilloud, applicant, between Two Buttes and Lamar and intermediate points; between Two Buttes and Walsh, Vilas and Springfield whenever freight is offered for transportation; within a radius of five miles from Two Buttes to Lamar for the transportation of livestock only, it being expressly understood that the applicant may not operate between Springfield and Lamar, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant herein shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission Governing Motor Vehicle Carriers within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedules filed with this Commission

except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions, and this order is made subject to compliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Geo Bock

John S Jones

Commissioners.

Dated at Denver, Colorado,
this 5th day of November, 1928.

(Decision No. 1987)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF)
RALPH T. PRESTON FOR A CERTIFICATE) APPLICATION NO. 1001
OF PUBLIC CONVENIENCE AND NECESSITY.)
- - - - - - - - - - - - - - - - - - - -

- - - - - - - - -
November 5, 1928.
- - - - - - - - -

Appearances: Ralph T. Preston, per se.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing a motor vehicle system for the transportation of freight and express between Springfield and Lamar, Colorado, and intermediate points.

The Board of County Commissioners of Baca County, filed a statement with the Commission to the effect that it has no objection to the application. No protests were filed.

This application was set down for hearing in the Court House, Lamar, Colorado, on October 23,1928, at which time and place evidence in support of same was received.

At the time of the hearing the applicant asked leave to amend his application so as to include an irregular operation within a radius of 50 miles from Springfield, for the transportation of agricultural products, including livestock and household furniture, except in such territory as is being served by some other certificate holder, to Lamar, and other points within a radius of ten miles therefrom, which amendment was allowed.

Springfield is located 50 miles south of Lamar, is the county seat of Baca County and has a population of about one thousand. There is no direct rail transportation between these two points. The applicant proposes to operate a regular scheduled freight service between Springfield

and Lamar four times a week, on Mondays, Wednesdays, Thursdays and Fridays. His proposed irregular operation will be conducted only when freight is offered for transportation. The applicant has been operating since October 1,1927, and has paid his road tax since that time. His equipment consists of a 1½ ton Graham truck, valued at approximately $1,000, and a Ford truck valued at $200.

After a careful consideration of all the evidence introduced at the hearing, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the motor vehicle transportation system of the applicant for the transportation of freight between Springfield and Lamar, Colorado, and for the transportation of agricultural products, including livestock, and household furniture, from Springfield and the territory within a radius of fifty miles therefrom to Lamar and other points within ten miles of the latter, whenever such freight is offered for transportation, except, however, that the public convenience and necessity does not require that the applicant render such service in territory now being served by other authorized certificate holders.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle system for the transportation of freight by Ralph T. Preston, applicant, between Springfield and Lamar, Colorado, and intermediate points on regular schedule, and for the transportation of agricultural products, including livestock, and household furniture, from Springfield and the territory within a radius of fifty miles therefrom to Lamar and other points within ten miles of the latter, whenever such freight is offered for transportation, except, however, that the public convenience and necessity does not require that the applicant render such service in territory now being served by other authorized certificate holders, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant herein shall file tariffs of rates, rules and regulations and time and distance schedules as required by

the Rules and Regulations of this Commission Governing Motor Vehicle Carriers within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedules filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions, and this order is made subject to compliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado, this
5th day of November, 1928.

(Decision No. 1988)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
* * *

IN THE MATTER OF THE APPLICATION OF BERT MYER, DOING BUSINESS UNDER THE NAME OF THE MYER BROTHERS TRANSFER COMPANY, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 1060

November 5, 1928.

Appearances: Byron G. Rogers, Esq., Las Animas, Colorado, for applicant;
A. C. Johnson, Esq., Las Animas, Colorado, for H. Hayhurst, protestant.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing an irregular motor vehicle system for the transportation of freight within the city of Las Animas, Colorado, and within a radius of 25 miles.

The County Commissioners of Bent County filed a statement with the Commission to the effect that they had no objections to this application, and feel that the proposed operation is a necessity to the community.

Protest was filed by H. Hayhurst, who operates a motor vehicle system for the transportation of freight under authority from this Commission.

This matter was set down for hearing at the Court House, Lamar, Colorado, on October 24, 1928, at which time and place evidence in support of and in opposition to said application was received.

Las Animas is a city of approximately 4100 population. Considerable livestock and agricultural products are trucked into Las Animas as feeders to the rail carrier. The farmers in the surrounding territory of Las Animas undoubtedly look upon this operation as a public convenience and necessity.

The Commission on February 29, 1928, granted a certificate to H. Hayhurst, protestant, on a very extensive record, considerably greater than the one made in this application, authorizing him to operate an irregular motor vehicle freight transportation system within the city of Las Animas and a radius of 15 miles from and to the city of Las Animas. The applicant in the instant case asks for a radius of 25 miles.

The Commission believes under the record made herein that the applicant should be limited to the transportation of agricultural products, including livestock only, within a radius of 15 miles east and west, and within a radius of 50 miles north and south. There is no other motor vehicle transportation operation directly to Las Animas north and south, where a large quantity of stock is raised, and, therefore, the Commission feels that that territory should be more extensive. East and west the Commission believes that a 15 mile radius is sufficient, because of other motor vehicle transportation operations authorized in that territory.

The testimony shows also an additional operation for the transportation of freight intracity as Las Animas is a public convenience and necessity.

H. Hayhurst, protestant, also operates a transportation system of freight between Las Animas and Pueblo. The testimony shows that the applicant has a number of contracts to transport freight from Las Animas to Pueblo and return. In the opinion of the Commission this is a common carrier operation, and should immediately be discontinued by the applicant. Furthermore, the issuance of this certificate precludes the applicant from operating any longer as a private contract carrier, and limits him solely to the territory granted in this certificate. Any operations outside of this territory may involve a cancellation of the certificate. The applicant has four trucks valued at approximately $3200.

After a careful consideration of all the facts and circumstances, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the operation by the applicant of an irregular motor vehicle system for the transportation of freight within the city of Las Animas

and the transportation of agricultural products, including livestock, within a radius of 15 miles east and west, and 50 miles north and south from and to the city of Las Animas.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle system for the transportation of freight by the applicant, Bert Myer, doing business under the name of The Myer Brothers Transfer Company, within the city of Las Animas, and for the transportation of agricultural products, including livestock, within a radius of fifteen miles east and west and fifty miles north and south from and to the city of Las Animas, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant shall not operate on regular schedule in the territory described above.

IT IS FURTHER ORDERED, That the certificate herein shall not become effective until the applicant has paid all the tax now due for the use of the public highway as required by law.

IT IS FURTHER ORDERED, That the applicant herein shall file tariffs of rates, rules and regulations as required by the Rules and Regulations of this Commission Governing Motor Vehicle Carriers within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That this order is made subject tocompliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carrier, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Harry S. Jones

Commissioners.

Dated at Denver, Colorado,
this 5th day of November, 1928.

(Decision No. 1989)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF)
E. M. HUMPHREY FOR A CERTIFICATE OF) APPLICATION NO. 1015
PUBLIC CONVENIENCE AND NECESSITY.)
- -)

- - - - - - - - -
November 5, 1928.
- - - - - - - - -

Appearances: Herschel Horn, Esq., Lamar, Colorado,
for applicant.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity, authorizing the applicant to operate a motor vehicle system for the transportation of freight between Lamar and Campo, and between Springfield and Campo, Colorado. No protest was filed against this application. The same was set down for hearing in the Court House, Lamar, Colorado, on October 23, 1928, at which time and place evidence in support of the same was received.

Campo is an inland town with a population of approximately one hundred. It has two general stores, one drug store, one garage and two cream stations, and is not being served by any other truck line. All supplies for this territory must be trucked in. Campo is approximately 72 miles from Lamar, and 23 miles from Springfield. The applicant has a 1½ ton truck, valued at approximately $800. He has been operating for approximately three years. Lamar is located on The Atchison, Topeka and Santa Fe Railroad, and Springfield is located on a branch of the same railroad but not directly connected with Lamar by rail. The applicant proposes to operate a regular scheduled service on Friday of each week between Lamar and Campo, and Thursday of each week between Springfield and Campo. The applicant does not transport freight from Lamar to

Springfield or from Springfield to Lamar, and the certificate issued herein does not authorize such transportation. The applicant seeks also to transport to Lamar livestock from the territory within a radius of ten miles from Campo.

After a careful consideration of all the evidence introduced at the hearing, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the motor vehicle operation by the applicant of a motor vehicle system for the transportation of freight on regular schedule once a week between Lamar and Campo, but not between Lamar and any intermediate points; between Springfield and Campo, and within a radius of ten miles from Campo to Lamar for the transportation of livestock only.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle system for the transportation of freight by E. M. Humphrey, applicant, between Lamar and Campo, Colorado, but not between Lamar and any intermediate points, and between Springfield and Campo, and for the transportation of livestock only to Lamar from a territory within a radius of ten miles from Campo, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the certificate herein shall not become effective until the applicant has paid all the tax now due for the use of the public highway, as required by law.

IT IS FURTHER ORDERED, That the applicant herein shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission Governing Motor Vehicle Carriers within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedules filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions, and this order is made subject to compliance by the applicant with the rules and regulations now in force or to be

hereafter adopted by the Commission with respect to motor vehicle carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bock

Dan L. Jones

Commissioners.

Dated at Denver, Colorado,
this 5th day of November, 1928.

(Decision No. 1990.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

IN THE MATTER OF THE APPLICATION OF)
PAUL WILLIAMS FOR A CERTIFICATE OF) APPLICATION NO. 962.
PUBLIC CONVENIENCE AND NECESSITY.)

November 5, 1928.

Appearances: Paul Williams, per se.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing a motor vehicle system for the transportation of passengers and freight between Eads and Lamar, Colorado, and intermediate points. A statement was filed by the County Commissioners of Kiowa County, to the effect that they approve the granting of a certificate to the applicant.

This application was set down for hearing in the Court House, Lamar, Colorado, on October 23, 1928, at which time and place evidence in support of the same was received.

This application was originally filed by one J. L. Eales, who appeared at the hearing and personally requested that Paul Williams be substituted as the applicant for him, which amendment, there being no objection, was allowed.

It developed also that the passenger business between these points is very meager, and that therefore the applicant does not desire to urge that portion of the application.

The applicant's equipment consists of a one-ton Graham truck, valued at approximately $1500. He is operating under a contract over a star route carrying U. S. mail daily, except Sunday, between Eads and Lamar. He, therefore, desires to operate at the same time and in connection therewith a regular sched-

uled freight service between Eads and Lamar, and intermediate points, daily except Sunday. He proposes also to transport livestock to Lamar from the territory within a radius of ten miles from Eads and two miles from Wiley. There is no other authorized motor vehicle carrier in the territory in question.

After a careful consideration of all the evidence introduced at this hearing, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the motor vehicle system for the transportation of freight by the applicant between Eads and Lamar, Colorado, and intermediate points, and for the transportation of livestock only to Lamar from the territory within a radius of ten miles from Eads and two miles from Wiley.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle system for the transportation of freight by Paul Williams, applicant, between Eads and Lamar, Colorado, and intermediate points, and for the transportation of livestock only to Lamar from the territory within a radius of ten miles from Eads and two miles from Wiley, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the certificate herein shall not become effective until the applicant has paid all the tax now due for the use of the public highway as required by law.

IT IS FURTHER ORDERED, That the applicant herein shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission Governing Motor Vehicle Carriers within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedules filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions, and this order is made subject to com-

pliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 5th day of November, 1928.

(Decision No. 1991)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

IN THE MATTER OF THE APPLICATION OF)
E. E. ECKELS FOR A CERTIFICATE OF) APPLICATION NO. 1028
PUBLIC CONVENIENCE AND NECESSITY.)

November 7, 1928.

S T A T E M E N T

By the Commission:

Our attention has been called by counsel for the above applicant to the order entered herein on October 20, 1928, granting a certificate of public convenience and necessity for the transportation of freight between Greeley and Longmont, Colorado. It is suggested that this order should read "between Greeley and Longmont and intermediate points." Since it was the intention of the Commission to grant a certificate for a motor vehicle freight operation between Greeley and Longmont, Colorado and intermediate points, the order entered herein on October 20, 1928, should be modified to that extent.

O R D E R

IT IS THEREFORE ORDERED, That the order granting a certificate of public convenience and necessity herein be so modified as to provide for motor vehicle freight operation by the applicant between Greeley and Longmont, Colorado, and intermediate points.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 7th day of November, 1928.

(Decision No. 1992.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

IN THE MATTER OF THE APPLICATION OF)
C. E. GOODRICH FOR A CERTIFICATE OF) APPLICATION NO. 1155
PUBLIC CONVENIENCE AND NECESSITY.)

- - - - - - - - - -

November 8, 1928.

- - - - - - - - - -

Appearances: C. E. Goodrich, Evergreen, Colorado, per se;
D. Edgar Wilson, Esq., Denver, Colorado, for Rocky Mountain Motors Company, The Rocky Mountain Parks Transportation Company, Denver Cab Company, M. F. Thomas and James R. Hobbs.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing a motor vehicle system for the transportation of passengers between Denver and Evergreen, and other points in Bear Creek Canon, Colorado, and a sightseeing operation from Evergreen, Colorado, to Silver Plume, Echo Lake, Mount Evans and Grand Lake, via Berthoud Pass and West Portal, and return. Protest was filed against this application by the Rocky Mountain Parks Transportation Company and the Denver Cab Company.

This application was set down for hearing on October 16, 1928, at the Hearing Room of the Commission, Denver, Colorado, at which time evidence in support of, and in opposition thereto, was received. The testimony shows that the applicant has one seven-passenger Peerless sedan valued at approximately $800.00. For the past several years, the applicant has, off and on, conducted a motor vehicle freight and passenger service. This operation was not on a regular schedule but only as the occasion arose. Sometime in 1918, the applicant sold his motor vehicle equipment to M. F. Thomas of Denver. There is some dispute as to whether he sold also his transportation business at that time, but for the purpose of this opinion, it is not necessary to determine

that question. It is a fact, however, that for several years thereafter M. F. Thomas served the territory between Denver and Evergreen, Colorado, with a truck and bus service until the same was purchased by the Denver Cab Company, protestant herein. Goodrich actively participated in the World War and returned to Evergreen sometime during the year 1919. Sometime thereafter he again entered the motor vehicle transportation field but mainly during the summer season and then not on regular schedule. For the past two years he has been hauling a few passengers during part of the year between Denver and Evergreen, mainly on Fridays and Sundays. He testified that he had about ten regular passengers, most of whom are school teachers.

The Denver Cab Company has for the past several years been operating a regular scheduled passenger and express service between Evergreen and Denver, making three round trips per day during the summer and one round trip per day during the winter. The patronage for the winter schedule is not very great and, undoubtedly, is conducted at a loss during that time. No one but the applicant testified as to the public convenience and necessity for his service. There seems to be no question that the regular scheduled passenger service is being conducted by the Denver Cab Company in an adequate and efficient manner, and there is no testimony in the record from which the Commission could find that the public convenience and necessity requires any further passenger service by motor vehicle between Evergreen and Denver.

The applicant asks also for a sightseeing operation from Evergreen to Silver Plume, Echo Lake, Mount Evans and Grand Lake, and return. This is not conducted on any regular schedule but is only operated when tourists and sightseers present themselves to the office of the applicant for such service. Evergreen has quite a summer population and, undoubtedly, there is a demand for such a service as the applicant proposes. A similar operation is also conducted by James R. Hobbs, Application No. 1166, in which the Commission is also entering an order granting a certificate for such an operation. Hobbs has four automobiles; Goodrich only one. It would seem that that equipment would be sufficient to take care of such sightseeing operations, and both Hobbs and Goodrich should,

therefore, be limited to that equipment. However, since the Commission has not had the benefit of a very extended record in either application, and especially not in the instant applicant, the Commission feels that, in order to more fully ascertain the desires of the public in that vicinity, it should at this time issue a certificate of public convenience and necessity for only one year from the date hereof, retaining jurisdiction over the application for further and final disposition after the 1929 season.

After a careful consideration of the evidence herein, the Commission is of the opinion, and so finds, that the public convenience and necessity does not require the applicant's proposed passenger service between Evergreen and Denver, Colorado, and other points. The Commission does find that the public convenience and necessity requires that the applicant herein receive a certificate of public convenience and necessity to operate a motor vehicle system for the transportation of the sightseeing and tourist public for one year from the date of this order from Evergreen, Colorado, to Silver Plume, Echo Lake, Mount Evans and Grand Lake via Berthoud Pass and West Portal, and return, for round trip operations only.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires that a certificate of public convenience and necessity be issued to the applicant herein for the term of one year from the date hereof to operate a motor vehicle system for the transportation of sightseers and tourists from Evergreen, Colorado, to Silver Plume, Echo Lake, Mount Evans and Grand Lake via Berthoud Pass and West Portal, and return; and this order shall be taken, deemed and held to be a certificate of public convenience and necessity for one year from the date hereof, subject to the following terms and conditions which, in the opinion of the Commission, the public convenience and necessity requires:

(a) That all sightseeing and tourist operations by the applicant herein shall be limited to round trip operations originating and terminating at Evergreen, Colorado.

(b) That no one way transportation of passengers is permitted under this certificate.

(c) That the quantity of equipment to be used in this operation shall be limited to one seven passenger sedan.

(d) That the certificate of public convenience and necessity hereby issued shall be good for one year only from the date hereof, and that the Commission retains jurisdiction of the application herein for further hearing and determination, and for such disposition as the Commission deems the public convenience and necessity shall require.

IT IS FURTHER ORDERED, That the applicant herein shall file a tariff of rates, rules and regulations as required by the Rules and Regulations of the Commission Governing Motor Vehicle Carriers within a period of not to exceed twenty days from the date hereof, and that this certificate is issued subject to compliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

IT IS FURTHER ORDERED, That in all other respects, except as is granted in the certificate issued herein, the application be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 8th day of November, 1928.

(Decision No. 1993)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF JAMES R. HOBBS FOR A CERTIFICATE) APPLICATION NO. 1166
OF PUBLIC CONVENIENCE AND NECESSITY.)

November 8, 1928.

Appearances: D. Edgar Wilson, Esq., Denver, Colorado, for applicant;
C. E. Goodrich, Evergreen, Colorado, protestant.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing a motor vehicle system for the transportation of passengers between Evergreen and Troutdale, Brook Forest and Bendemeer Lodge in Jefferson County, Colorado, and a scenic operation from Evergreen, Troutdale, Brook Forest and Bendemeer Lodge, Colorado, over thirteen routes. No written protest was filed against the application.

This application was set down for hearing on October 30, 1928, at the Hearing Room of the Commission, Denver, Colorado, at which time evidence in support of, and in opposition thereto, was received. The testimony shows that the applicant has four touring cars valued at approximately $3,050; that for more than seven years past, he has operated, in conjunction with one M. F. Thomas of Evergreen and Denver, and with the Denver Cab Company, a motor vehicle passenger service between Evergreen, Brook Forest and Bendemeer Lodge in Jefferson County, Colorado. At these points, there are mountain resorts and hotels which receive considerable patronage during the summer months. There is also considerable motor vehicle operation to scenic points from

Evergreen, Troutdale, Brook Forest and Bendemeer Lodge. These scenic points will be more fully set forth in the findings and order.

The Commission has on this day granted to C. E. Goodrich, Application No. 1155, a certificate to operate to certain scenic points from Evergreen. It would seem that the amount of equipment now owned by Hobbs and Goodrich would be sufficient to take care of such scenic operations, and, therefore, they should be limited to that equipment. However, since the Commission has not had the benefit of a very extended record in either application, the Commission feels that, in order to more fully ascertain the desires of the public in that vicinity, so far as they relate to scenic operations, it should at this time issue a certificate of public convenience and necessity for only one year from the date hereof, retaining jurisdiction over this application for further and final disposition after the 1929 season.

After a careful consideration of the evidence herein, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the motor vehicle system of the applicant herein for the transportation of passengers between Evergreen, Brook Forest and Bendemeer Lodge, Colorado, and intermediate points. The Commission further finds that the public convenience and necessity requires that the applicant herein receive a certificate of public convenience and necessity to operate a motor vehicle system for the transportation of the sight-seeing and tourist public for one year from the date of this order from Evergreen, Troutdale, Brook Forest and Bendemeer Lodge over the following routes, to-wit:

1. Mount Evans, Echo Lake, Idaho Springs, Chicago Creek.
2. Silver Plume, Georgetown.
3. Platte Canon, via Bailey, Shawnee, Kiowa.
4. Colorado Springs via Bailey, Shawnee, Kiowa, Fairplay, Hartzell, Denver. app.
5. Georgetown.
6. Grand Lake, West Portal, Berthoud Pass.
7. Berthoud Pass.
8. Central City.
9. Denver, via Bear Creek or Lookout Mountain.
10. Boulder, via Central City or Golden.
11. Lookout Mountain.
12. Morrison.
13. Indian Hills, Conifer.

for round trip operations only.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle system of the applicant herein for the transportation of passengers between Evergreen, Brook Forest and Bendemeer Lodge, Colorado, and intermediate points; and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the public convenience and necessity requires that a certificate of public convenience and necessity be issued to the applicant (for a term of one year from the date hereof) to operate a motor vehicle system for the transportation of sightseers and tourists from Evergreen, Troutdale, Brook Forest and Bendemeer Lodge, Colorado, over the following routes, to-wit:

1. Mount Evans, Echo Lake, Idaho Springs, Chicago Creek.
2. Silver Plume, Georgetown.
3. Platte Canon, via Bailey, Shawnee, Kiowa.
4. Colorado Springs via Bailey, Shawnee, Kiowa, Fairplay, Hartzell, Denver. app.
5. Georgetown.
6. Grand Lake, West Portal, Berthoud Pass.
7. Berthoud Pass.
8. Central City.
9. Denver, via Bear Creek or Lookout Mountain.
10. Boulder, via Central City or Golden.
11. Lookout Mountain.
12. Morrison.
13. Indian Hills, Conifer,

and this order shall be taken, deemed and held to be a certificate of public

convenience and necessity for one year from the date hereof, subject to the following terms and conditions which, in the opinion of the Commission, the public convenience and necessity requires:

(a) That all sightseeing and tourist operations by the applicant herein shall be limited to round trip operations originating and terminating at Evergreen, Troutdale, Brook Forest and Bendemeer Lodge in Jefferson County, Colorado.

(b) That no one way transportation of passengers is permitted under this certificate.

(c) That the quantity of equipment to be used in this operation shall be limited to four seven passenger touring cars.

(d) That the certificate of public convenience and necessity hereby issued shall be good for one year only from the date hereof, and that the Commission retains jurisdiction of the application herein for further hearing and determination, and for such disposition as the Commission deems the public convenience and necessity shall require.

IT IS FURTHER ORDERED, That the applicant herein shall file a tariff of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of the Commission Governing Motor Vehicle Carriers within a period of not to exceed twenty days from the date hereof, and that this certificate is issued subject to compliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Brock

Danys S. Jones

Commissioners.

Dated at Denver, Colorado,
this 8th day of November, 1928.

(Decision No. 1994)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN RE HAZARD OR UNSAFE CONDITION)
UPON COLORADO UTILITIES CORPORA-)
TION 13000 VOLT TRANSMISSION LINE) CASE NO. 390
TO PHIPPSBURG EXISTING UPON THE)
FARM OF AUGUST MARTENS, OAK CREEK.) COMPLAINT
- - - - - - - - - - - - - - - - - - -

- - - - - - - - -
November 7,1928.
- - - - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That complaint has been made to the Commission by August Martens of Oak Creek, Colorado, on June 23,1928, against the unsafe condition of the Colorado Utilities Corporation's 13000 volt transmission line where it crosses the farm of said Martens near Oak Creek, and said complaint states that the hazard exists because said transmission line is improperly built at this point so that the wires are too close to the ground, in consequence of which he had suffered a severe injury to himself and his property while driving a haystacker under it.

IT FURTHER APPEARING, That an effort has been made to settle this matter as Informal Complaint No. 1629 but the said Corporation to date has failed to correct this hazard, and

IT FURTHER APPEARING, That on September 20,1928, the Commission's engineer visited the scene of this hazard and interviewed said Martens and thereafter made a report to the Commission regarding the same, which report was the basis of a letter dated October 3,1928, written by Commissioner Allen to said corporation insisting, "that within a short time, say ten days or two weeks, this hazardous situation be corrected," and that thereafter the Commission received letters from A.E.Anderson, general manager of said Corporation, dated October 6, November 1 and November 2 promising immediate attention to the Commission's request and that five weeks have now elapsed and no fruitful measures have been taken to correct this hazard.

O R D E R

IT IS THEREFORE ORDERED, That upon the Commission's own motion, you, the Colorado Utilities Corporation, file written answer within ten days of the date of this order with the Commission showing why an order should not be entered requiring you immediately to start such construction as may be necessary to correct the hazardous condition of the transmission line on and over the farm of said Martens and proceed diligently and without delay to its completion to the end that such construction shall be entirely completed before December 1, 1928, and

IT IS FURTHER ORDERED, That this matter be and the same is hereby set down for hearing in the hearing room of the Commission, 318 State Office Building, Denver, Colorado, on December 3, 1928, at 10 A.M., and

IT IS FURTHER ORDERED, That Informal Complaint No. 1629 be transferred to the formal complaint docket.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado, this 7th day of November, 1928.

PUC 312

(Decision No. 1995)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE GREELEY TRANSPORTATION COMPANY, A CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1092

November 24, 1928.

Appearances: E. H. Houtchens, Esq., Greeley, Colorado, attorney for applicant;
D. Edgar Wilson, Esq., Denver, Colorado, and Clay R. Apple, Esq., Greeley, Colorado, attorneys for Colorado Motor Way, Inc., protestant;
E. G. Knowles, Esq., Denver, Colorado, attorney for Union Pacific Railroad Company.

S T A T E M E N T

By the Commission:

On April 13, 1928, The Greeley Transportation Company, a corporation, filed its application for a certificate of public convenience and necessity authorizing the transportation of passengers in an intracity service in the city of Greeley, and also the transportation in a separate service of passengers between Greeley and Denver and intermediate points. Thereafter written protests and answers, relating solely to the intercity operations, were filed by Union Pacific Railroad Company, Colorado Motor Way, Inc., hereinafter referred to as the Motor Way and The Colorado and Southern Railway Company. The city of Greeley filed a demurrer, and as grounds therefor alleged that this Commission has no jurisdiction over the city of Greeley or of the streets or highways within the corporate limits thereof; that the application does not state facts sufficient to give this Commission any authority or jurisdiction over said city or its said streets; and that two separate applications

for a certificate of public convenience and necessity covering two separate and distinct routes have been united improperly in one application. The case was set for hearing and was heard in the court house in Greeley on September 12, 1928.

Section 4 of House Bill No. 430, passed at the last session of the Legislature reads as follows:

> "No motor vehicle carrier as defined in this act shall hereafter operate any motor vehicle for the transportation of either persons or property, or both, without first having obtained from the Commission a certificate declaring that the present or future public convenience and necessity require, or will require, such operation,* * *"

The applicant is without question a motor vehicle carrier as defined in said act. That this Commission does have jurisdiction over public utilities operating in those cities other than what are known as Home Rule cities needs, in our opinion, no argument at this time. The question then is whether public convenience and necessity does require the motor vehicle operation of the applicant within the city of Greeley. The applicant has been conducting a city transportation operation in said city for almost six years. It operates regularly two busses. Its equipment consists of two 21-passenger Reo busses, 1 25-passenger Mack bus and 1 17-passenger Reo bus. The value of all of said equipment is $25,000.00. The encumbrance thereon amounts to $4,500.00.

The evidence shows without any question that the applicant has been rendering an efficient, satisfactory and a much needed service in the transportation of passengers within said city and that in so doing it has and does now comply with all ordinance requirements of said city. No other operator is furnishing such service.

After careful consideration of the testimony the Commission is of the opinion and so finds that the public convenience and necessity requires the motor vehicle operation of the applicant for the transportation of passengers within the city of Greeley.

The applicant proposes to use in the service which it desires to render between Greeley and Denver, three 29-passenger modern Mack busses with

baggage racks inside. The cost of each of these busses would be $11,000.00. Of the total purchase price of $33,000.00, one-third would be paid down and the balance would be paid in installments. A large part of the original purchase price would be borrowed by the applicant.

On April 28, 1925, the applicant filed with this Commission an application for a certificate authorizing the transportation of passengers between Greeley and Denver without stopping to take on or discharge passengers at intermediate points. On June 6, 1925, that application was denied. In the course of the opinion in that case the Commission stated that the Motor Way, protestant herein, had been operating under a certificate issued on September 15, 1923, and that the transportation service afforded by said company was sufficient to meet all reasonable demands made by the public in the communities affected. The Commission further stated that if a certificate were granted to the applicant the authorized operator would suffer such losses that the deficit "would perhaps be so large as to seriously affect its continued operation."

The applicant seeks in this case to support its application by its offer to make the trip between the two terminal points in an hour and forty minutes, being ten minutes less than the time now taken by the protestant, Colorado Motor Way, Inc. and by its offer to transport passengers one way between the terminal points for $1.50 and on a round trip for $2.50. The rates of the Motor Way now in effect are $1.90 one way and $3.40 for the round trip.

Under the statute it is the duty of this Commission before granting any certificate to find from the evidence that the public convenience and necessity requires it. The question then is whether the public convenience and necessity has been shown in this case to require the proposed operation by the applicant. Before answering this question we will refer to a number of authorities. In the course of the opinion of the Commission in Application No. 436 in which it denied the application previously filed by the applicant herein, we stated:

> "The general principle of public utility regulation protecting the utility which is rendering to the public

a service reasonably adequate and practically sufficient against injustice and ruinous competition, is fairly well settled. The purpose and application of this general principle is intended in the interest of the public welfare. This general principle does not mean that all competition is unjust and unnecessary, but that each case should stand on the special facts and circumstances."

In Re Fay Elliott, P.U.R. 1926A, 380, we said, 382:

"* * *that to permit more motor truck carriers to operate than is reasonably necessary to properly take care of the business to be handled over said line of route will deprive said protestant of the benefit of his certificate already granted by this Commission, and to admit several to this field of activity will tend to decrease the volume of business for each utility, and tend to make the overhead expense and other expense of each utility heavier, even to the point of being burdensome, and that it would be only a matter of time until the weakest and less able financially to withstand the pressure of little or no business must abandon their activities as public utilities; that the protestant is at this time adequately prepared financially and with equipment to take care of all business offered to him in the said territory, and that to permit competition would further divide the business now adequately handled."

We held in the case of Re Edd D. Harriss, P.U.R. 1927E, 730,731:

"In order to make out a case of public convenience and necessity of a motor vehicle system for the transportation of freight between Fowler and Pueblo, Colorado, where the Commission has already granted one certificate, it is necessary to prove that the public convenience and necessity requires an additional operation and that the present operation is not sufficient to meet all public demands."

In its opinion in Re United Stages et al, P.U.R. 1925A, 688,696, the California Commission said:

"The primary interest of the citizens of Santa Monica and the duty of the Commission lie in the safeguarding of adequate provision for the existing operations of transportation companies now operating in that community. Anything that would tend to jeopardize the existing service, or that would tend to prevent such transportation companies from adequately meeting the full growing demands of such service would not meet the requirements of public convenience and necessity."

The Maine Commission in Re Maine Motor Coaches, Inc., P.U.R. 1926B, 545, 553-554, stated:

> "We feel that the principle of regulated monopoly so generally adopted throughout the nation, and particularly in our own state, by restriction upon competition as expressed in legislative enactment, with respect to other branches of public service applies with equal force to those of our citizens who have established such business, with the consent of the state, expressed through this Commission, of transporting passengers over regular routes upon the highways of this state between regular termini for hire."

The Maine Commission after quoting Honorable Herbert Hoover then stated, page 555:

> "This will make for high-grade equipment, a jealous guarding of the rights thus obtained, while the opposite course would be fraught with such uncertainty as to result in the use of deteriorated equipment and a half-hearted response to the public need of service. Certainty in any business is an economic bulwark. A feeling of insecurity cannot contribute to the attainment of a high standard by the ordinary man in any endeavor of life."

The Virginia Court of Appeals in Norfolk Southern Railroad Company v. Commonwealth, 126 S.E. 82, P.U.R. 1925C, 555,563, held:

> "Existing transportation systems should be protected so far as compatible with the public interest. There should be no unreasonable or unnecessary duplication of service, to the point that efficient service is made impossible."

It is obvious that the ultimate purpose is the protection and benefit of the public. As was stated by the Indiana Commission in Re Highway Transportation Company, P.U.R. 1926D, 594, 602:

> "Not the carrier but the public weal must be the dominant consideration."

In addition to the operations of the Motor Way, hereinafter described, Union Pacific Railroad Company operates four passenger trains daily each way between Greeley and Denver.

The service rendered by the protestant, the Motor Way, is shown by the evidence to be generally satisfactory although there was some substantial complaint and evidence in support thereof, about the drivers for that company loafing and smoking at intermediate points while the passengers wait in the

busses. Such conduct undoubtedly is annoying to the passengers. We believe the evidence is such that that company doubtless has seen to it that this practice of some of the drivers has been discontinued. If it has not it is a detail of service over which this Commission has power and which it will if necessary promptly take steps to correct.

We do not regard the ten minutes proposed by the applicant to be saved in its trip between the terminal points, even if it could safely operate on such schedule, a matter of a great deal of importance. Moreover, whether it could safely operate on such a schedule would remain to be seen.

The said protestant is now making eight regular runs daily from Denver to Greeley, an additional run on Sundays without any stops at intermediate points, and still another run on Saturdays, Sundays and holidays. In the other direction it makes eight regular runs and one additional run on Saturdays, Sundays and holidays. It is admitted that the said protestant is able to transport all passengers desiring to travel over the route in question. The evidence shows that for each average bus mile the protestant's busses run they carry an average of less than ten passengers in busses with a capacity of almost three times that number.

However, the argument is made that with the reduced rates which the applicant proposes to put into effect the increased business will be such that there will be enough business for both the present operator and the applicant. This is merely a speculation. Whether any greatly increased number of people will ride on motor vehicles over the route in question merely because the one way fare would be reduced forty cents and the round trip fare ninety cents is very doubtful.

There was some opinion evidence that the applicant could afford to operate at a profit at the rates proposed, but the information upon which the opinion was based was so meager and unsatisfactory as to make the evidence of little value. There was no evidence tending to show that because of any inherent difference between the mode of operation of the applicant and that of the protestant the applicant can operate at any lower cost than does the protes-

tant. The evidence does show that the protesting operator lost $12,000.00 in one year when the applicant herein was unlawfully operating over the route in question.

What the public is interested in is an efficient, dependable operation at a reasonable cost. If a certificate were granted to the applicant herein it is probable that a rate war would immediately ensue. The stronger of the two operators would survive. Such a warfare cannot in the long run, be for the public interest, although the public might appear to benefit temporarily. It is true that this Commission has power to regulate rates, but its jurisdiction to prevent reduction of rates, particularly those of a company whose financial strength will not be seriously impaired thereby, is limited, as we pointed out in Re The Cheyenne Mountain Co., App.No.1089, decided by this Commission this year.

As we view the case the only possible ground for granting the certificate would be one of rates. As we have stated, there is no evidence that because of any inherently different manner of operation the applicant can operate at any lower cost than the certificate holder does. The rates of the certificate holder may on proper showing be ordered by this Commission to be reduced. Unless they are voluntarily reduced, the Commission expects in the reasonably near future, to enter on its own motion upon an investigation thereof. If they are unreasonably high they will be ordered lowered and the public will then have the benefit of the continued operation of the present holder at such rates as are reasonable. The Commission stands ready and eager to see that the public at all times gets the service it is entitled to at reasonable rates and will gladly receive and hear complaints to that end.

There was quite a little evidence about a contract entered into on February 5, 1926, after the previous application of the applicant had been denied by which the applicant agreed that it would not operate between Greeley and Denver and the protestant, the Motor Way, agreed that it would not operate between Denver and Pueblo. There was further evidence bearing on the violation of said agreement which tended to show that the applicant had

taken passengers from Greeley to Denver in a bus; that the protestant had sold some tickets to Pikes Peak as distinguished from Colorado Springs. However, the Commission does not base its finding and order on said contract or any evidence relating thereto.

It is elementary that a common carrier, whether by motor vehicle or rail, is entitled under the constitution of the State of Colorado and that of the United States, to charge such rates as will enable it to earn a fair return on its investment. Orders of State Commissions are being set aside frequently by the courts because the rates fixed are such as are held to deprive carriers of their constitutional rights. If a certificate were granted to the applicant herein both it and the Motor Way would obviously be entitled to charge such rates, however high, as would enable them to pay all costs of operation, including depreciation of equipment, and to earn a reasonable return on their investments. The public thus would be required to support two operations instead of one.

It is quite possible that this Commission after a hearing on the rates of the Motor Way would be warranted on the basis of its present volume of business, in lowering them. If we are warranted in lowering them and the volume of business should then greatly increase, as the applicant contends, as the result of such reduction, we might quite conceivably be warranted in making further reductions based on the greater volume of business. It should be remembered however that there is in every territory a limit to the potential traveling public. However, the average number of passengers per mile could increase almost two-hundred percent before reaching the seating capacity of the Motor Way's busses. It could thus handle a volume of business almost three times as great as that now handled without any substantially increased cost of operation. It is quite obvious that if the total business handled by the Motor Way, under rates which this Commission intends to see are reasonable, should be divided with another operator duplicating the service and operating expense of the Motor Way, both the Motor Way and the competitor would have to increase the rates and this

Commission under the law would be powerless to interfere. Assuming, as we do, that the service of the Motor Way is reasonably adequate and satisfactory, and that there is no reason why its operating costs are any higher than would be the costs of rendering a similar service by another, and that this Commission has the power to and will limit the returns of the Motor Way to such as are reasonable, within constitutional limitations, the granting of a certificate to the applicant herein would be contrary both to the fundamental principles of regulation and utility commission practice and the best interests of the public served.

The legislative policy of limitation of competition is justified and made necessary for the public benefit because of the power in the State over rates. There exists in the State no police or other power to limit the prices of the ordinary retail or wholesale merchants. Limitation of competition between such merchants would not only be unlawful but wholly indefensible because of the lack of power over their prices. But since the State may lawfully and does limit the rates of public utilities, as distinguished from a private business, limitation of competition between such utilities is lawful and actually required for the protection of the public interest.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity does not require the proposed motor vehicle operation of the applicant between Greeley and Denver.

O R D E R

IT IS THEREFORE ORDERED, That the demurrer of the City of Greeley be, and the same is hereby, overruled.

IT IS FURTHER ORDERED, That the public convenience and necessity requires the proposed motor vehicle system of the applicant, The Greeley Transportation Company, for the transportation of passengers within the city limits of the city of Greeley and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the application for a certificate authorizing the transportation of passengers between Greeley and Denver and intermediate points be, and the same is hereby, denied.

IT IS FURTHER ORDERED, That the applicant shall file tariffs of rates, rules and regulations and time schedules as required by the Rules and Regulations of this Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedule filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bruck

Harry S. Jones

Commissioners.

Dated at Denver, Colorado,
this 24th day of November, 1928.

(Decision No. 1996.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

IN THE MATTER OF THE APPLICATION OF CHARLES E. REED FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1217.

- - - - - - - - -

November 26, 1928.

- - - - - - - - -

Appearances: E. H. Houtchens, Esq., Greeley, Colorado, for applicant;
J. Q. Dier, Esq., Denver, Colorado, for Chicago, Burlington & Quincy Railroad Company.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing a motor vehicle system for the transportation of passengers and express between Sterling, Colorado, and the Colorado-Nebraska state line in an intrastate as well as interstate operation. A protest was filed by the Chicago, Burlington & Quincy Railroad Company. This application was set down for hearing at the Hearing Room of the Commission, Denver, Colorado, on November 2, 1928, at which time evidence in support of and in opposition thereto was received.

Sterling is an incorporated town, located in the northeastern part of Colorado, with a population of approximately 7500 people. The applicant proposes to operate an interstate service for the transportation of passengers and express to Scotts Bluff, Nebraska. The distance from Sterling to the Colorado-Nebraska state line is 27 miles. The only important intermediate point, so far as intrastate service is concerned, is the town of Peetz, which has a population of approximately 350 people. With the question of public convenience and necessity as it relates solely to interstate operation, this Commission is not concerned. (Buck v. Kuykendall, 267 U. S. 307.)

The Chicago, Burlington & Quincy Railroad operates passenger service between Peetz and Sterling. The rail carrier's service between Peetz and Sterling is as follows:

Peetz to Sterling

Leave	Arrive
4:48 P. M.	5:35 P. M.

Sterling to Peetz

11:50 P. M.	12:30 A. M.
7:00 A. M.	7:42 A. M.

It will be noted that there is only one train per day from Peetz to Sterling, which brings the passenger into Sterling at 5:35 P. M., usually too late to conduct any business of any kind after arrival. The time of trains leaving Sterling returning to Peetz is 11:50 P. M. and 7:00 A. M., and, therefore, at such hours as would not permit a passenger to do anything during business hours after his arrival from Peetz.

The bus operations between Peetz and Sterling are as follows:

Read Down P. M. Daily		Read Up A. M. Daily
2:00	Lv. Sterling Ar.	12:15
2:50	Peetz, Colo.	11:15

This bus service permits a passenger to leave Peetz at 11:15 A. M., arriving at Sterling at 12:15 P. M., and leaving Sterling returning to Peetz at 2:00 P. M., giving the travelling public an hour and forty-five minutes in Sterling to conduct their business at a very convenient time during the day.

It would seem to the Commission, therefore, considering the transportation service offered to the public in the territory involved, that the proposed bus service by the applicant would be a public convenience and necessity.

The testimony shows that the applicant has been in the transportation business since May, 1927, and has had considerable experience in conducting such operations. He is the owner of two passenger busses, valued at approximately $5,000.

As stated above, the testimony shows that the applicant has been operating since May, 1927. This application was filed on October 15, 1928. During that time passengers who offered themselves for transportation from Peetz to Sterling, or from Sterling to Peetz, were given tickets destined from or to Lorenzo, Nebraska. In that manner the applicant was operating an intrastate motor service without a certificate authorized by this Commission. The protestant rail carrier contended that this was a mere subterfuge and moved that the application be denied on that ground. The applicant's testimony was to the effect that it was his understanding that it was proper to conduct his intrastate operation in such manner. While it is undoubtedly true that this method of doing an intrastate business amounts to a mere subterfuge and cannot be considered as a bona fide interstate operation, yet the Commission, judging solely from the testimony of the applicant, is inclined to the view that he was conducting such operations in apparent good faith, not knowing that it was in violation of the law, and was not done in wilful disregard of the law. Under those circumstances the motion by the rail carrier to deny the application is overruled.

After a careful consideration of all the evidence introduced at this hearing, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the motor vehicle system for the transportation of passengers and express by the applicant between Sterling, Colorado and the Colorado-Nebraska State line on the route designated, in intrastate as well as interstate transportation.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the proposed motor vehicle system for the transportation of passengers and express by the applicant, Charles E. Reed, between Sterling, Colorado and the Colorado-Nebraska state line over the route designated in his application in intrastate as well as interstate transportation, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant herein shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission Governing Motor Vehicle Carriers within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedules filed with this Commission, except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Brick

John S. Jones

Commissioners.

Dated at Denver, Colorado,
this 26th day of November, 1928.

(Decision No. 1997)

At a General Session of the Public Utilities Commission of the State of Colorado, held at its office in Denver, Colorado, November 26, 1928.

INVESTIGATION AND SUSPENSION DOCKET NO. 112

IT APPEARING, That the Brookside Water Company, by its Secretary, filed with the Commission on September 22, 1928, a revised schedule of Rates and Rules and Regulations for said company to be effective on January 1, 1929, the principal changes of which are set out in notice to its consumers dated October 1, 1928,

AND IT FURTHER APPEARING, That on October 26, 1928, there was filed with the Commission a protest from a committee representing the Ivywild Improvement Society alleging that the membership of said Society includes a large portion of the consumers of the aforesaid water company, and requested that a public hearing be held that their objections to the proposed schedule of rates, as filed, might be heard,

AND IT FURTHER APPEARING, That on November 13, 1928, a protest from R.M. Reid and eleven other customers of said company was filed with the Commission protesting the quality of water due to pollution,

IT IS THEREFORE ORDERED, That the proposed schedule of water rates for the territory served by the Brookside Water Company be suspended until May 1, 1929, unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED, That said rates and service appearing to be injuriously affecting the rights, interests and health of the public that the same be made the subject of investigation and determination by this Commission within the said period of time, or within such further time as the same may be suspended.

IT IS FURTHER ORDERED, That a copy of this order be filed with the above stated protest and proposed rate schedule in the office of the Commission and that copies thereof be forthwith served on the said Brookside Water Company

and the protestants, W. W. Johnson, Chairman of the Ivywild Improvement Society, and R. M. Reid, civil engineer, Colorado Springs, Colorado.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
26th day of November, 1928.

(Decision No. 1998)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF THE STATE HIGHWAY DEPARTMENT FOR THE OPENING OF A PUBLIC HIGHWAY CROSSING OVER THE RIGHT-OF-WAY AND TRACK OF THE COLORADO AND SOUTHERN RAILWAY COMPANY AT A POINT ON THE SECTION LINE BETWEEN SECTIONS 25 AND 26, TOWNSHIP 7 NORTH, RANGE 70 WEST.

APPLICATION NO. 1205

- - - - - - - - -

November 27,1928.

- - - - - - - - -

S T A T E M E N T

By the Commission:

Our attention has been called by the General Attorney for The Colorado and Southern Railway Company to the order entered herein on October 26, 1928, granting permission to establish a temporary public highway crossing at a point on the section line between Sections 25 and 26, Township 1 North, Range 70 West.

It is suggested that the paragraph limiting the speed of trains over the crossing should read, "and not exceed a speed of eight miles per hour" instead of "and not exceed a speed of four miles per hour," as the said original order reads. The intention of the Commission was to secure such a train movement over this crossing that the dangers to travel approaching the crossing on the heavy grade required at the crossing would be minimized, and still not seriously delay train movements at the crossing. The Commission, with further information as to grades at the crossing on the railroad, now realizes that the speed prescribed in the order might cause serious inconvenience and very burdensome operating difficulties, and believing that adequate protection can be secured by changing the order as requested, the order entered herein

on October 26, 1928, should be modified to the extent stated.

O R D E R

IT IS THEREFORE ORDERED, That the order granting permission for the establishment of a temporary public highway crossing herein be, and the same is hereby, so modified as to provide for a speed of not to exceed eight miles per hour for the trains of the respondent, The Colorado and Southern Railway Company, over said crossing.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 27th day of November, 1928.

(Decision No. 1999)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

IN THE MATTER OF THE APPLICATION OF)
CLAUD M. CLUTTER FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY)
TO OPERATE AND MAINTAIN A MOTOR) APPLICATION NO. 464
TRANSPORTATION SYSTEM BETWEEN DENVER AND)
PUEBLO, COLORADO, AND INTERMEDIATE POINTS.)

- - - - - - - - - -

November 27,1928.

- - - - - - - - - -

S T A T E M E N T

By the Commission:

On November 16, 1928, counsel for the above applicant filed a motion with this Commission to dismiss the above entitled application.

O R D E R

IT IS THEREFORE ORDERED, That the application of Claud M. Clutter, No. 464, be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 27th day of November,1928.

(Decision No. 2000)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE CITY OF FORT MORGAN FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO EXTEND ITS FACILITIES.

APPLICATION NO. 1215

December 3, 1928.

Appearance: Stoton R. Stephenson, Esq., Fort Morgan, Colorado, attorney for the City of Fort Morgan.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity authorizing applicant to construct and extend its light and power lines and service beyond the corporate limits of the city of Fort Morgan and into territory adjacent thereto. A statement was filed by the Public Service Company of Colorado to the effect that it does not and will not protest the granting of said application.

This matter was set down for hearing in the Hearing Room of the Commission, State Office Building, Denver, Colorado, on November 27, 1928, at which time evidence in support of the same was received. The city of Fort Morgan operates a municipally owned plant generating and distributing electric current for light and power purposes within said city. It has also heretofore received authority to operate in territory adjacent to the city of Fort Morgan. The instant application asks authority for the construction, extension and maintenance of light and power lines south of the city of Fort Morgan. The proposed construction and extension on line (A) is two miles south, line (B) one mile south, and line (C) two miles south. There

are five prospective customers on line (A), three on line (B) and three on line (C), some of which are power consumers. However, there are quite a number of other prospective consumers residing on each of these lines. No other public utility is serving the territory in question with electrical energy at this time. The cost of construction and extension will amount to approximately $5,000.

After a careful consideration of all the evidence introduced in this matter, the Commission is of the opinion and so finds that the present and future public convenience and necessity requires the proposed construction, extension and maintenance by the applicant of the lines above mentioned for transmission of electric current for light and power purposes in the territory as more fully hereinafter set forth in the order herein.

O R D E R

IT IS THEREFORE ORDERED, That the present and future public convenience and necessity requires the proposed construction, extension and maintenance by the applicant, the city of Fort Morgan, of the lines above mentioned, for transmission of electric current for light and power purposes in the following described territory, to-wit:

A. Beginning at the southeast corner of Section Six (6), Township Three (3) North, Range Fifty-seven (57) West of the Sixth Principal Meridian, and extending due south along the public highway to the corner common to Sections Seventeen, Eighteen, Nineteen and Twenty (17,18,19 and 20), in said Township 3 North, Range 57.

B. Beginning at the end of the present constructed pole line of applicant near the South quarter corner of Section Seven (7), Township Three (3) North, Range Fifty-seven (57) West of the Sixth Principal Meridian, and extending thence due south along the public highway to the North Quarter corner of Section Nineteen (19), in said Township 3 North, Range 57.

C. Commencing at the Southwest corner of Section Six (6), Township Three (3) North, Range Fifty-seven (57) West of the Sixth Principal Meridian, and extending thence due south along the public highway to the Northwest corner of Section Nineteen (19), in said Township 3 North, Range 57.

and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant will be required within twenty days from the date hereof to file with this Commission its tariff of rates, rules and regulations covering the above described territory.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bock

Doyle S. Jones

Commissioners.

Dated at Denver, Colorado,
this 3rd day of December, 1928.

(Decision No. 2001)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

IN THE MATTER OF THE APPLICATION)
OF HAROLD HAGGARD AND EARL HATFIELD,)
FOR PERMIT TO OPERATE AN AUTOMOBILE) APPLICATION NO. 675
BUS LINE, VIA WOLFE CREEK PASS,)
FROM ALAMOSA TO DURANGO, COLORADO.)

- - - - - - - - - -

December 8, 1928.

- - - - - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That the applicant in this cause has asked leave to withdraw the above entitled application for the reason that the firm of Haggard and Hatfield has been dissolved. This application should be dismissed.

O R D E R

IT IS THEREFORE ORDERED, That the above application be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado,
this 8th day of December, 1928.

(Decision No. 2002)

I and S - 113

At a General Session of the Public Utilities Commission of the State of Colorado, held at its office in Denver, Colorado, December 10, 1928.

INVESTIGATION AND SUSPENSION DOCKET NO. 113

Re: Discontinuing D. & R. G./R. R. passenger trains Nos. 15 and 16 west of Leadville, C W. Colorado.

IT APPEARING, That there has been filed with The Public Utilities Commission of the State of Colorado by The Denver and Rio Grande Western Railroad Company by R. K. Bradford, its Superintendent of Transportation, a petition for permission to discontinue operation of passenger trains Nos. 15 and 16 west of Leadville, Colorado, to become effective Sunday, December 16, 1928.

IT IS ORDERED, That the Commission, upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the changes stated in the said petition.

IT FURTHER APPEARING, That the said petition makes certain changes in the facilities whereby the rights and interests of the public may be injuriously affected; and it being the opinion of the Commission that the effective date of the said change contained in said petition should be postponed pending said hearing and decision thereon.

IT IS FURTHER ORDERED, That the effective date as stated in said petition relating to passenger trains Nos. 15 and 16 discontinuing service west of Leadville, Colorado, be suspended for one hundred and twenty days, or until April 15, 1929, unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED, That a copy of this order be filed with the said petition in the office of the Commission and that copies hereof be forthwith served upon The Denver and Rio Grande Western Railroad Company; Mr. R. D. McLeod, City Attorney, Leadville, Colorado; Mr. John Cortellini, President, Chamber of Commerce, Leadville, Colorado; Mr. Ike L. Jones, President, Lions Club, Leadville, Colorado; Mr. O. W. Randall, Eagle, Colorado; Mr. L. R. Thomas, Town Clerk, Eagle, Colorado; Mr. A. B. Koonce, Mayor, Eagle, Colorado; Mr.

Howard L. Van Horn, Mayor, Gypsum, Colorado; Mr. R. W. McGuirk, Mayor, Glenwood Springs, Colorado; Mr. M. W. Hamilton, President, Lions Club, Glenwood Springs, Colorado; Mr. W. G. McDonald, President, Chamber of Commerce, Glenwood Springs, Colorado; Mr. Howard Roepnack, Attorney, Palisade, Colorado; Mr. C. D. Moslander, President, City Council, Grand Junction, Colorado; Chamber of Commerce, Grand Junction, Colorado; Mr. F. A. Carstens, Secretary, The Rio Blanco Commercial Club, Meeker, Colorado; and The Grand Valley Chamber of Commerce, Grand Valley, Colorado.

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing at a future date to be determined by the Commission, due notice of such date and place of hearing being given all interested parties.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 10th day of December, 1928.

Commissioners.

(Decision No. 2003)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

- - - - -

IN THE MATTER OF THE APPLICATION OF H. A. JOHNSON, AGENT, BY G. R. GLOVER, COLORADO-NEW MEXICO COAL AND COKE TARIFF FOR AUTHORITY TO PUT IN FORCE THE FOLLOWING RATES TO BECOME EFFECTIVE ONE DAY AFTER THE FILING THEREOF WITH THE COMMISSION: "SLACK AND PEA COAL FROM THE COLORADO AND SOUTHERN RAILWAY STATIONS LOCATED IN GROUP NO. 7, NORTHERN COLORADO DISTRICT TO BRUSH AND FT. MORGAN, COLORADO, $1.40 PER TON OF 2000 POUNDS."

CASE NO. 391

- - - - - - - - -
December 10, 1928.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter came before the Commission upon an application made by H. A. Johnson, Agent, by G. R. Glover, Colorado-New Mexico Coal and Coke Tariff, for authority to put in force the following rate to become effective one day after filing thereof with the Commission: "Slack and Pea Coal from Colorado and Southern Railway stations located in Group No. 7 Northern Colorado District to Brush and Ft. Morgan, $1.40 per ton of 2000 pounds."

The rate in effect at the time of the application was $1.80 per ton of 2000 pounds.

In support of the said application the petitioner made the following representation of facts; "There has been in effect for some time a rate from C. B. & Q. R. R. mines in Northern Colorado of $1.40 per ton. However, as the sugar factories at Brush and Ft. Morgan sometimes have difficulty in having their orders filled at C. B. & Q. mines, they have requested us to reduce our rate to equal that of theCC. B. & Q." Since said authority was granted suggestion has been made to the Commission that the statement "That the sugar factories at Brush and Ft. Morgan sometimes have difficulty in having their orders filled

at C. B. & Q. mines, they have requested us to reduce our rate to equal that of the C. B. & Q." is not true. The Commission has caused some investigation to be made of the matter, and it is of the opinion that there is grave doubt as to the correctness of said statement, and as to there being any foundation for making such a statement.

Without charging any particular person with any bad faith in the matter, it goes without saying that any representations made to this Commission with the intention of having it act in reliance thereon should be made with caution and with assurance that it is true and correct.

Of course, the Commission has expressed no opinion as to the propriety of the rate reduction in question, but if the agent had not made application for authority to publish this rate on short notice, the same could not have been made effective upon less than the statutory notice. The course taken prevented any and all persons from protesting against said reduction, even though they may conceivably have good grounds therefor.

The Commission is of the opinion and so finds that sufficient cause exists for it, on its own motion, to enter an order requiring said H. A. Johnson, Agent, and G. R. Glover to file with it in five days a written answer showing why the Commission should not cancel and rescind the said authority heretofore granted, as aforesaid.

O R D E R

IT IS THEREFORE ORDERED, That said H. A. Johnson, Agent and said G. R. Glover file with the Commission in five days a written answer showing why the Commission should not cancel and rescind the said authority heretofore granted, as aforesaid.

IT IS FURTHER ORDERED, That this matter be set down for hearing at a future date to be determined by the Commission, due notice of such date and place of hearing being given all interested parties, at which hearing evidence relating to the truth and correctness of the said statement shall be received.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Peter Bock

Commissioners.

Dated at Denver, Colorado,
this 10th day of December, 1928.

For supporting papers see Informal Reparation Docket No. 801 - December 10, 1928.

(Decision No. 2004)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF THE RIO GRANDE SOUTHERN RAILROAD COMPANY FOR AN ORDER AUTHORIZING REPARATION OF $128.62 AND THE WAIVING OF UNDERCHARGES AMOUNTING TO $110.88 ON FIVE CARLOAD SHIPMENTS OF SCRAP IRON FROM DOLORES, COLORADO TO DURANGO, COLORADO IN THE MONTHS OF FEBRUARY AND MARCH, 1928.

APPLICATION NO. 1233

December 10, 1928.

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Rio Grande Southern Railroad Company under its claim number 894, for an order of the Commission authorizing the payment of reparation amounting to $128.62 and waiving collection of $110.88 undercharges, on five carload shipments of scrap iron (147,850 pounds) from New Mexico Lumber Company, Dolores, Colorado consigned to Booker Junk Yard, Durango, Colorado, February 25, 27 and 29, and March 2, 1928.

The interests and claims of J. C. Booker, doing business as Booker Junk Yard, are assigned by stipulation to the American Smelting and Refining Company.

The matter of reparation and waiving collection of undercharges will be considered together, but any order of the Commission authorizing the payment of reparation will be entered on its informal reparation docket.

At the time these shipments moved the legal rate applicable was 25 cents per 100 pounds, and the minimum carload weight was 16,000 pounds. The 25¢ rate being the class "D" rate published in Item 315, page 18, Freight

Tariff R. G. So. No. 4753-D, Colo. P.U.C. No. 23, effective June 29, 1923, minimum weight authorized in Item 135 of the above mentioned tariff. Class "D" rating authorized in Item 5, page 261, Western Classification No. 60, Colo. P.U.C. No. 9, effective December 15, 1927.

Thru error the agent at Durango collected charges on these shipments on the basis of a rate of 17½ cents per 100 pounds, governing his action by item No. 750 of Tariff 4753-D, supra, which item, included scrap iron along with a number of other commodities, and named a rate of 17½¢ per cwt., from Dolores to Durango. However, this item was restricted in its application to the effect that same was only applicable upon mixed carloads of the named commodities.

Effective March 3, 1928, in Amendment No. 32 to Freight Tariff R. G. So. No. 4753-D, supra, The Rio Grande Southern Railroad Company published a rate of $1.50 per ton of 2000 pounds on scrap iron C/L minimum weight 30,000 pounds from Dolores, Colorado to Durango, Colorado, or subsequent to these movements.

It is admitted by The Rio Grande Southern Railroad Company, by Fred Wild, its Vice-President in charge of traffic, that the charges collected and the balance to be collected, on the basis of the legal rate, are unreasonable and upon authority of the Commission they will reparate $128.62 and waive collection of undercharges amounting to $110.88.

The Commission finds that the charges assessed on the basis of the legal rate and the charges collected on the basis of the 17½ cent rate were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of $1.50 per ton of 2000 pounds, carload minimum weight, 30,000 pounds, and separate orders will be issued authorizing waiving collection of the undercharges amounting to $110.88, and reparation of $128.62.

O R D E R

IT IS THEREFORE ORDERED, That The Rio Grande Southern Railroad Company, be, and it is hereby authorized and directed to waive collection of undercharges amounting to $110.88 on five carload shipments of scrap iron (147,850 pounds) from New Mexico Lumber Company, Dolores, Colorado, consigned

to Booker Junk Yard (interests and claims assigned to American Smelting & Refining Company by stipulation) Durango, Colorado, covered by Dolores, Colorado to Durango, Colorado, waybills numbers 42, 48, 49, 50 and 3, dated February 25, 27, 29, and March 2, 1928, respectively, and

IT IS FURTHER ORDERED, That this rate shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado, this
10th day of December, 1928.

(Decision No. 2005)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $22.81 ON ONE CARLOAD SHIPMENT OF DRIED BEANS (24,595 lbs.) FROM FOWLER, COLORADO, TO ROCKY FORD, COLORADO, MAY 14, 1927.

APPLICATION NO. 1234

December 10, 1928.

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Atchison, Topeka and Santa Fe Railway Company, under its claim No. R. C. 4286, for an order of the Commission authorizing waiving collection of undercharges amounting to $22.81 on one carload shipment of Dried Beans (24,595 pounds, actual weight) minimum weight 36,000 pounds, from Blotz-Henneman Seed Company, Fowler, Colorado, consigned to Blotz-Henneman Seed Company, Rocky Ford, Colorado, May 14, 1927.

At the time this shipment moved the legal rate and minimum weight applicable upon dried beans from Fowler to Rocky Ford was as follows:

"20 cents per 100 pounds, 36,000 pounds."

Western Freight Classification No. 59, Colo. P.U.C. No. 8, issued by R. C. Fyfe, Effective February 10, 1925, in Item No. 7, page 435, provides a fifth class rating on dried beans, carload minimum weight 36,000 pounds.

Santa Fe Distance Table No. 9900, Colo. P.U.C. No. 279, effective May 15, 1909, names a distance of 18 miles from Fowler, Colorado to Rocky Ford, Colorado.

Santa Fe Tariff No. 5681-J, Colo. P.U.C. No. 1035, effectife February 24, 1925, on page 296 provides a distance rate sheet covering the class rates,

which under the 20 mile block names a 20 cent rate for the fifth class rating. The 20 mile block being the applicable block for the 18 miles actual distance.

Under Item 540, page 66 of freight tariff 5681-J, supra, there was a provision which permitted elevator companies to what is known as "Clean Out" of their elevators at the close of the season, whereby it was possible to ship remnants of cars containing less than the usual minimum weight named in the tariff, but said provision applied only on grain.

In order to give the bean producers and handlers a like privilege, The A. T. & S. F. Ry. Co., established a similar rule, same being named in Item 213, Supplement 41, to freight tariff 5681-J, supra, effective December 31, 1927, which rates as follows:

"For the purpose of cleaning out elevators and bean houses, one carload may be shipped at the close of the season each year, from each elevator or bean house, subject to a minimum weight of 20,000 pounds, in lieu of the minimum weight otherwise specified in the tariff, or as may be amended, such carload to be from one consignor and from one shipping point to one consignee at one destination."

The Atchison, Topeka and Santa Fe Railway Company, by R.G. Merrick, its Assistant Freight Traffic Manager, states that it is willing to apply this rule on the shipment involved and upon authority of the Commission it will waive collection of undercharges amounting to $22.81.

The Commission finds that the charges assessed on the basis of the legal rate and minimum weight were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of a rate of 20 cents per 100 pounds and actual weight, viz: 24,595 pounds, and an order will be issued authorizing waiving collection of the undercharges amounting to $22.81.

O R D E R

IT IS THEREFORE ORDERED, That The Atchison, Topeka and Santa Fe Railway Company, be, and it is hereby authorized and directed to waive collection of undercharges amounting to $22.81 on one carload shipment of dried beans (24,595 pounds actual weight, as 36,000 pounds, minimum weight) from Blotz-Henneman Seed Company, Fowler, Colorado, consigned to Blotz-Henneman Seed Company, Rocky Ford, Colorado, covered by Fowler to Rocky Ford waybill No. 28, dated May 14, 1927, and

IT IS FURTHER ORDERED, That the basis of this so-called "Clean Out" rule shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado, this
10th day of December, 1928.

Commissioners.

(Decision No. 2006)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - - -

IN THE MATTER OF THE APPLICATION OF UNION PACIFIC RAILROAD COMPANY AND CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY FOR AN ORDER AUTHORIZING THE WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $96.12 ON ONE CARLOAD SHIPMENT OF CANNED GOODS (53,400 pounds) FROM LONGMONT, COLORADO TO BRIGHTON, COLORADO, FEBRUARY 24, 1928.

APPLICATION NO. 1235

- - - - - - - - -
December 11, 1928.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by Union Pacific Railroad Company under its numbers G.F.O. 0-600-5120-387 and U.C.A. 26338-3, and joined in by Chicago, Burlington & Quincy Railroad Company for an order of the Commission authorizing waiving collection of undercharges amounting to $96.12 on one carload shipment of canned goods, (53,400 pounds) from Kuner-Empson Company, Longmont, Colorado, consigned to Kuner-Empson Company, Brighton, Colorado, February 24, 1928, routed C. B. & Q. Erie, Colorado, Un. Pac., to destination.

At the time this shipment moved the legal rate applicable via this route was 14¢ cwt., Longmont to Erie, and 14¢ cwt., Erie to Brighton, making a through rate of 28¢ cwt. Western Freight Classification No. 60, Colo. P.U.C. No. 9, at Item 7 and 8, page 449, provides a fifth class rating on canned vegetables, carload minimum weight, 36,000 pounds. The distance from Longmont to Erie is 12.6 miles as published in C. B. & Q. Distance Tariff No. 9000-A, Colo. P.U.C. No. 310, effective February 1, 1923. The distance

from Erie to Brighton is 14.9 miles, as published in U. P. R. R. Distance Tariff No. 110-B, Colo. P.U.C. No. 203, effective September 10, 1925.

C. B. & Q. Tariff 15035-B, Colo. P.U.C. No. 363, effective December 7, 1925, page 41, publishes a table of distance class rates, which, under the 15 mile block (the applicable block for 12.6 miles) names a fifth class rate of 14¢ cwt.

U. P. Tariff 3000-F, Colo. P.U.C. No. 235, effective September 23, 1927, page 490, Item 5301, publishes a table of distance class rates, which under the 15 mile block (the applicable block for 14.9 miles) names a fifth class rate of 14¢ cwt.

The Union Pacific agent at Brighton assessed the 28¢ rate upon this shipment and presented freight bill for collection to the consignee, who refused to pay the amount assessed, and in turn took the matter up with Mr. W. T. Price, Assistant General Freight Agent, Union Pacific Railroad Company, Denver, Colorado for a reduction in the rate. Under date of March 24, 1928, W. T. Price advised the agent at Brighton to collect charges from the consignee, on the basis of 10¢ cwt., stating that an agreement had been reached between the Chicago, Burlington & Quincy Railroad Company and the Union Pacific Railroad Company for the publication of a through rate of 10¢ cwt., on canned goods, from Longmont to Brighton.

The ton mile and car mile earnings under the legal rate are as follows:

	Distance Miles	Earnings Ton Mile Cents	Earnings Car Mile Cents
Longmont to Erie, C. B. & Q.	12.6	22.2	593.3
Erie to Brighton, Un. Pac.	14.9	18.8	501.7

Effective June 1, 1928 in Supplement No. 1, Item 687, to C. B. & Q. Freight Tariff No. 15035-C, Colo. P.U.C. No. 400 there was published in connection with the Un. Pac. a through rate of 10¢ cwt., on canned goods, from Longmont to Brighton, and the carriers are willing to waive collection of undercharges, which would put the shipment on the basis of the subsequently established rate of 10¢ cwt.

The Commission finds that the charges assessed on the basis of the legal rate were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of 10¢ cwt., and an order

will be issued authorizing waiving collection of undercharges amounting to $96.12.

O R D E R

IT IS THEREFORE ORDERED, That the Union Pacific Railroad Company and the Chicago, Burlington & Quincy Railroad Company be, and they are hereby authorized and directed to waive collection of undercharges amounting to $96.12 on one carload shipment of canned goods (53,400 pounds) from Kuner-Empson Company, Longmont, Colorado, consigned to Kuner-Empson Company, Brighton, Colorado covered by Chicago, Burlington & Quincy, Longmont to Brighton waybill No. 75, dated February 24, 1928, and

IT IS FURTHER ORDERED, That this rate shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado this
11th day of December, 1928.

Commissioners.

(Decision No. 2007)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
* * *

PROPOSED CHANGES IN RATES OF THE)
MOUNTAIN STATES TELEPHONE AND TELE-)
GRAPH COMPANY AFFECTING THE SUBSCRI-) I. & S. NO. 109
BERS IN THE HUDSON EXCHANGE AREA.)

December 12, 1928.

S T A T E M E N T

By the Commission:

The Commission is in receipt of a statement from The Mountain States Telephone and Telegraph Company, dated December 7, 1928, to the effect that the tariff suspended herein until January 18, 1929, be withdrawn. Under the circumstances an order will be entered cancelling said tariff and discontinuing this proceeding.

O R D E R

IT IS THEREFORE ORDERED, That the tariff filed with this Commission by The Mountain States Telephone and Telegraph Company containing a proposed increase in rates for the Hudson Exchange area to become effective October 1, 1928, and subsequently suspended by this Commission to January 18, 1929, be, and the same is hereby, cancelled and this proceeding be discontinued.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 12th day of December, 1928.

(Decision No. 2008.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

IN THE MATTER OF THE APPLICATION OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY FOR AN ORDER AUTHORIZING THE WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $18.23 ON TWO NARROW GAUGE CARS OF WOOL (13,123 POUNDS) FROM GUNNISON AND DOYLE, COLORADO TO DENVER, COLORADO, JUNE 20 AND 23, 1928.

APPLICATION NO. 1238.

- - - - - - - - -

December 17, 1928.

- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company under its claim No. S-22020 for an order by the Commission authorizing the waiving collection of undercharges amounting to $18.23 on two narrow gauge cars of wool (13,123 pounds) from H. A. Smith, Gunnison and Doyle, Colorado, consigned to E. A. Stephens & Company, Inc., Denver, Colorado, June 20 and 23, 1928.

At the time these shipments moved the legal rate applicable was as follows: $1.46 per cwt. less carload, Gunnison, Colorado to Denver, Colorado and $1.28½ per cwt. less carload, Doyle, Colorado to Denver, Colorado. Western Classification No. 60, Colo. P.U.C. No. 9, Item 12, page 485 provides a second class rating on wool less than carload and a fourth class rating on carloads, minimum weight 16,000 pounds. The second class rate from Gunnison, Colorado to Denver, Colorado is $1.46 per cwt., per Index 202, page 106 of Freight Tariff, D. & R. G. W. G.F.D. 4900F, Colo. P.U.C. 126, and the second class rate from Doyle, Colorado to Denver, Colorado is $1.28½ per cwt., per Index 197, page 105 of D. & R. G. W. Colo. P.U.C. 126, supra.

The shipment from Gunnison consisted of 36 bags of wool in grease, loaded in Rio Grande car 3666 (7,918 pounds) with instructions to stop this

car at Doyle to complete loading. The shipment from Doyle consisted of 27 bags of wool in grease (5,205 pounds) loaded in Rio Grande car 3156 with instructions to mate with Rio Grande car 3666, loaded at Gunnison, Colorado. The tariff in effect at the time these shipments moved published a stopping in transit privilege on some commodities. However, it made no provision for the stopping in transit of wool, which resulted in the application of the second class rate on the actual weight from each point of origin to destination.

Upon arrival of this shipment in Denver the agent was unable to collect from the consignee the charges assessed on the above stated basis, and was authorized by phone conversation with Mr. Stone, of the General Freight Agent's office, to collect charges on the basis of 99 cents per cwt. (16,000 pounds, minimum weight), plus a stopping in transit charge of $5.85, the 99 cent rate being the fourth class rate from Gunnison to Denver, Colorado.

Effective October 27, 1928, in Supplement No. 22, Item 483½, page 2 to D. & R. G. W. Colo. P.U.C. 126, supra, there was published a provision permitting the stopping in transit of carload shipments of wool or mohair at directly intermediate points between point of origin and final destination to finish loading at the following charges per stop: When stopped at points in Group A, (Group A points include stations along the Colorado common point line, viz. Denver to Trinidad, inclusive),$6.30 per car; at all other points, $5.85 per car. The charges on the entire shipment are to be assessed on basis of rate applicable from originating point.

It is admitted by The Denver and Rio Grande Western Railroad Company, by George Williams, its Freight Traffic Manager, that the charges to be collected are unreasonable and upon authority of this Commission it will waive collection of $18.23.

The Commission finds that the charges assessed on the basis of the legal rate were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of 99¢ per cwt. carload minimum weight 16,000 pounds, plus $5.85 stopping in transit charge to finish loading,

and an order will be issued authorizing the waiving collection of undercharges amounting to $18.23.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company be, and it is hereby, authorized and directed to waive collection of undercharges amounting to $18.23 on two narrow gauge carload shipments of wool (13,123 pounds) (Transferred into one standard gauge car at Salida) from H. A. Smith, Gunnison and Doyle, Colorado, consigned to E. A. Stephens & Company, Inc., Denver, Colorado covered by Gunnison to Denver Waybill No. 155, dated June 20, 1928, and Doyle to Denver Waybill No. 6, dated June 23, 1928, and

IT IS FURTHER ORDERED, That the charge for stopping in transit to finish loading on wool, as provided in Item 583½ of D. & R. G. W. Colo. P.U.C. 126, supra, shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 17th day of December, 1928.

(Decision No. 2009)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF A JOINT APPLICATION BY THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, THE COLORADO AND SOUTHERN RAILWAY COMPANY AND CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY FOR AN ORDER BY THE COMMISSION AUTHORIZING WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $23.56 ON ONE CARLOAD SHIPMENT OF WHEAT AND FLOUR FROM AKRON, COLORADO TO CANON CITY, COLORADO, MARCH 22, 1928.

APPLICATION NO. 1240

December 17, 1928.

STATEMENT

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company under its claim number S-21923, and joined in by The Colorado and Southern Railway Company and Chicago, Burlington & Quincy Railroad Company for an order by the Commission authorizing waiving collection of undercharges amounting to $23.56 on one carload shipment of wheat (42,828 pounds) from Akron, Colorado, consigned to The Pueblo Flour Mills Company, Pueblo, Colorado, milled into flour at Pueblo, and consigned to The Jones Realty and Wholesale Supply Company, Canon City, Colorado. The shipment of wheat was shipped from Akron to Pueblo, March 22, 1928, via the C. B. & Q., Denver and Colo. & Sou. The shipment of flour was shipped from Pueblo, Colorado, to Canon City, Colorado, April 10, 1928, via the D. & R. G. W. R. R.

At the time this shipment moved the legal rate applicable was as follows: 20½¢ cwt., on wheat from Akron, Colorado to Pueblo, Colorado, and 17¢ cwt., on flour from Pueblo, Colorado to Canon City, Colorado, carload minimum weight 40,000 pounds, the 20½¢ rate being authorized at Index 6050,

page 23, C. B. & Q. Freight Tariff G.F.O. No. 5600-F, Colo. P.U.C. No. 389, effective October 19, 1927, and the 17¢ rate being authorized in Flour Circle 1 column opposite Canon City, in Item 9550, page 312, Western Trunk Lines, Freight Tariff No. 120-D, issued by E. B. Boyd, Agent, effective November 15, 1927. Item 8810, page 297, Boyd's Tariff 120-D, authorizes the application of the rates named in Item 9550, viz: "Rates to stations in Colorado on The Denver and Rio Grande Western Railroad west of Pueblo, Colorado, as named on pages 294 and 295, will in the absence of specific rates to such points, be made by adding to the rates shown in Section No. 5 or to the rates shown in Section No. 6 (whichever is lower) the rates shown in other tariffs lawfully on file with the Interstate Commerce Commission; but if the rate so made exceeds the rate applying in the same direction to a point beyond, taking Salt Lake City, Utah, rates, the Salt Lake City, Utah, rate will apply."

Item 4010, page 162, Boyd's Tariff 120-D, names a rate of 59¢ cwt., carload minimum weight 40,000 pounds, on Grain Products from points in the Missouri River Group, to Ogden and Salt Lake City, Utah, and points taking same rates. Item 7480, page 274, of the same tariff, provides for the application of the Missouri River-Salt Lake City rate from Akron, Colorado, to Salt Lake City or points taking same rates. Items 4010 and 7480 taken in connection with Item 8810 have the effect of establishing the Missouri River-Salt Lake City, Utah, rate as the maximum rate. Minimum weight 40,000 pounds per section 2, Item 1870, page 90, Boyd's Tariff 120-D, authorized in Item 430, page 21 of C. & S. Ry. G.F.O. 1290-M, Colo. P.U.C. 466, effective January 1, 1928.

The Colorado and Southern Railway Company's agent at Pueblo, Colorado, assessed and collected charges on this shipment on the basis of 20½¢ cwt., on the wheat from Akron to Pueblo, amounting to $87.80, and 11½¢ cwt., on the flour from Pueblo to Canon City, amounting to $49.25, thus creating an undercharge of $23.56. The application does not show under what tariff authority, if any, the agent at Pueblo acted in collecting the charges on the flour from Pueblo to Canon City on the basis of a rate of 11½¢ cwt.

Effective June 1, 1928, in Supplement No. 13, Item 9550-A, page 31, Boyd's Tariff No. 120-D, there was published a basing rate of 11½¢ cwt., on flour from Pueblo to Canon City, (Flour is described in the first column of Item 9551, page 32, Supplement 13, Boyd's Tariff 120-D)or subsequent to the

movement herein involved.

It is admitted by The Denver and Rio Grande Western Railroad Company, by W. M. Carey, its Assistant General Freight Agent, The Colorado and Southern Railway Company, by G. W. Logan, its Assistant General Freight Agent and Chicago, Burlington & Quincy Railroad Company, by G. A. Hoffelder, its Assistant General Freight Agent, that the charges to be collected are unreasonable and upon authority of the Commission they will waive collection of $23.56.

The Commission finds that the charges assessed on the basis of the legal rate were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of 20½ cwt., wheat, carload, Akron to Pueblo, and 11½¢ cwt., on flour, carload, as a basing rate from Pueblo to Canon City, and an order will be issued authorizing waiving collection of undercharges amounting to $23.56.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company, The Colorado and Southern Railway Company and Chicago, Burlington & Quincy Railroad Company be, and they are hereby authorized and directed to waive collection of undercharges amounting to $23.56 on one carload shipment of wheat, (42,828 pounds) from Akron, Colorado, consigned to The Pueblo Flour Mills Company, Pueblo, Colorado, and one carload shipment of flour, milled from the carload of wheat, (42,828 pounds) from The Pueblo Flour Mills Company, Pueblo, Colorado, consigned to The Jones Realty and Wholesale Company, Canon City, Colorado, covered by Chicago, Burlington & Quincy, Akron to Pueblo waybill No. 125, March 22, 1928, routed C. B. & Q. Denver-C. & S. and Colorado and Southern, Pueblo to Canon City transit waybill No. 1492, April 10, 1928, routed C. & S. Pueblo-D. & R. G. W., and

IT IS FURTHER ORDERED, That these rates shall not be exceeded on intrastate traffic for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
17th day of December, 1928.

(Decision No. 2010)

(At a General Session of the Public Utilities Commission of the State of Colorado held at its Office in Denver, Colorado, December 18, 1928.)

INVESTIGATION AND SUSPENSION DOCKET NO. 114

In re the proposed abandonment of the Western Union Telegraph Office at Palisade, Colorado.

IT APPEARING, That there has been filed with the Public Utilities Commission of the State of Colorado by the Western Union Telegraph Company, Inc., by C.J. Ince, District Commercial Superintendent, a notice, dated November 24,1928, of its desire and intent to close its independent office in Palisade, Colorado, after posting a notice thirty days in advance in accordance with General Order No. 40, in which notice it is proposed that the commercial telegraph business thereafter be handled by The Denver and Rio Grande Western Railroad Company's depot office and that said discontinuance of service become effective January 1, 1929;

IT FURTHER APPEARING, That H. G. Crissy, Manager, United Fruit Growers Association, Palisade, Colorado, filed on November 28, 1928, a letter protesting against said discontinuance of service, alleging that this service is a very essential matter in the business of this association and that past experience shows that the railroad employees do not have time to give it the necessary attention,

IT FURTHER APPEARING, That the Palisade Tribune by C. W. Culhane, Publisher, Palisade, Colorado, filed, on December 8,1928, a letter and petition signed by forty-seven business concerns of Palisade in which they protest against the proposed discontinuance of telegraph service, alleging that the regular duties of railroad employees do not permit prompt and efficient attention to Western Union business as has been proven by past experience, and that in preparation for and the marketing of the Palisade fruit crop, prompt and efficient telegraph service is required.

IT IS THEREFORE ORDERED, That said proposed closing of the independent office of the Western Union Telegraph Company at Palisade

be suspended for one hundred and twenty days, or until April 18, 1929, unless otherwise ordered by this Commission and that no change in the service heretofore rendered to this territory be made during the period of suspension.

IT IS FURTHER ORDERED, That the Commission enter upon an investigation and hearing concerning the lawfulness and propriety of the proposed closing of the independent office of the Western Union Telegraph Company at Palisade.

IT IS FURTHER ORDERED, That a copy of this order be filed with said notice of proposed discontinuance and protests in the office of the Commission and that copies hereof be forthwith served upon the Western Union Telegraph Company, C. J. Ince, District Commercial Superintendent, Denver, Colorado; H. G. Crissy, Manager, United Fruit Growers Association, Palisade, Colorado, C. W. Culhane, Publisher, Palisade Tribune, Palisade, Colorado.

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing, the date and place to be designated later.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

John S. Jones

Commissioners.

Dated at Denver, Colorado, this
18th day of December, 1928.

(Decision No. 2011)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * *

IN THE MATTER OF THE APPLICATION OF COMMONWEALTH UTILITIES CORPORATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 1164

December 19, 1928.

Appearances: Messrs. Grant, Ellis, Shafroth & Toll, Denver, Colorado, for applicant;
Hon. H. C. Hooper, Mayor, for Town of Castle Rock, Colorado.

STATEMENT

By the Commission:

This is an application by the Commonwealth Utilities Corporation for a certificate of public convenience and necessity to exercise proposed franchise rights, when secured, from the towns of Castle Rock, Douglas County, and Monument and Palmer Lake, El Paso County, Colorado, and to construct electric transmission lines connecting said municipalities with the present transmission lines and sources of power of the applicant. Because the applicant in one application asked for a certificate involving operations in separate municipalities, the Commission suggested to the applicant that our practice requires that where public utilities are seeking authority to exercise franchise rights, a separate application be filed for each municipality involved. Thereafter the applicant filed an amended application, which seeks only authorization to exercise franchise rights from the town of Castle Rock, and authority to serve the territory contiguous to Castle Rock and the territory contiguous to the present electric transmission lines of Castle Rock.

This matter was set down for hearing in the Hearing Room of the Commission in Denver, Colorado, on December 8, 1928, at which time evidence in support of the same was received.

Relative to the request for authority to serve the territory

contiguous to Castle Rock and the territory contiguous to the present electric transmission lines of the town of Castle Rock, the applicant was advised that on the 28th day of February, 1928, in Decision No. 1602, the Commission issued such certificate to the town of Castle Rock, and therefore suggests that the applicant should have that certificate transferred to it, it being understood from allegations in the application that it is purchasing the transmission lines and distributing system in that territory.

The testimony shows that the applicant has, under agreement and subject to the authorization in the instant application, purchased from the town of Castle Rock its electric property, including the electric distribution system within Castle Rock and in the territory contiguous thereto, all contracts of Castle Rock for purchase and sale of electric energy, as well as electric transmission lines and distribution systems and other property owned by the town of Castle Rock and used by it in the operation of its electric property. The purchase price is $26,000.00, upon which $5,000.00 has been paid, the balance to be paid upon issuance of the certificate herein. This purchase price shall not be binding upon the Commission in any subsequent investigation involving the valuation and rate structure of the applicant.

Copy of Ordinance No. 100, which is the franchise involved herein, was introduced in evidence and which is for a term of twenty-five years. The rates contained in said franchise are lower than now charged except where in a few instances the minimum might be higher.

No protests were filed against this application. The town of Castle Rock filed a statement with the Commission to the effect that it had no objections to the same. The vote on the franchise by the town of Castle Rock showed 85 for and 2 against. No other public utility is serving this territory with electric energy at this time.

After a careful consideration of all the evidence introduced at this hearing, the Commission is of the opinion, and so finds, that the public convenience and necessity requires that the applicant exercise

all rights and privileges granted to it by the town of Castle Rock under a certain franchise designated as Ordinance No. 100.

O R D E R

IT IS THEREFORE ORDERED, That the present and future public convenience and necessity requires the exercise by Commonwealth Utilities Corporation of all the rights and privileges granted to it by the town of Castle Rock in a certain franchise designated as Ordinance No. 100, and this order shall be held and deemed to be a certificate therefor.

IT IS FURTHER ORDERED, That the applicant herein shall file with this Commission tariffs of rates, rules and regulations as required by the Rules and Regulations of this Commission within a period not to exceed ten days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

OTTO ROCK

(S E A L)

DAN S. JONES

WORTH ALLEN

Commissioners.

Dated at Denver, Colorado, this
19th day of December, 1928.

I do hereby certify that the above and foregoing is a true and correct copy of the original order of the Public Utilities Commission of the State of Colorado entered in the above entitled cause and now on file in this office.

Secretary.

(Decision No. 2012)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * *

M. L. MOAURO,

COMPLAINANT,

vs.

WOLF CREEK RAILROAD COMPANY AND THE DENVER AND SALT LAKE RAILWAY COMPANY,

DEFENDANTS.

CASE NO. 321

December 19, 1928.

Appearances: Denious & Moore, Esqs., Denver, Colorado, for complainant;
Elmer L. Brock, Esq., Denver, Colorado, for defendant, The Denver and Salt Lake Railway Company;
Frank E. Gove, Esq., Denver, Colorado, for defendant, Wolf Creek Railroad Company.

S T A T E M E N T

By the Commission:

This case was brought by the complainant, M. L. Moauro, to require the defendants, Wolf Creek Railroad Company and The Denver and Salt Lake Railway Company, to extend the rail line of the Wolf Creek Railroad Company to connect with the proposed mine of the complainant. The complaint alleges in substance that the Wolf Creek Railroad Company owns a line of railroad connected with the line of railroad of The Denver and Salt Lake Railway Company and extending northerly along Wolf Creek to a point beyond the mine of the International Fuel Corporation; that the defendant, The Denver and Salt Lake Railway Company, as lessee or otherwise, actively operates and controls the Wolf Creek Railroad; that the complainant is the owner and holder of certain leasehold interests in and to the Northeast Quarter of Section 10, Township 6 North, Range 87 West, Routt County, Colorado, and other adjoining properties alleged to contain valuable and workable

coal deposits; that it is the purpose and intention of the complainant at once to develop said property and begin active coal mining operations thereon, if, and when, he can procure railroad facilities for the shipping of said coal from the mine to the customers; that the only way such facilities can be furnished and supplied is by requiring the defendants to construct a spur track connected with the northern terminal of the Wolf Creek Railroad Company, extending northerly along Wolf Creek about fifteen hundred feet near the mouth of complainant's proposed mine; that the construction of said spur track will not be burdensome to the defendants, and the tonnage of coal which will be furnished by complainant will make the construction thereof profitable to the said defendants.

The answer of the Wolf Creek Railroad Company alleges that the defendant is not now, and never was, a common carrier and that, therefore, this Commission has no jurisdiction over this defendant or its property, and has no power or authority to order or compel the construction of the railroad tracks sought by complainant to be constructed, and then denies each and every allegation in the complaint. The answer of The Denver and Salt Lake Railway Company admits the allegations in paragraph 2 of the complaint and, in effect, denies every other allegation, except it admits that it makes use of a portion of the line of the Wolf Creek Railroad Company for certain and specific purposes under arrangement with said company therefor.

This complaint was set down for hearing in the Hearing Room of the Commission, State Office Building, Denver, Colorado, on September 17, 1928, at which time evidence in support of, and in opposition thereto, was received. The testimony shows that the complainant is the holder of a lease from the Federal government covering some five hundred acres of coal lands, which was delivered to him on May 19, 1928; that for a part of this transaction, complainant was required to, and did, execute a bond for the faithful performance of the lease requiring an expenditure of at least ten thousand ($10,000) dollars for development on or before April 30, 1929, and ten thousand ($10,000) dollars during each year thereafter for two additional years. Complainant testified that he and his associate are financially able to comply with the requirements of their

lease; that it is their purpose to proceed at once with the development of the mine; that the location has been thoroughly prospected and contains an abundance of high grade coal. A report by a skilled engineer was also introduced, giving the details of the development and the character and extent of the coal therein.

As usual a number of questions are argued in the brief. In our opinion only two of these questions require our attention and disposition. The first question is, is the Wolf Creek Railroad Company a common carrier subject to the jurisdiction of this Commission. The second question is, has this Commission jurisdiction over the issues involved in this complaint and, if so, is the complainant entitled to the relief sought.

Article XV, Section 4, of the State Constitution provides:

> "All railroads shall be public highways, and all railroad companies shall be common carriers. Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state, and to connect at the state line with railroads of other states and territories. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad."

It will be noted, therefore, that by the terms of the Constitution of this State all railroad companies in Colorado are common carriers. The Wolf Creek Railroad Company was incorporated under the laws of the State of Colorado applicable to railroads on May 18, 1915. It is therefore chartered as a railroad company for a term of fifty years. Its purpose was to construct a railroad line from a junction with The Denver and Salt Lake Railway Company's tracks at Mount Harris, Routt County, northerly and northwesterly to meet the requirements of the Wadge Coal mine of the Colorado Coal Company and other mines which, it was thought, were about to be developed. The entire capital stock of the company was taken and is still held by the Colorado Coal Company, a subsidiary of The Victor-American Fuel Company, which now operates a mine adjoining the tracks of the Wolf Creek Railroad Company. According to the testimony, the original plan of construction was immediately abandoned. Only one mile of track was laid. Some time thereafter, one thousand feet of this track was destroyed by flood,

and abandoned. Since that time only approximately four thousand feet of track has been in existence. However, the charter of the Railroad Company has never been dissolved, and the contract testified to as existing with The Denver and Salt Lake Railway Company is with the Wolf Creek Railroad Company.

Counsel for the Wolf Creek Railroad Company calls our attention to Section 2818 of Compiled Laws of Colorado, 1921, wherein it is provided that, if any railroad corporation organized under the Railroad Incorporation Act shall not begin the construction of its road and expend thereon twenty percent of the amount of its capital stock within five years after the date of its organization, its corporate existence and power shall cease. No matter whether this section can be invoked only by the State and that no railroad can be discontinued and dismantled without first obtaining the consent of this Commission, and no matter what the Railroad Company has in effect been doing since it obtained its charter, since the charter as a railroad is still in existence, this Commission is constrained to hold that, because the Constitution provides that a railroad shall be a common carrier, the defendant, Wolf Creek Railroad Company, therefore, is a common carrier so long as it retains its corporate existence for that purpose from the State. Defendant argues very strenously that since it does not perform any functions of a common carrier it is not subject to the jurisdiction of this Commission. It is a fact, however, that the defendant has voluntarily taken on the legal status of a railroad corporation and up to now has retained this corporate legal entity. Surely in view of the constitutional provision above referred to, it cannot retain its present legal entity and claim to be only a private carrier and merely the owner of an industrial track or plant facility.

Having concluded that, by express provision of the Constitution of this State, the Wolf Creek Railroad Company is a common carrier, the only other question remaining is whether the Commission has jurisdiction over the relief sought and, if so, should the relief under the evidence as introduced herein be granted.

We quote from the following statutes which, in our opinion, give this Commission jurisdiction over the relief sought in the complaint filed herein:

> "Whenever the Commission, after a hearing had upon* * * complaint, shall find that the * * * equipment, appliances, facilities or service of any public utility* * * are* * * inadequate or insufficient, the Commission shall determine the * * * adequate * * * equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order* * *."
>
> Section 2935 Compiled Laws of Colorado, 1921.
>
> "Whenever the Commission, after a hearing * * * upon complaint, shall find the additions, extensions, * * * or improvements to, or change in the existing * * * equipment,* * * facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected * * * to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extension,* * * improvements or changes be made, or such structure or structures be erected in the manner and within the time specified in such order."
>
> Section 2936 Compiled Laws of Colorado, 1921.
>
> "If, in the judgment of the Commission, after a careful, personal examination and investigation, and after a hearing before the Commission,* * * the Commission shall find that * * * improvements or increased facilities in respect to * * * trackage, * * * switches, * * * or any other element of the service of common carrier shall be necessary and within the reasonable power of any common carrier to make or adopt for the * * * accommodation of the public in the shipping and handling of property, the Commission shall make such reasonable order requiring any common carrier to do any such thing deemed by the Commission to be proper in respect to such matters within a reasonable time, to be fixed by the Commission, as to them shall seem so necessary and within such reasonable power of such common carrier * * *."
>
> Section 3000 Compiled Laws of Colorado, 1921.

The above quoted sections from our laws clearly indicate to us that this Commission has jurisdiction to grant the relief prayed for. The only question remaining for its determination is whether the extension of the track of the defendant, Wolf Creek Railroad Company, ought reasonably to be made to secure adequate service or facilities and whether the improvements or increased facilities in respect to trackage, as involved in the instant case, are necessary and within the reasonable power of the defendants to make or adopt for the accommodations of the public in the shipping and handling of property.

To grant the relief asked herein, the Commission must find from the record that the construction, ownership and operation over the proposed extension ought reasonably to be made and is within the reasonable power of the Wolf Creek Railroad Company to make and adopt. The defendant railroad company operates less than one mile of track, which was mainly constructed pursuant to a contract of August 10, 1915, between The International Fuel Company and the Wolf Creek Railroad Company (Exhibit No. 6) and for the purpose of serving the Wadge Mine, operated by a subsidiary of The Victor-American Fuel Company and The International Fuel Company, now operated by The Pinnacle-Kemmerer Coal Company. The Denver and Salt Lake Railroad Company operates with its equipment on the defendant's tracks. The Wolf Creek Railroad Company has never done anything more, so far as operation is concerned, than to construct the track. It has no equipment whatsoever. It has never published or filed tariffs or made reports either to the Interstate Commerce Commission or to this Commission. It has never carried for hire, or otherwise, any freight of any character for any person or corporation. It has no employes and no payroll. Its total annual revenue consists of the interest charge of $390.00 a year paid by The Pinnacle-Kemmerer Coal Company. In 1926 the company's expenses for taxes, etc., exceeded its income by $355.11. In 1927 the deficit amounted to $964.67. These losses have been paid by The Colorado Coal Company, the sole stockholder of the defendant rail company. The complainant offers to pay the entire cost of the proposed extension plus a reasonable rental or sum by way of interest for the use of that portion of the track now constructed, including the upkeep of the road. If the Commission should grant the relief prayed for, defendant rail carrier would assume all usual burdens with respect to the proposed extension, would therefore in some measure have to supervise the same because of such burdens, and have to pay the tax thereon and could be required to file a tariff, at least with this Commission, covering all commodities carried over said proposed extension. Furthermore, the evidence shows that the coal industry is in a depressed condition; that the competitive situation in this industry is very intense

and that some of the best financed coal operators are not making any profit. If the proposed extension should be required with such a condition existing in the coal industry, it can reasonably be assumed that the complainant might be unable to profitably conduct his coal mining operations, with the result that the use of the extension for transportation of the complainants freight would be abandoned leaving the burden of ownership of the same upon the rail carrier to continue the payment of taxes, etc.

Under all the circumstances, therefore, the Commission is unable to find from the record that the proposed construction of the spur track is within the reasonable power of the defendant rail carrier to make or adopt. An order will, therefore, be entered dismissing the complaint herein.

O R D E R

IT IS THEREFORE ORDERED, That the complaint herein be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 19th day of December, 1928.

I concur in the result reached.

Commissioner.

(Decision No. 2013)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF A JOINT APPLICATION BY THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, THE COLORADO AND SOUTHERN RAILWAY COMPANY, AND CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY FOR AN ORDER BY THE COMMISSION AUTHORIZING WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $21.79 ON ONE CARLOAD SHIPMENT OF WHEAT FROM HAXTUN, COLORADO AND ONE FROM LOGAN, COLORADO, MILLED INTO FLOUR AT PUEBLO, COLORADO, AND SHIPPED IN PART TO CANON CITY, COLORADO, AUGUST 6, 1928.

APPLICATION NO. 1242

- - - - - - - - -
December 21, 1928.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company, The Colorado and Southern Railway Company, and Chicago, Burlington & Quincy Railroad Company, for an order by the Commission authorizing waiving collection of undercharges amounting to $21.79 on one carload shipment of flour (39,626 pounds) from The Pueblo Flour Mills Company, Pueblo, Colorado, consigned to The Jones Realty and Wholesale Supply Company, Canon City, Colorado, August 6, 1928. This shipment of flour was combined with 450 pounds of corn meal to make up the required 40,000 pounds, minimum weight. The flour was the product of 32,894 pounds of wheat from Haxtun, Colorado, and 6732 pounds of wheat from Logan, Colorado, the 450 pounds of corn meal being the product of corn from Stockham, Nebraska.

The wheat from Logan and Haxtun was shipped January 23 and 26, 1928, respectively, billed to Denver, transited at Denver, and shipped to Pueblo, Colorado, April 20 and April 27, 1928, respectively, the shipments moving

thru to Pueblo, Colorado, at a rate of 22½¢ cwt., authorized at indices Nos. 7730 and 7700, page 32, C. B. & Q. Freight Tariff G.F.O. 5600-F, Colo. P.U.C. No. 389, effective October 19, 1927.

The corn from Stockham, Nebraska was shipped to Omaha, Nebraska, March 2, 1928, transited at Omaha, and shipped to Pueblo, Colorado, May 10, 1928, moving thru to Pueblo, Colorado at a rate of 33¢ cwt., authorized in Item 250, page 48, C. B. & Q. Freight Tariff G.F.O. 5600-F, supra. Carriers have filed claim with the Interstate Commerce Commission seeking authority to waive collection of 21 cents undercharge in connection with the corn and corn meal movements.

At the time this shipment moved the legal rates applicable on the flour and corn meal were, 17¢ and 15¢ cwt., respectively, authorized in flour circles Nos. 1 and 2, opposite Canon City, Colorado, in Item 9550, page 312, Western Trunk Lines Freight Tariff No. 120-D, issued by E. B. Boyd, Agent, effective November 15, 1927.

Item 8810, page 297, Boyd's Tariff 120-D, authorizes the application of the rates named in Item 9550, viz: "Rates to stations in Colorado on The Denver and Rio Grande Western Railroad, west of Pueblo, Colorado, as named on pages 294 and 295, will in the absence of specific rates to such points, be made by adding to the rates shown in Section No. 5 or to the rates shown in Section No. 6 (whichever is lower) the rates shown in other tariffs lawfully on file with the Interstate Commerce Commission; but if the rate so made exceeds the rate applying in the same direction to a point beyond, taking Salt Lake City, Utah, rates, the Salt Lake City, Utah, rate will apply."

Item 4010, page 162, Boyd's Tariff 120-D, names a rate of 59¢ cwt., carload minimum weight 40,000 pounds, on Grain Products from points in the Missouri River Group, to Ogden and Salt Lake City, Utah, and points taking same rates. Item 7480, page 274, of the same tariff, provides for the application of the Missouri River-Salt Lake City rate from Logan and Haxtun, Colorado to Salt Lake City, or points taking same rates. Item 4010 and 7480 taken in connection with Item 8810, has the effect of establishing the Missouri River-Salt Lake City, Utah, rate as the maximum rate. Minimum weight 40,000 pounds, per section 2, Item 1870, page 90, Boyd's Tariff 120-D, authorized in Item 430, page 21, C. & S. Ry. G.F.O. 1290-M, Colo. P.U.C. 466,

effective January 1, 1928.

The Colorado and Southern Railway Company's agent at Pueblo, Colorado, assessed and collected charges on these shipments on the basis of 22½¢ cwt., on the wheat from Logan and Haxtun, Colorado to Pueblo, Colorado, and 11½¢ cwt., on 39,626 pounds of flour, from Pueblo, Colorado, to Canon City, Colorado, thus creating an undercharge of $21.79. The application does not show under what tariff authority, if any, the agent at Pueblo acted in collecting the charges on the flour from Pueblo, to Canon City, on the basis of a rate of 11½¢ cwt.

Effective June 1, 1928, in Supplement No. 13, Item 9550-A, page 31, Boyd's Tariff No. 120-D, there was published a basing rate of 11½¢ cwt., on flour from Pueblo, to Canon City, (Flour is described in the first column of Item 9551, page 32, Supplement 13, of above mentioned tariff) or subsequent to the movements of the wheat, which governs the outbound rates on commodities given transit privileges.

It is admitted by The Denver and Rio Grande Western Railroad Company, by W. M. Carey, its Assistant General Freight Agent, The Colorado and Southern Railway Company, by G. W. Logan, its Assistant General Freight Agent, and Chicago, Burlington & Quincy Railroad Company, by G.A. Hoffelder, its Assistant General Freight Agent, that the charges to be collected are unreasonable and upon authority of the Commission they will waive collection of $21.79.

The Commission finds that the charges assessed on the basis of the legal rate were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of 22½¢ cwt., wheat, carload, Logan and Haxtun, Colorado, to Pueblo, Colorado, and 11½¢ cwt., on flour, carload, as a basing rate from Pueblo, Colorado, to Canon City, Colorado, and an order will be issued authorizing waiving collection of undercharges amounting to $21.79.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company, The Colorado and Southern Railway Company, and Chicago, Burlington & Quincy Railroad Company be, and they are hereby authorized and directed to waive collection of undercharges amounting to $21.79 on two carload shipments of wheat, one from Logan, Colorado, and one from Haxtun,

Colorado, milled in transit at Pueblo, Colorado, 32,894 pounds of flour being used of the Haxtun wheat, and 6732 pounds of flour being used of the Logan wheat, and shipped by The Pueblo Flour Mills Company, Pueblo, Colorado, consigned to The Jones Realty & Wholesale Supply Company, Canon City, Colorado, covered by C. B. & Q., Haxtun to Denver, and Denver toPueblo, waybills Nos. 146 and 295, dated January 26 and April 27, 1928, respectively, Logan to Denver, waybill,number not shown, dated January 23, 1928, and Denver to Pueblo, waybill No. 221, dated April 20, 1928, routed C. B. & Q., Denver-Colo. & Sou., and Colorado and Southern, Pueblo to Canon City, transit waybill No. 3393, dated August 6, 1928, and

IT IS FURTHER ORDERED, That these rates shall not be exceeded on intrastate traffic for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado, this
21st day of December, 1928.

Commissioners.

(Decision No. 2014)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF AN APPLICATION BY THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY FOR AN ORDER BY THE COMMISSION AUTHORIZING WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $376.20 ON TWO CARLOAD SHIPMENTS OF CEMENT, FROM BOETTCHER, BILLED AT FT. COLLINS, COLORADO TO PORTLAND, COLORADO, APRIL 30 AND MAY 4, 1928.

APPLICATION NO. 1243

- - - - - - - - -

December 21, 1928.

- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company, under its claim number S-21975, for an order by the Commission authorizing waiving collection of undercharges amounting to $376.20 on two carload shipments of Cement, (228,000 pounds) from Colorado Portland Cement Company, Boettcher, billed at Ft. Collins, Colorado, consigned to Colorado Portland Cement Company, Portland, Colorado, routed Union Pacific, Denver, D. & R. G. W., April 30, and May 4, 1928.

At the time these shipments moved the legal rate applicable was 33½¢ cwt., made as follows: 6¢ cwt., carload minimum weight 80,000 lbs., Boettcher, Colorado, to Denver, Colorado, per Index 79, page 5, Un. Pac. Tariff No. 3148-A, Colo. P.U.C. No. 239, effective October 1, 1927, plus 27½¢ cwt., carload minimum weight 30,000 lbs., Denver, Colorado, to Portland, Colorado, which is the class "C" rate, published at Index 159, page 101, D. & R. G. W. Freight Tariff No. 4900-F, Colo. P.U.C. 126, effective June 15, 1926. Carload minimum weight authorized in Item 380C, paragraph D, page 9, Supplement No. 11, effective October 11, 1927, to D. & R. G. W. Tariff No. 4900-F, supra. Class "C"

rating authorized in Item 20, page 129, Western Classification No. 60, Colo. P.U.C. No. 9, effective December 15, 1927.

Upon arrival of these shipments at Portland, the agent assessed the charges on the basis of the thru rate of 33½¢ cwt., which the consignee refused to pay. The matter was then referred to Mr. D. A. Barton, Auditor Freight Receipts, D. & R. G. W. R. R. Co., for disposition.

On July 9, 1928, Mr. Barton, upon request of Mr. Wallace of the Traffic Department, authorized the agent at Portland to collect charges on the basis of a thru rate of 17¢ cwt.

Effective May 18, 1928, in Amendment No. 12 to D. & R. G. W. Freight Tariff No. 5973-C, Colo. P.U.C. No. 73, there was published a proportional rate of 11¢ cwt., on cement, carloads, minimum weight 80,000 lbs., from Denver, Colorado, to Portland, Colorado, applicable only on traffic originating at Boettcher, Colorado, which rate was published to expire with November 30, 1928.

When the D. & R. G. W. was asked to publish the 11¢ proportional rate from Denver to Portland on this traffic, it was with the understanding that the movement would be temporary, which fact resulted in using an expiration date. It was the purpose of the cement company to forward this Boettcher product to the Portland plant to be loaded there in mixed cars with the class of cement manufactured at the latter point. It appears there is some difference between the Boettcher and Portland products. The claimant intended to later manufacture at Portland the class of cement which was being shipped from Boettcher, but since the movement began it has been decided to ship all of this class of cement from Boettcher instead of equipping a plant at Portland to manufacture the same product.

Effective December 17, 1928, in Amendment No. 13 to D. & R. G. W. Tariff No. 5973-C, supra, this 11¢ rate was re-established without expiration date.

It is admitted by The Denver and Rio Grande Western Railroad Company, by W. M. Carey, its Assistant General Freight Agent, that the charges to be collected are unreasonable and upon authority of the Commission they will waive collection of $376.20.

The Commission finds that the charges assessed on the basis of the

legal rate were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of a proportional rate of 11¢ cwt., from Denver, to Portland, in connection with a rate of 6¢ cwt., from Boettcher to Denver, and an order will be issued authorizing waiving collection of undercharges amounting to $376.20.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company be, and it is hereby authorized and directed to waive collection of undercharges amounting to $376.20, on two carload shipments of cement, (228,000 pounds) from Colorado Portland Cement Company, Boettcher, billed at Ft. Collins, Colorado, consigned to Colorado Portland Cement Company, Portland, Colorado, covered by Union Pacific, Boettcher, billed at Ft. Collins to Portland, waybills Nos. 185 and 257, dated April 30 and May 4, 1928, and

IT IS FURTHER ORDERED, That the proportional rate of 11¢ cwt., on cement from Denver, Colorado to Portland, Colorado, shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Henry S. Jones

Commissioners.

Dated at Denver, Colorado, this
21st day of December, 1928.

(Decision No. 2015)

(At a General Session of the Public Utilities Commission of the State of Colorado, held at its office in Denver, Colorado, December 20, 1928.)

INVESTIGATION AND SUSPENSION DOCKET NO. 115

Re Proposed Changes in Primary Mining Power Rates of the Public Service Company of Colorado affecting all Metal Mining Consumers to be Effective December 24,1928.

IT APPEARING, That there has been filed with the Public Utilities Commission of the State of Colorado by the Public Service Company of Colorado, by Clare N. Stannard, Vice President and General Manager, a tariff containing proposed changes in all the rate sheets in its schedule Colo. P.U.C.No. 2 which affect consumers engaged in metal mining in Garfield, Eagle, Lake, Park, Summit, Gilpin, Clear Creek, Boulder, and Adams Counties, to become effective December 24,1928, and

IT FURTHER APPEARING, That said changes are primarily for the purpose of reconciling the General Power Rate, the Large Power Rate, the Electric Furnace and Smelter Rate, and also the special contract heretofore existing with the Leadville Deep Mines Company, which contract has now been cancelled after six months written notice and the consumer placed this month on Large Power Rate, under which rates, eleven consumers are now taking service, nine of whom will receive a reduction in charges and two will receive a material increase, one, the American Smelter and Refining Company, Leadville, Colorado, being increased by approximately 7.09% and the other, the Leadville Deep Mines Company, Leadville, being increased approximately 16% over the special contract heretofore enjoyed but not so greatly increased as it is receiving by being placed on the Large Power Rate which increase is approximately 17.6%.

IT FURTHER APPEARING, That the proposed rate schedule contains an exception discount clause entitled "Special Conditions" as follows:

> "When fifty percent (50%) or more of the total energy is used for mine unwatering, and/or smelter operation, and customer provides suitable submetering, approved by and free of cost to the Company, the energy charge of the rate schedule shall be subject to a discount determined as follows:- Ten percent (10%) of the percentage obtained by dividing the kilowatt hours measured by the submetering by the total kilowatt hours used,"

the effect of which would be to reduce the increase to the American Smelting

and Refining Company, Leadville, to practically nothing, to reduce the increase to the Leadville Deep Mines Company, Leadville, from approximately 16% to 10.8% over the special contract and to increase the reduction of the M. & S. Corporation, Leadville, from approximately 1.17% to 5.58%.

IT FURTHER APPEARING, That Barney L. Whatley, Esq., Attorney for the Climax Molybdenum Company, Climax, Colorado, filed on November 22,1928, a formal protest against said "Special Conditions" provided in the said rate which he alleges would constitute an unfair, unreasonable, unlawful and discriminatory difference in rates prejudicial to the Climax Molybdenum Company not legally justified if the use of electricity in the mining and milling operations of the Climax Molybdenum Company is compared with those of the companies who would benefit by this clause in the rate.

O R D E R

IT IS THEREFORE ORDERED, That said clause entitled "Special Conditions" be suspended for 120 days or until April 20,1929, unless otherwise ordered by this Commission and that said exception discount or modifications thereof shall not be made applying to the rate for metal mining power consumers during the period of suspension.

IT IS FURTHER ORDERED, That a copy of this order be filed with said proposed rates and protest in the office of the Commission, and copies hereof be forthwith served upon the Public Service Company of Colorado, Denver; Barney L. Whatley, Esq., Denver, Attorney for the Climax Molybdenum Company, and each of the other consumers affected by the said above exception discount, to-wit: the Golden Rod Mine and Smelter Corporation, Leadville; the American Smelting and Refining Company, Leadville; and the Leadville Deep Mines Company, George Argall, Manager, Leadville.

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing, the date and place to be designated later.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bock

Gary S. Jones

Commissioners.

Dated at Denver, Colorado, this
20th day of December, 1928.

(Decision No. 2016)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

TOWN OF OAK CREEK, COLORADO Complainant, vs. THE DENVER AND SALT LAKE RAILWAY COMPANY, Defendant.	CASE NO. 376.

December 22, 1928.

S T A T E M E N T

By the Commission:

This is a complaint by the Board of Trustees of the town of Oak Creek, Colorado, against the inadequate protection of the public at the crossing of The Denver and Salt Lake Railway Company on Sharp Avenue in that town. This case was set down for hearing in the Town Hall, Oak Creek, Colorado, on November 8, 1928, at which time evidence in support of and in opposition thereto was received.

Oak Creek is a town of approximately 1400 people located about four miles from Phippsburg. At Phippsburg the defendant has a railroad yard and roundhouse. At Oak Creek and a mile or two west thereof there are several coal mines which ship considerable tonnage over the defendant rail carrier. The track of the defendant carrier through Oak Creek is a part of the switching and railroad yard at Phippsburg. Considerable switching is carried on through the town of Oak Creek daily to Phippsburg. Engines are frequently run backward through the town pushing long strings of cars ahead of them, the town being situated between Phippsburg and the coal mines. Sharp Avenue is the main street of the town of Oak Creek. The block just east of the crossing is built up solid

to about fifty or sixty feet from the track, and there is no visibility along the track in either direction for anyone approaching the track until he is close to the same. From the west the visibility to the north is obscured by buildings on the north side of the street. To the south there are no obstructions of the visibility but there is a steep grade of about 8 per cent approaching the track from the west, and this creates a further danger from this side. The physical conditions at the crossing are poor as to visibility and grades. The operations by the switch engine from Phippsburg in going to the mines and switching ten or fifteen cars ahead of the engine through the town of Oak Creek adds considerably to the hazard. Owing to the fact that there is a heavy ascending grade toward Phippsburg, these trains go over the crossing in question at a fair rate of speed and power.

If the operating conditions over this crossing were such as would result from a normal traffic situation with regular freight and passenger trains passing through the town, we would not feel warranted in considering the same so dangerous as to warrant special attention. We believe it to be a fair statement that the situation at this crossing in Oak Creek is perhaps not comparable to any crossings located in other towns through which the defendant carrier operates. We are, therefore, dealing here with an abnormal traffic situation. The evidence of the complainant warrants the installation of gates, the placing of a watchman at the crossing or an automatic bell signal. While the rail carrier is under some duty to protect the public at railroad crossings, and especially dangerous ones, we believe that after all the major responsibility in the prevention of accidents over railroad crossings rests with the pedestrian and the drivers of vehicles. The driver of a vehicle should, in approaching such a crossing as the one in question, stop before he crosses the same. This Commission, of course, has no jurisdiction to require the driver of every vehicle to stop at railroad crossings before proceeding, but the town could, under its police power, make this requirement. Several accidents have happened at this crossing, but the evidence discloses that a bell signal or wigwag would not have prevented the same.

Under all the circumstances, we do not believe that the record is sufficient to warrant us in requiring a gate or a wigwag bell signal. We do believe, however, that defendant rail carrier should provide a more conspicuous warning sign than it uses at most of its railroad crossings. The evidence shows that in the rail carrier's yards at Utah Junction on Pecos Street it has a large electric sign stretched across the street in the center of the crossing entitled: "Stop, Look, Listen," which at night time flashes, and the same has proven satisfactory in that location. While certain hazardous conditions do not exist in the Pecos Street crossing as exist in the instant crossing, yet there is considerably more traffic over the same.

After a careful consideration of all the evidence introduced at this hearing, the Commission is of the opinion and so finds that the safety of the public requires a danger signal such as is now used by the defendant carrier at the Pecos Street crossing at Utah Junction.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Salt Lake Railway Company be, and it is hereby, directed and required to install at the Sharp Avenue crossing over its right-of-way and tracks in the town of Oak Creek, Colorado, an electric danger signal stretched over the center of its right-of-way, having thereon the words "Stop, Look, Listen" which will flash after dark, which signal shall be substantially the same as the danger signal of the defendant carrier now located at the Pecos Street crossing at Utah Junction, said danger signal to be installed, operated and maintained by the defendant railroad carrier at its expense.

IT IS FURTHER ORDERED, That said danger signal be installed, connected and in operation by the defendant railway company within thirty days from the date of this order.

IT IS FURTHER ORDERED, That the defendant railway company submit to this Commission for its approval a detailed plan of the proposed danger signal within fifteen days from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 22nd day of December, 1928.

(Decision No. 2017)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ELBERT, STATE OF COLORADO FOR THE OPENING OF A PUBLIC HIGHWAY CROSSING AT GRADE OVER THE TRACKS AND RIGHT-OF-WAY OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY AT THE STATION OF RESOLIS, LOCATED IN SECTION 13, TOWNSHIP 9 SOUTH, RANGE 58 WEST, OF THE 6th P.M.

APPLICATION NO. 1128

- - - - - - - - -

December 22,1928.

- - - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises out of the application of the Board of County Commissioners of Elbert County, Colorado, filed with the Commission on May 15, 1928, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the authorization of the opening and establishment of a public highway crossing, at grade, over the main line and side tracks and the right-of-way of the Chicago, Rock Island and Pacific Company at the old private crossing near the east switch at Resolis, located in Section 13, Township 9 South, Range 58 West, of the 6th Principal Meridian.

The application states that the crossing is necessary for the use of people residing east of the railroad to reach the main highway at Rivers Bend in going to Limon and other places on this main highway.

A copy of the application was duly served on the Chicago, Rock Island and Pacific Railway Company through its attorneys, and on May 29, 1928, said respondent company made reply thereto protesting the application in general and more particularly on account of dangers at the proposed site due to bad visibility to the east and north and obstructions to view by cars on siding, and to the crossing of three tracks at this point.

A conference at the proposed site of crossing between representatives of all the parties concerned was arranged for August 2,1928, but the representatives of the county failed to appear and later another conference was arranged

for October 19,1928. At that time county commissioners Davis and Carnahan, and Mr. Wallace, Assistant Engineer and the Roadmaster of the railway company met the Engineer for the Commission at Resolis to consider the matter. The railway officials objected to the proposed location of the crossing because of the dangers as given in the answer to the application. The need for a public crossing at Resolis was apparent, and several other sites were considered. Finally all agreed that a location on the section line between Sections 13 and 14, Township 9 South, Range 58 West, of the 6th P.M. would be the best place for the crossing as it better accommodates the people residing each of the railroad, and connects directly with a road already opened going towards River Bend. Also the visibility at this site is good in both directions and, therefore, has a greater degree of safety than any other point that could be considered. The original site proposed was urged particularly because it would provide convenient access to the stockyards located near the crossing and on east side of the railroad. It was understood at said conference that the railroad company would open a lane along and upon the Company's right-of-way from the new crossing to the stockyards.

It was understood at the conference that the tentative agreement arrived at would be submitted to the management of the railway company by Mr. Wallace for approval, and in letters received from the attorneys for the company on December 5 and 17 the Commission is advised that while the company objects to the multiplication of grade crossings because of the increased hazards to railroad operation, yet it will not insist upon its protest filed in this case, provided it is located at the new site that was tentatively agreed upon at the aforesaid conference of representatives of the interests concerned, and to be installed with the usual division of expense for installation and maintenance of grade crossings.

The Commission fully realizes the gravity of the protest of the company as to the hazards of all grade crossings and believes the time is rapidly approaching when it will be necessary to have a separation at most, if not all, places where crossings are required. But in a sparsely settled country like Colorado the hazards, while serious, are not sufficiently great to justify the expense of construction of a separation of grades at all places,

and in some cases like this it is necessary to use a grade crossing with all features of safety that can be provided.

There is undoubtedly a real need for a crossing at this place, and believing there is not sufficient justification for a separation of grades and that the representations of all the parties concerned have selected a location where the hazards are least the Commission will now issue its order for the authorization of a public highway grade crossing at the location agreed upon.

O R D E R

IT IS THEREFORE ORDERED, in accordance with Section 29 of the Public Utilities Act, as amended April 16,1917, that a public highway crossing, at grade, be, and the same is hereby, permitted to be opened and established over and across the main line, side track and right-of-way of the Chicago, Rock Island and Pacific Railway Company at a point on the section line between Sections Thirteen (13) and Fourteen (14), Township Nine (9) South, Range Fifty-eight (58) West, of the 6th Principal Meridian in Elbert County, Colorado, conditioned, however, that prior to the opening of said crossing to public travel it shall be constructed in accordance with plans and specifications as prescribed in the Commission's order "In re improvements of grade crossings in Colorado, 2 Colo. P.U.C. 128."

IT IS FURTHER ORDERED, That the expense of the construction and maintenance of grading for the highway up to the track at the crossing including the necessary drainage therefor shall be borne by the county of Elbert, State of Colorado, and the expense for the installation and maintenance of said crossing including necessary cattle guards, crossing plank and signs shall be borne by the respondent, the Chicago,Rock Island and Pacific Railway Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Harry S. Jones

Commissioners.

Dated at Denver, Colorado, this 22nd day of December,1928.

(Decision No. 2018)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE INVESTIGATION)
BY THE COMMISSION ON ITS OWN MOTION) CASE NO. 368
OF A COMPLAINT OF E. G. OTTINGER.)

December 26, 1928.

Appearances: R. W. Booze, Golden, Colorado and
P. Shepard, Platteville, Colorado,
for Colorado Central Power Company.

S T A T E M E N T

By the Commission:

On June 6 of this year E. G. Ottinger of Platteville, Colorado, wrote the Commission a letter complaining that because of his refusal to pay a deposit of $24.00 to Colorado Central Power Company, which is engaged in the distribution of electric energy in Platteville, the said company disconnected his service. He requested that the Commission investigate the matter of the propriety of the demand of the deposit and that in the meantime his service be restored. The Commission's electrical engineer immediately telephoned the company requesting it to restore and maintain service until such time as the matter could be heard. The Commission thereupon on June 22 on its own motion converted the matter into a formal proceeding, making the said E. G. Ottinger and the said Colorado Central Power Company parties thereto. The matter was duly set for hearing and was heard in the hearing room of the Commission in Denver on December 21. Although notice was duly given to Mr. Ottinger he did not appear in person or by an attorney.

At a date prior to the time of the beginning of the controversy Colorado Central Power Company adopted a uniform policy requiring new customers

to make a deposit for the purpose of guaranteeing payment of current bills. This policy was adopted pursuant to authority contained in Rule 11 of this Commission regulating the service of gas, electric and water utilities. The said rule reads in part as follows:

> "Any utility may require at any time from any consumer or prospective consumer, a cash deposit intended to guarantee payment of current bills. Such required deposit shall not exceed the amount of an estimated ninety days' bill of such consumer, or in the case of a consumer whose bills are payable in advance, it shall not exceed an estimated sixty days' bill for such consumer."

The evidence shows that one Bohlender was the predecessor of Ottinger in the operation of a pool hall in Platteville; that he was succeeded in said business by a partnership known as Ottinger and Bennett, Ottinger being the party hereto; that the said partnership took their electricity under Bohlender's contract with the company; that Bennett withdrew from the firm in February of this year and that the company understood that Bohlender desired to terminate his contract and allow Ottinger to make his own with the company; that thereupon the company, through its district manager Shepard, requested a deposit of $10.00, following which a controversy arose. Shepard then concluded that because of the apparent antagonism which Ottinger bore to the company, the company should and did require a deposit of $24.00, being an estimated ninety days' bill.

The evidence further shows that the company has been demanding of new resident consumers a $5.00 deposit and of new business consumers a deposit of $10.00. Since the adoption of the policy in question 45 deposits have been made, 13 of them being by business consumers.

The demand for such deposits for new customers is not only permitted by Rule 11 of this Commission but is made by a large number of utilities. The company instead of adopting a rule authorized by the rule of this Commission by which it would charge an estimated ninety days' bill, has decided to demand and receive only $10.00 from business men. This being true we are of the opinion and so find that a demand of more than $10.00 from Mr. Ottinger constitutes an unreasonable discrimination against him.

We are of the opinion and so find that the demand of $10.00 is reasonable and proper.

It now appears that there is some question as to whether the said Bohlender is willing to continue his contract for electric service at the pool hall with the bills being sent in the first instance to Ottinger. However, that is a matter very largely for the determination of the parties themselves.

O R D E R

IT IS THEREFORE ORDERED, That the Colorado Central Power Company serve electrical energy to the said E. G. Ottinger upon his making a deposit with the said company of $10.00 to guarantee payment of current bills.

IT IS FURTHER ORDERED, That the said company shall be under no obligation and duty to serve said E. G. Ottinger under a contract with him without such deposit.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado,
this 26th day of December, 1928.

For supporting papers see I. R. D. No. 8 Oe, Dec. 26, 1928.

(Decision No. 2019)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR AN ORDER BY THE COMMISSION AUTHORIZING THE PAYMENT OF REPARATION AMOUNTING TO $112.41 AND WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $327.01 ON TWO CARLOAD SHIPMENTS OF SECOND-HAND MACHINERY, (204,380 POUNDS) FROM PIKEVIEW, BILLED AT COLORADO SPRINGS, COLORADO TO DENVER, COLORADO, OCTOBER 6 and 7, 1927.	APPLICATION NO. 1245

- - - - - - - - -
December 26, 1928.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Atchison, Topeka and Santa Fe Railway Company under its claim number X-RC-4128, for an order by the Commission authorizing the payment of reparation amounting to $112.41, and waiving collection of $327.01, undercharges on two carload shipments of second-hand machinery (204,380 pounds) from Weicker Transfer Company, Pikeview, billed at Colorado Springs, Colorado, consigned to Denver Metal & Machinery Company, Denver, Colorado, October 6 and 7, 1927.

The question of reparation and waiving collection of undercharges will be considered together, but any order of the Commission authorizing the payment of reparation will be entered on its informal reparation docket.

At the time these shipments moved the legal rate applicable was 31½¢ cwt., the class "A" rate, published at Index 137, page 78, Santa Fe Tariff No. 5681-J. Colo. P.U.C. No. 1035, effective February 24, 1925. Class "A" rating on machinery, authorized in Item 3, page 298, Western Classification No. 59, Colo. P.U.C. No. 8, effective February 10, 1925, issued by R.C. Fyfe, Agent.

These shipments were billed as "Scrap Iron as mill machinery, set up", and "Second-hand mill machinery," at a rate of 15½¢ cwt., per item 2620, Santa Fe Tariff 5681-J, supra, and the charges were collected on that basis. Upon inspection by the Western Weighing and Inspection Bureau it was found that the shipments contained other than second-hand mill machinery which resulted in the assessment of the machinery rate of 31½¢ cwt.

Prior to the time these shipments moved the Santa Fe had established an emergency rate of 10¢ cwt., on second-hand machinery, from Pikeview, Colorado, to Denver, Colorado, which was established for the purpose of moving second-hand machinery from a dismantled coal mine plant at Pikeview, and was published to expire June 1, 1927, it being its understanding that all of the material would be moved before that date.

The shippers found that they could not move all of their shipments by June 1, 1927, and requested the carrier to extend this rate, which it agreed to do. However, thru inadvertence this rate was not reestablished until the publication of Amendment P to Santa Fe Tariff 5681-J, supra, effective October 19, 1927, which was published to expire December 31, 1927. This claim was filed with the Commission on the first instant September 19, 1928, and was rejected by it on account of the requirements of its General Order No. 18 not being complied with.

Effective December 12, 1928, in Amendment F1to Santa Fe Tariff No. 5681-K, Colo. P.U.C. No. 1120, this 10¢ rate was again published and the carrier is willing to reparate and waive collection of undercharges to the basis of the 10¢ cwt. rate.

The Commission finds that the charges assessed on the basis of the legal rate and the charges collected on the basis of the 15½¢ cwt., rate were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of 10¢ cwt., carload minimum weight 36,000 pounds, and separate orders will be issued authorizing waiving collection of undercharges amounting to $327.01, and the payment of reparation amounting to $112.41.

O R D E R

IT IS THEREFORE ORDERED, That The Atchison, Topeka and Santa Fe

Railway Company be, and it is hereby authorized and directed to waive collection of undercharges amounting to $327.01 on two carload shipments of second-hand machinery, (204,380 pounds) from Weicker Transfer Company, Pikeview, billed at Colorado Springs, Colorado, consigned to Denver Metal & Machinery Company, Denver, Colorado, covered by Pikeview, B/A Colorado Springs, to Denver, waybills numbers 1 and 7, dated October 6 and 7, 1927, respectively, and

IT IS FURTHER ORDERED, That a rate of 10¢ cwt., on second-hand machinery, minimum carload weight 36,000 pounds, from Pikeview, Colorado, to Denver, Colorado, shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Harry S. Jones

Commissioners.

Dated at Denver, Colorado, this
26th day of December, 1928.

(Decision No. 2020)

At a session of The Public Utilities Commission of The State of Colorado, held at its office in Denver, Colorado on the 21st day of December, 1928.

INVESTIGATION AND SUSPENSION DOCKET NO. 108

Re: Transporting Less Than Carload Shipments of Fresh Meat and/or Packing House Products in individual cars.

Transporting Less Than Carload Traffic in individual cars.

IT APPEARING, That by an order dated the 20th day of August, 1928, The Public Utilities Commission of The State of Colorado entered on an investigation concerning the lawfulness of the new individual rules and charges, and new individual regulations and practices affecting such rules and charges stated in schedules contained in tariff designated in said order.

IT FURTHER APPEARING, That pending such hearing and decision, the Commission ordered that the operation of certain schedules contained in said tariff be suspended and that the use of the rules, charges, regulations and practices therein stated be deferred upon intrastate traffic until the 22nd day of December, 1928.

IT FURTHER APPEARING, That such investigation cannot be conducted within the period of suspension above stated;

IT IS ORDERED, That the operation of the schedules contained in the tariff specified in said order dated the 20th day of August, 1928, be further suspended and that the use of the rules, charges, regulations and practices therein stated, be further deferred on intrastate traffic until the 25th day of March, 1929, unless otherwise ordered by the Commission, and no change shall be made in such rules, charges, regulations and practices during the said period of suspension.

IT IS FURTHER ORDERED, That the rules and charges, and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of, or until the period of suspension has

expired.

IT IS FURTHER ORDERED, That a copy of this order be filed with said schedules in the office of The Public Utilities Commission of the State of Colorado, and that copies hereof be forthwith served upon the respondents to this proceeding, and

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing at a future date to be determined by the Commission, due notice of such date and place of hearing being given all interested parties.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 21st day of December, 1928.

Commissioners.

(Decision No. 2021)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAS ANIMAS COUNTY, STATE OF COLORADO, FOR THE OPENING OF A PUBLIC HIGHWAY CROSSING, AT GRADE, OVER THE MAIN LINE TRACK AND RIGHT-OF-WAY OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY AT A POINT APPROXIMATELY TWO MILES NORTH OF BARNES STATION, LAS ANIMAS COUNTY, COLORADO.

APPLICATION NO. 1231

- - - - - - - - -

December 28,1928.

- - - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises out of the application of the Board of County Commissioners of Las Animas County, Colorado, filed with the Commission on November 23, 1928, in compliance with Section 2? of the Public Utilities Act, as amended April 6, 1917, for the authorization of the opening and the establishment of a public highway crossing, at grade, over the main line track and right-of-way of The Denver and Rio Grande Western Railroad Company at a point on the section line between Sections 5 and 8, Township 31 South, Range 64 West, of the 6th P.M., and which point is at Mile Post 192, plus 3430 feet of said railroad, and about two miles north of Barnes station.

The application alleges that the crossing is necessary for the opening of a new county highway between the two main north and south highways at this point. A copy of the application was duly served on The Denver and Rio Grande Western Railroad Company, the respondent in this case, and on December 4, 1928, the Commission was advised by Mr. E. N. Clark, the attorney for the respondent, that the Railroad Company would offer no objection to the granting of the application, provided that it is the opinion

of the Commission that no unnecessary hazard would be created by the establishment of the crossing, said crossing to be installed upon the usual terms.

A conference at the site of the proposed crossing was arranged for the parties concerned to investigate the need for and physical aspects of the site, and accordingly on the 18th instant, Mr. Green, county commissioner of Las Animas County, Mr. Coon, assistant engineer of the railroad company, and the railway engineer of the Commission met at said proposed location of the crossing.

It was found that the location is on a tangent near the top of a grade with a clear view along the track for a distance of two miles or more in each direction, and that there are no obstructions to view along the highway in approaching the track. The site, therefore, has all the safe topographical features that it is possible to obtain at a grade crossing. The grades of approaches to the crossing will be very slight.

There is quite a settlement in an irrigated district east of the railroad that the new highway will accommodate, besides providing a cross road between the two main north and south highways. The crossing, therefore, is found to be a convenience and necessity.

Since, therefore, it has been shown that the crossing will be a convenience and necessity, and that there are no objectionable features to it from a safety point of view, and a separation of grade is not practicable, and all parties concerned therein consent to the establishment of the crossing upon the usual terms, the Commission without further proceedings in the matter will now issue its order granting the application.

O R D E R

IT IS THEREFORE ORDERED, in accordance with Section 29 of the Public Utilities Act, as amended April 16,1917, that a public highway crossing, at grade, be, and the same is hereby, permitted to be opened and established over and across the main line track and right-of-way of The Denver and Rio Grande Western Railroad Company at a point where

the section line between Sections Five (5) and Eight (8), Township Thirty-one (31) South, Range Sixty-four (64) west of the 6th P.M., intersects the railroad, which point is said to be at Mile Post 192, plus 3430 feet of said railroad, conditioned, however, that prior to the opening of said crossing to public travel it shall be constructed in accordance with plans and specifications as prescribed in the Commission's order "In re Improvements of grade crossings in Colorado, 2 Colo. P.U.C.No.128."

IT IS FURTHER ORDERED, That the expense of the construction and maintenance of grading for the highway up to the track at the crossing, including the necessary drainage therefor, shall be borne by the County of Las Animas, State of Colorado, and the expense of the installation and maintenance of said crossing, including necessary cattle guards, crossing plank and signs shall be borne by the respondent, The Denver and Rio Grande Western Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
28th day of December, 1928.

For supporting papers
see informal reparation
docket no. 807, 1/7/28.

(Decision No. 2022)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF A JOINT APPLICATION BY THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY AND THE COLORADO AND SOUTHERN RAILWAY COMPANY FOR AN ORDER BY THE COMMISSION AUTHORIZING THE PAYMENT OF REPARATION AMOUNTING TO $137.98, AND WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $520.35 ON FIVE CARLOAD SHIPMENTS OF COAL (483,300 pounds) FROM SOMERSET, COLORADO TO ALMA, COLORADO, NOVEMBER 23 AND DECEMBER 2, 1927, JANUARY 14, 23 AND FEBRUARY 18, 1928.

APPLICATION NO. 1250

- - - - - - - - -

December 28, 1928.

- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company under its claim number S-21978, and joined in by The Colorado and Southern Railway Company for an order by the Commission authorizing payment of reparation amounting to $137.98, and waiving collection of undercharges amounting to $520.35 on four carload shipments of mine run coal (404,200 pounds) and one carload shipment of nut coal (79,100 pounds) from The Oliver Coal Company, Somerset, Colorado, consigned to The London Gold Mines Company, Alma, Colorado, November 23 and December 2, 1927, January 14 and 23 and February 18, 1928, routed via D. & R. G. W., Leadville, Colo. & Sou. to destination.

The question of reparation and waiving collection of undercharges will be considered together, but any order of the Commission authorizing the payment of reparation will be entered on its informal reparation docket.

At the time these shipments moved the legal rate applicable was as follows:

$7.86 per ton of 2000 pounds on mine run coal from Somerset, Colorado, to Alma, Colorado, made:

$3.38 per ton of 2000 pounds, carload minimum weight marked capacity of the car, except when cars are loaded to full visible capacity, actual weight will apply, Somerset, Colorado, to Gunnison, Colorado, authorized under Group 5, at Index 1920, page 22, Freight Tariff D. & R. G. W. G.F.D. 6249, Colo. P.U.C. No. 89, effective February 15, 1924. Minimum carload weight authorized in Item 50-A, page 3, Supplement 6, effective October 13, 1927, to above tariff.

$4.48 per ton of 2000 pounds, carload minimum weight 40,000 pounds, except when cars are loaded to full visible physical capacity, actual weight will apply. Gunnison, Colorado, intermediate to Castleton, Colorado, to Alma, Colorado, authorized in Item 250-A, page 2, Supplement 3, effective August 3, 1925, to The Colorado and Southern Railway Company Freight Tariff G.F. O. 807-O, Colo. P.U.C. 435, effective March 17, 1925.

$7.82 per ton of 2000 pounds on nut coal from Somerset, Colorado to Alma, Colorado, made:

$3.04 per ton of 2000 pounds, carload minimum weight marked capacity of car, except when cars are loaded to full visible capacity, actual weight will apply. Somerset, Colorado, to Gunnison, Colorado, authorized under Group 5, at Index 1920, page 22, of D. & R. G. W. Tariff 6249, supra. Minimum carload weight authorized in Item 50-A, page 3, Supplement 6, effective October 13, 1927, to same tariff.

$4.78 per ton of 2000 pounds, carload minimum weight 40,000 pounds, except when cars are loaded to full visible physical capacity, actual weight will apply. Gunnison, Colorado intermediate to Castleton, Colorado, to Alma, Colorado, authorized in Item 250-A, page 2, Supplement 3, effective August 3, 1925, to The Colorado and Southern Tariff 807-O, supra.

Thru error the Colorado and Southern agent at Fairplay, Colorado, assessed and collected charges on the basis of $6.12 per ton of 2000 pounds on the shipments of November 23 and December 2, 1927, and $5.45 per ton of 2000 pounds on the other three shipments. The application does not state under what tariff authority, if any, the agent at Fairplay acted in collecting charges on the above mentioned basis.

Effective July 2, 1928, in Amendment No. 7, to Colorado and Southern Tariff 807-O, supra, The Colorado and Southern Railway published a joint thru rate of $5.08 per ton of 2000 pounds on mine run coal, and $5.38 per ton of 2000 pounds on nut coal, carload minimum weight, 40,000 pounds, from Somerset, Colorado, to Alma, Colorado, or subsequent to these movements.

It is admitted by The Denver and Rio Grande Western Railroad Company, by W. M. Carey, its Assistant General Freight Agent, and The Colorado and Southern Railway Company, by G. W. Logan, its Assistant General Freight Agent, that the charges collected and the undercharges to be collected on the basis of the legal rate are unreasonable and upon authority of the Commission they

will reparate $137.98, and waive collection of undercharges amounting to $520.35.

The Commission finds that the charges assessed on the basis of the legal rate, and the charges collected on the basis of $5.45 and $6.12 per ton of 2000 pounds, were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of $5.08 per ton of 2000 pounds on mine run coal, and $5.38 per ton of 2000 pounds on nut coal, carload minimum weight 40,000 pounds, and separate orders will be issued authorizing the payment of reparation amounting to $137.98, and waiving collection of undercharges amounting to $520.35.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company and The Colorado and Southern Railway Company be, and they are hereby authorized and directed to waive collection of undercharges amounting to $520.35 on four carload shipments of mine run coal, (404,200 pounds) and one carload shipment of nut coal, (79,100 pounds) from The Oliver Coal Company, Somerset, Colorado, consigned to The London Gold Mines Company, Alma, Colorado, covered by D. & R. G. W., Somerset to Alma, waybills numbers D-103, November 23, 1927, D-3, December 2, 1927, D-72 and D-102, January 14 and 23, 1928, and D-28, February 18, 1928, and

IT IS FURTHER ORDERED, That rates of $5.08 and $5.38 per ton of 2000 pounds on mine run coal and nut coal, respectively, from Somerset, Colorado to Alma, Colorado, shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dora S. Jones

Commissioners.

Dated at Denver, Colorado, this
28th day of December, 1928.

(Decision No. 2023)

At a General Session of the Public Utilities Commission of the State of Colorado held at its office in Denver, Colorado, December 28, 1928.

INVESTIGATION AND SUSPENSION DOCKET NO. 116

IT APPEARING, That The Denver and Rio Grande Western Railroad Company filed with the Commission on December 13, 1928, in accordance with General Order No. 15, a notice of the Company's intention to discontinue its agency station at Loma, Colorado and coincident therewith to place a caretaker in charge of said station on January 1, 1929.

AND IT APPEARING FURTHER, That on December 26, 1928, certain residents and citizens living in the vicinity of the town of Loma filed a petition with the Commission protesting the proposed action of the railroad company, alleging that said action will be an injustice to the community, "and that there is no adequate substituted service that will be available to meet the needs of this community", and that if said station service is discontinued, development of the community will be seriously retarded.

IT IS THEREFORE ORDERED, That the proposed date of discontinuance of said agency service and proposed substitution therefor be suspended for ninety days from January 1, 1929, unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED, That as said discontinuance and substitution appears to injuriously affect the rights, interests, convenience and necessity of the citizens and residents of Loma and vicinity, the same be made the subject of investigation and determination by the Commission at a public hearing to be held at the Court House at Grand Junction, Colorado at 9:30 A. M. on January 30, 1929, unless otherwise suspended after due notice to all concerned.

IT IS FURTHER ORDERED, That a copy of this order be filed with the proposed notice of discontinuance and substitution thereof, and that copies hereof, together with copies of the aforesaid petition, be forthwith served

on said The Denver and Rio Grande Western Railroad Company, and that copies hereof be served on the protestants through the postmaster at Loma, Colorado.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bouck

Jay S. Jones

Commissioners.

Dated at Denver, Colorado, this
28th day of December, 1928.

For supporting papers see informal reparation docket No. 808 - Dec. 28, 1928.

(Decision No. 2024)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - - -

IN THE MATTER OF THE APPLICATION OF THE COLORADO AND SOUTHERN RAILWAY COMPANY FOR AN ORDER BY THE COMMISSION AUTHORIZING THE PAYMENT OF REPARATION AMOUNTING TO $42.20 AND WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $3.20 ON TWO NARROW GAUGE CARLOAD SHIPMENTS OF WOOL FROM GAROS AND JEFFERSON, COLORADO TO DENVER, COLORADO, DURING THE MONTHS OF JUNE AND JULY, 1928.

APPLICATION NO. 1251

- - - - - - - - -

December 28, 1928.

- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Colorado and Southern RailwayCompany under its claim number 30-2903, for an order by the Commission authorizing the payment of reparation amounting to $42.20, and waiving collection of undercharges amounting to $3.20 on two narrow gauge carload shipments of wool, one carload from Jefferson, Colorado weighing 14,132 pounds, as 16,000 pounds, and one carload from Garos, billed at Como, Colorado, weighing 11,014 pounds, as 16,000 pounds, destined Denver, Colorado, June 22 and July 5, 1928, the consignor and consignee being E. A. Stephens Company,

The question of reparation and waiving collection of undercharges will be considered together, but any order by the Commission authorizing the payment of reparation will be entered on its informal reparation docket.

At the time these shipments moved the legal rate applicable was 78 cents per cwt., from Garos, Colorado to Denver, Colorado, and 76 cents per cwt., from Jefferson, Colorado to Denver, Colorado, minimum carload weight 16,000 pounds, the 76¢ and 78¢ rates being the fourth class rates, authorized at indices 306 and 354, pages 103 and 105, Colo. & Sou. Freight Tariff G.F.O.

No. 1-O, Colo. P.U.C. No. 440, effective July 5, 1925. The fourth class rating, and minimum weight, authorized in Item 360, page 37, of above mentioned tariff.

Thru error the agent at Denver collected charges on the shipment from Garos on the basis of 76¢ cwt., minimum weight 16,000 pounds, the fourth class rate from Garos being 78¢ cwt., thus creating an undercharge of $3.20.

In support of the application the carrier admits, that due to the light weight of this commodity, it is impossible to load 16,000 pounds of wool in sacks in one of our narrow gauge box cars, the cubical capacity of which ranges from 1280 to 1324 cubic feet. In Western Trunk Lines Tariff 172-A, which names rates on wool from Colorado and other producing points to eastern destinations, the minimum weight for wool, in sacks, is 24,000 pounds for a thirty-six foot car, the cubical capacity of which range from 2015 and 2926 cubic feet. Shippers called our attention to the fact that they were being penalized by our narrow gauge minimum and requested that it be lowered to 12,000 pounds. In view of the minimum weight prescribed for a thirty-six foot car with an average cubical capacity of approximately 2500 cubic feet, it is felt that 12,000 pounds would be a fair minimum to prescribe for a car with an average cubical capacity of 1300 cubic feet.

Effective August 25, 1928, in Amendment 142, to C. & S. Tariff No. 1-O, supra, The Colorado and Southern Railway Company published a minimum of 12,000 pounds on wool between all stations named in Items Nos. 4 and 5 of tariff, the stations involved in these shipments being named in Items 4 and/or 5.

It is admitted by The Colorado and Southern Railway Company, that the charges collected and the charges to be collected on the basis of a 16,000 pound minimum are unreasonable and upon authority of the Commission it will reparate $42.20 and waive collection of undercharges amounting to $3.20.

The Commission finds that the charges assessed and the charges collected on the basis of a 16,000 pound minimum, were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of a 12,000 pound minimum, and separate orders will be issued authorizing the payment of reparation amounting to $42.20, and waiving collection of undercharges amounting to $3.20.

O R D E R

IT IS THEREFORE ORDERED, That The Colorado and Southern Railway Company be, and it is hereby authorized and directed to waive collection of undercharges amounting to $3.20 on one carload shipment of wool, (11,014 pounds, as 16,000 pounds) from E. A. Stephens Company, Garos, Colorado, consigned to E. A. Stephens Company, Denver, Colorado, covered by Garos, billed at Como, Colorado, waybill number 15, dated July 5, 1928, and

IT IS FURTHER ORDERED, That a minimum weight of 12,000 pounds on wool, from Garos, Colorado, to Denver, Colorado, shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado, this
28th day of December, 1928.

Commissioners.

(Decision No. 2025)

At a Session of the Public Utilities Commission of the State of Colorado, held at its office in Denver, Colorado on the 28th day of December, 1928.

INVESTIGATION AND SUSPENSION DOCKET NO. 110

Re: Abandonment and Dismantlement of King Solomon Mine Spur Track on the Denver-Leadville Line of The Colorado and Southern Railway Company.

IT APPEARING, That by an order dated September 29,1928, the Public Utilities Commission of the State of Colorado entered on an investigation concerning the proposed abandonment and dismantling of the King Solomon Mine spur track on the Denver-Leadville line of the Colorado and Southern Railway Company, as designated in said order;

IT APPEARING FURTHER, That pending such hearing and decision the Commission ordered that the proposed abandonment and dismantlement of said spur track be suspended ninety days from October 1,1928, unless otherwise ordered by the Commission;

IT APPEARING FURTHER, That such investigation cannot be conducted within the period of suspension above stated.

IT IS ORDERED, That the abandonment and dismantlement of said spur track as specified in said order dated September 29,1928, be further suspended and the use of said track be continued until June 30,1929, unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED, That a copy of this order be filed with the records of this case in the office of the Public Utilities Commission, and that copies hereof be forthwith served on the respondent, The Colorado and Southern Railway Company and the protestant, Samuel H. Alexander, President and General Manager of the King Solomon Mining Company, Mining Exchange Building, Denver, Colorado.

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing at a future date to be determined by the Commission, due notice of such date and place of hearing being given all interested parties.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 28th day of December, 1928.

(Decision No. 2026)

At a Session of the Public Utilities
Commission of the State of Colorado
held at its office in Denver, Colorado,
on the 29th day of December, 1928.

INVESTIGATION AND SUSPENSION DOCKET NO. 117

Re: Curtailment of Service by The
Denver & Interurban Motor Co.

IT APPEARING, That there has been filed with the Public Utilities Commission of the State of Colorado, by The Denver & Interurban Motor Company, by C.A.Willfong, Superintendent, a time schedule containing schedules eliminating certain busses, to become effective on the 30th day of December, 1928, designated as follows:

The Denver & Interurban Motor Company
Time Schedule No.10.

IT IS ORDERED, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the propriety of the changes stated in the said schedules contained in said time schedule, viz.,

The Denver & Interurban Motor Company
Time Schedule No. 10.

Eliminating busses leaving Denver, 10:45 A.M. and 12:30 P.M., and busses leaving Westminster, 9:30 A.M. and 3:30 P.M., also changing the leaving time of the 9:45 P.M. bus from Denver to 10:00 P.M. and the leaving time of the 8:30 P.M. bus from Westminster, to 9:15 P.M.

IT FURTHER APPEARING, That the said schedule makes certain changes in its facilities whereby the rights and interests of the public may be injuriously affected; and it being the opinion of the Commission that the effective date of the said schedules contained in the said time schedule should be postponed pending said hearing and decision thereon.

IT IS FURTHER ORDERED, That the operation of the said schedules contained in said time schedule be suspended, and that the eliminations and changes, as hereinbefore mentioned, be deferred one hundred and twenty (120) days, or until the 29th day of April, 1929, unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED, That a copy of this order be filed with said time schedule in the office of the Commission, and that copies thereof be forthwith served upon The Denver & Interurban Motor Company, 3625 Fox Street, Denver, Colorado, and W. D. Cool, Mayor, Town of Westminster, Colorado, protestant.

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing in the hearing room of the Commission, 305 State Office Building, Denver, Colorado, on Tuesday, January 8,1929, at 2:00 o'clock P.M.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado, this
29th day of December,1928.

(Decision No. 2027)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE STATE HIGHWAY DEPARTMENT FOR OPENING OF A PUBLIC HIGHWAY OVER THE RIGHT OF WAY AND TRACK OF THE COLORADO AND SOUTHERN RAILWAY COMPANY AT A POINT ON THE SECTION LINE BETWEEN SECTIONS 25 AND 36, T. I N. R. 70-W.

APPLICATION NO. 1205

December 29, 1928.

STATEMENT

By the Commission:

On October 26, 1928, the Commission entered an order in the above entitled application authorizing a temporary public highway crossing at grade. The Commission also provided in the second paragraph of said order that all trains passing over the crossing in question should not exceed a speed of four miles per hour. Thereafter our attention was called to the fact that the speed prescribed in the order might cause serious inconvenience and very burdensome operating difficulties and therefore on November 27, 1928, we issued an order providing for a speed of not to exceed eight miles per hour for the trains of the respondent over said crossing.

Our attention is now called to the fact that there is nothing in the record in this application warranting this Commission in making a finding in the first instance in relation to the speed of trains over the crossing in question. The order in the instant case was entered upon agreement by all the parties. Where there is a dispute about the facts the Commission orders a hearing. The Commission can only enter such order as is warranted under the agreed statement of facts or testimony submitted upon a hearing. A search of the record discloses that no agreement was arrived at relative to the speed by trains over the crossing in question and in

fact was not even discussed. Under these circumstances an order will be entered revoking and cancelling the second paragraph in the order dated October 26, 1928, and the order entered on November 27, 1928.

O R D E R

IT IS THEREFORE ORDERED, That the second paragraph of the order entered on October 26, 1928, in Application No. 1205 be, and the same is hereby, revoked and cancelled, and the order entered on November 27, 1928, in Application No. 1205 be, and the same is hereby, revoked and cancelled.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 29th day of December, 1928.

Commissioners.

(Decision No. 2028)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE MOTOR VEHICLE OPERATIONS)
OF ROBERT A. HAZELL.) CASE NO. 392

January 4, 1929.

S T A T E M E N T

By the Commission:

On to-wit December 19, 1928, complaint was filed in the Justice Court of the City and County of Denver by the District Attorney for the Second Judicial District charging Robert A. Hazell, respondent herein, with operating as a motor vehicle carrier as defined in Chapter 134, Session Laws, 1927, without first having obtained a certificate of public convenience and necessi ty from this Commission. This complaint was set down for trial on January 4, 1929, but was continued to January 16. Information submitted to the Commission as to his operations is such as to cause sufficient grounds to exist to make an investigation and for it to issue an order requiring the respondent, Robert A. Hazell, to show cause why an order should not be entered by this Commission requiring him to cease and desist from operating as such motor vehicle carrier.

O R D E R

IT IS THEREFORE ORDERED, That Robert A. Hazell be, and he is hereby, required to show cause why this Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws, 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing at the Hearing Room of the Commission, Denver, Colorado, on January 7, 1929, at 10:00 o'clock A. M. at which time the said

respondent shall appear and give such testimony and make such showing as he may deem proper and at which time such evidence relating to his operations as may be proper may be introduced.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dana S. Jones

Commissioners.

Dated at Denver, Colorado,
this 4th day of January, 1929.

(Decision No. 2029)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * * *

IN THE MATTER OF THE APPLICATION)
OF JAKE WEILER AND FRED HAUF FOR) APPLICATION NO. 1206
A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY.)
-)

- - - - - - - - -
January 5, 1929.
- - - - - - - - -

Appearances: David F. How, Esq., Denver, Colorado,
for applicants;
Edward Affolter, Esq., Louisville, Colorado,
for protestant William Webber.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity to operate a motor vehicle system for the transportation of passengers between the Town of Lafayette, in Boulder County, Colorado, and Erie, State Mine and Clayton or Morrison Mine, all in Weld County, Colorado.

Answer and protest was filed against this application by William Webber, to whom the Commission on May 17, 1928, granted a certificate of public convenience and necessity authorizing a similar operation in the same territory.

The testimony adduced at the public hearing on this application shows that applicant Weiler has been operating as a common carrier of passengers from Lafayette to the Clayton Mine for the past several years, and that applicant Hauf has been operating since approximately August 1, 1928. They both reside at Lafayette, both work on the day-shift at the Clayton Mine, and each in going to and from his work operates a bus carrying passengers to and from the mines.

The testimony further shows that protestant William Webber has

been operating under the certificate granted to him on May 17, 1928, and that his service has been satisfactory and adequate, and no complaint has been made against this operation. It further shows that Webber cannot continue to operate if an additional certificate is granted.

Under these circumstances, there being no evidence in the record that any additional service is necessary to serve the traveling public in the territory involved, nothing remains for the Commission but to deny the application.

After a careful consideration of all the evidence the Commission finds that the public convenience and necessity does not require the proposed motor vehicle service by the applicants herein.

O R D E R

IT IS THEREFORE ORDERED, That the application of Jake Weiler and Fred Hauf be and the same is hereby denied.

IT IS FURTHER ORDERED, That Jake Weiler and Fred Hauf forthwith cease and desist from conducting a motor vehicle carrier transportation system of passengers as defined in Chapter 134, Session Laws of 1927.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
5th day of January, 1929.

(Decision No. 2030)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

In the matter of the application of)
the Board of County Commissioners of)
Cheyenne County for the opening of a) APPLICATION NO. 972
public highway crossing.)
- - - - - - - - - - - - - - - - - - - -

- - - - - - - - -
January 5, 1929.
- - - - - - - - -

S T A T E M E N T

By the Commission:

On January 6, 1928, the Commission entered an order in the above application for two railroad crossings at grade adjacent to the town of Arapahoe. To carry this order into effect it was necessary for the Union Pacific Railroad Company to lease to the town a sixty foot right-of-way between the two crossings. It has since developed that the rail carrier either will not or cannot furnish this right-of-way. Under these circumstances, the Board of County Commissioners of Cheyenne County has requested that this application be reopened for further hearing.

O R D E R

IT IS FURTHER ORDERED, That the above entitled application be, and the same is hereby, reopened for further hearing at such time and place as the Commission may hereafter determine.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dayle L. Jones

Commissioners.

Dated at Denver, Colorado,
this 5th day of January, 1929.

(Decision No. 2031)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
WILLIAM H. CONYERS FOR A CERTIFICATE) APPLICATION NO. 843
OF PUBLIC CONVENIENCE AND NECESSITY.)

January 7, 1929.

S T A T E M E N T

By the Commission:

On February 23, 1928, this Commission issued a certificate of public convenience and necessity to the above applicant authorizing the motor vehicle transportation of passengers and express between Walden, Colorado, and the Wyoming state line and intermediate points.

Under the Public Utilities Act, the Commission is required to charge and collect a fee for a certificate of public convenience and necessity which, in the above application, is $5.00. On November 16, 1928, this Commission addressed a letter to the above applicant, calling his attention to his failure to make payment of this fee and informing him that unless this bill was paid by November 30, 1928, there would issue an order to show cause why this certificate granted to the applicant should not be revoked. No reply whatever has been received by this Commission from the applicant.

O R D E R

IT IS THEREFORE ORDERED, That said William H. Conyers be, and he is hereby, directed to show cause in writing within ten days from the date of this order why the certificate of public convenience

and necessity granted to him on February 23, 1928, should not be revoked and cancelled.

IT IS FURTHER ORDERED, That this matter be set down for hearing at the hearing room of the Commission at Denver, Colorado, on January 16, 1929, at 10:00 A. M., at which time such evidence will be received as may be pertinent to the issues.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 7th day of January, 1928.

(Decision No. 2032)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
RAY S. HALL AND FLOSSIE M. HALL,)
CO-PARTNERS, DOING BUSINESS UNDER)
THE FIRM NAME OF HALL'S BLACK AND) APPLICATION NO. 848
WHITE CAB COMPANY, FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY.)

January 7, 1929.

STATEMENT

By the Commission:

On May 10, 1928, this Commission issued a certificate of public convenience and necessity to the above applicants, authorizing a motor vehicle system for the transportation of passengers from Boulder to the various scenic attractions in the Boulder region.

Under the Public Utilities Act, the Commission is required to charge and collect a fee for a certificate of public convenience and necessity, which in the above application is $5.00. On November 16, 1928, this Commission addressed a letter to the above applicants, calling their attention to their failure to make payment of this fee, and informing them that unless this bill was paid by November 30, 1928, there would issue an order to show cause by this certificate granted to the applicants should not be revoked. No reply whatever has been received by this Commission from the applicants.

ORDER

IT IS THEREFORE ORDERED, That said Ray S. Hall and Flossie M. Hall, co-partners, be, and they are hereby, directed to show cause in

writing within ten days from the date of this order why the certificate of public convenience and necessity granted to them on May 10, 1928, should not be revoked and cancelled.

IT IS FURTHER ORDERED, That this matter be set down for hearing at the hearing room of the Commission at Denver, Colorado, on January 16, 1929, at 10:00 A. M., at which time such evidence will be received as may be pertinent to the issues.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 7th day of January, 1929.

(Decision No. 2033)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
HENRY CRAWFORD AND ARTHUR COWLING,)
CO-PARTNERS, DOING BUSINESS UNDER)
THE FIRM NAME OF CRAWFORD AND COWLING,)
FOR A CERTIFICATE OF PUBLIC CONVENIENCE) APPLICATION NO. 1063
AND NECESSITY.)

January 7, 1929.

S T A T E M E N T.

By the Commission:

On July 25, 1928, this Commission issued a certificate of public convenience and necessity to the above applicants, authorizing the motor vehicle transportation of passengers, freight and express between Cortez and the Colorado-New Mexico state line over highway leading from Cortez to Gallup, New Mexico.

Under the Public Utilities Act, the Commission is required to charge and collect a fee for a certificate of public convenience and necessity which, in the above application, is $5.00. On November 16, 1928, this Commission addressed a letter to the above applicants, calling their attention to their failure to make payment of this fee, and informing them that unless this bill was paid by November 30, 1928, there would issue an order to show cause why this certificate granted to the applicants should not be revoked. No reply whatever has been received by this Commission from the applicants.

O R D E R

IT IS THEREFORE ORDERED, That said Henry Crawford and Arthur Cowling, co-partners, be, and they are hereby, directed to show cause in writing within ten days from the date of this order why the certificate

of public convenience and necessity granted to them on July 25, 1928, should not be revoked and cancelled.

IT IS FURTHER ORDERED, That this matter be set down for hearing at the hearing room of the Commission at Denver, Colorado, on January 16, 1929, at 10:00 A. M., at which time such evidence will be received as may be pertinent to the issues.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 7th day of January, 1929.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF E. CORY, DOING BUSINESS AS THE COL-MEX TRANSPORTATION COMPANY, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1180.

January 10, 1929.

Appearances:

Charles W. Woodard, Esq., Alamosa, Colorado, attorney for applicant;

Thomas R. Woodrow, Esq., Denver, Colorado, attorney for the San Luis Valley Southern Railway Company.

S T A T E M E N T.

By the Commission:

The applicant, E. Cory, filed his application for a certificate of public convenience and necessity authorizing transportation by him as a motor vehicle carrier of passengers, freight and express between Fort Garland, Colorado, and Costilla, New Mexico, and intermediate points in Colorado. The San Luis Valley Southern Railway Company and The Denver & Rio Grande Western Railroad Company filed their written answers and protests. The Board of County Commissioners of Costilla County filed a certified copy of a resolution asking that the application be denied. During the course of the hearing, the applicant secured leave to, and has filed an amended application, waiving that part of his application asking for authority to do any intrastate business in Colorado. He now proposes to render his service in interstate only between Fort Garland

and a point on the Colorado-New Mexico line where the Fort Garland-San Luis-Garcia-Costilla highway crosses the same. He proposes to use in said operation two International trucks, one having a capacity of three and one-half tons, the other two tons, the two having a total value of three thousand four hundred fifty dollars ($3,450.00).

The Commission is of the opinion, and so finds, that under the constitution and laws of the United States and the laws of the State of Colorado, the applicant is entitled to a certificate of public convenience and necessity, authorizing the transportation by him interstate only of express, freight and passengers between Fort Garland, Colorado, and a point on the Colorado-New Mexico line where the Fort Garland-San Luis-Garcia-Costilla highway crosses the same.

O R D E R

IT IS THEREFORE ORDERED, That in compliance with the constitution and laws of the United States and the laws of the State of Colorado, a certificate of public convenience and necessity be, and the same is hereby, issued to E. Cory, doing business as the Col-Mex Transportation Company, authorizing the transportation by him interstate only of passengers, freight and express between Fort Garland, Colorado, and a point on the Colorado-New Mexico line where the Fort Garland-San Luis-Garcia-Costilla highway crosses the same, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedule filed with this

Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Tom Williams

Commissioners.

Dated at Denver, Colorado,
this 10th day of January, 1929.

(Decision No. 2036)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * * *

IN THE MATTER OF THE APPLICATION OF)
W. J. CLARK FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY.)

APPLICATION NO. 1204

January 19, 1929.

Appearances: Platt & Edgar, Esqs., Alamosa, Colorado, attorneys for applicant;

Thomas R. Woodrow, Esq., Denver, Colorado, attorney for The Denver & Rio Grande Western Railroad Co.

S T A T E M E N T

By the Commission:

The applicant, W. J. Clark, of Alamosa, Colorado, filed his application for a certificate of public convenience and necessity, for a motor vehicle carrier system authorizing the transportation of freight between Alamosa and a point on the Colorado-New Mexico state line where the Alamosa-Antonito-Taos highway crosses said line, and the intermediate points of La Jara, Romeo, Antonito and two other points, Manassa and Sanford, which are situated one and one-half and three miles, respectively, east of said highway. The Denver and Rio Grande Western Railroad Company filed its written objection and protest. The Boards of County Commissioners of Alamosa and Conejos Counties filed statements in which they say that the public convenience and necessity warrants the operation of the proposed system.

At the hearing, the applicant waived that portion of his application asking for authority to transport freight intrastate, except to and from Sanford and Manassa, both of which points are situated off the main highway, as stated, and also off the line of the railroad company. The applicant proposes to use in said operation one and one-quarter ton Reo truck and

one one and one-half ton Graham Brothers truck, the two having a reasonable value of Fifteen Hundred Dollars ($1,500.00.) The two towns of Manassa and Sanford are now served by no common carrier of freight. The applicant enjoys a good reputation and is able financially to carry on the proposed operations.

The Commission is of the opinion, and so finds, that the public convenience and necessity requires the motor vehicle operation of the applicant in the transportation of freight intrastate over the said route to and from the towns of Sanford and Manassa, and that under the laws of the State of Colorado and the United States he is entitled to a certificate of public convenience and necessity, authorizing the transportation of freight interstate between Alamosa and the Colorado-New Mexico line at a point where the Alamosa-Antonito-Taos highway crosses the same.

O R D E R

IT IS THEREFORE ORDERED, That a certificate of public convenience and necessity be, and the same is hereby, issued to the said W. J. Clark, authorizing the transportation of freight intrastate over the said route to and from the towns of Sanford and Manassa, and interstate upon the Alamosa-Antonito-Taos highway between Alamosa and the Colorado-New Mexico state line, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant shall file tariffs of rates, rules and regulations and time and distance schedules, as required by the Rules and Regulations of this Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedule filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle

carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dave S. Jones

Thos. D. Allen

Dated at Denver, Colorado,
this 10th day of January, 1929.

(Decision No. 2037)

At a General Session of the Public Utilities Commission of The State of Colorado, held at its office in Denver, Colorado, on the 10th day of January, 1929.

INVESTIGATION AND SUSPENSION DOCKET NO. 118

Re: Changes in rates.

IT APPEARING, That there has been filed with the Public Utilities Commission of the State of Colorado by The Miller Transfer Company, by Charles D. Bromley, its attorney, a tariff containing schedules stating new individual rates and charges to become effective on the 14th day of January, 1929, entitled as follows:

> The Miller Transfer Company Local Freight Tariff No. 4, Colo. P.U.C. No. 4, Freight Classification and Class Rates for the transportation of freight between Denver and Boulder, Colorado.

IT IS ORDERED, That the Commission, upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the rates and charges stated in the said schedules contained in said tariff, viz:

> The Miller Transfer Company Local Freight Tariff No. 4, Colo. P.U.C. No. 4, Freight Classification and Class Rates for the transportation of freight between Denver and Boulder, Colorado, Item No. 2 * * * over 50 cents and not exceeding $2.00 per pound, $1.50 per cwt. * * *. Item No. 6 * * * freight of every class other than special commodities listed herein and in Items Nos. 7 and 8 exceeding 2,000 pounds in one shipment, 25 cents per cwt. * * *.

IT FURTHER APPEARING, That the said schedules make certain increases and reductions in rates for the transportation of commodities whereby the rights and interests of the public may be injuriously affected; and it being the opinion of the Commission that the effective date of said schedules contained in said tariff should be postponed, pending said hearing and decision thereon;

IT IS FURTHER ORDERED, That the operation of the said schedules contained in said tariff be suspended, and that the use of the rates, charges, regulations and practices therein stated be deferred 120 days, or until the 13th day of May, 1929, unless otherwise ordered by the Commission, and no

change shall be made in such rates, charges, regulations and practices during the said period of suspension.

IT IS FURTHER ORDERED, That the rates and charges and the regulations and practices hereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of, or until the period of suspension or any extension thereof has expired.

IT IS FURTHER ORDERED, That a copy of this order be filed with said schedule in the office of the Commission and that copies hereof be forthwith served upon The Miller Transfer Company and Over-Land Motor Express Company, by E. C. Mason, its attorney, protestant.

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing at a future date to be determined by the Commission, due notice of such date and place of hearing being given all interested parties.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

John S. Jones

Commissioners.

Dated at Denver, Colorado, this
10th day of January, 1929.

FMC

(Decision No. 2039)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * *

IN RE CURTAILMENT OF SERVICE BY THE DENVER AND INTERURBAN MOTOR COMPANY.) INVESTIGATION AND SUSPENSION DOCKET NO. 117.

January 15, 1929.

Appearances: John Q. Dier, Esq., Denver, Colorado, for The Denver and Interurban Motor Company;

Gabriel, Mills and Mills, Esqs., Denver, Colorado, for the town of Westminster.

S T A T E M E N T

By the Commission:

On November 30, 1928, The Denver and Interurban Motor Company, respondent herein, filed its Time Schedule No. 10 cancelling Schedule No. 9, effective December 30, 1928. On December 29, 1928, Mr. W. D. Cool, Mayor of the town of Westminster, filed a protest against the proposed change in said time schedule as it applies to Westminster. Thereupon the Commission issued an order suspending that portion of the time schedule relating to the service at Westminster entitled, "Local and Mining District Service."

This matter was set down for hearing in the Hearing Room of the Commission, Denver, Colorado, on January 8, 1929, at which time testimony in support of and in opposition to the proposed schedule was received. The testimony shows that Time Schedule No. 10 eliminates two daily operations from Denver and Westminster and points west thereof at 10:45 A. M. and 12:30 P. M., and coming east from Boulder leaving Westminster at 9:30 A. M. and 3:30 P. M. The evidence further shows that the average number of passengers per trip from and to Westminster in July, 1928 was 1.85, August 2.01, November 1.93 and December 2.32. The testimony further shows that

the public used the transportation facilities in question somewhat less in 1928 than in 1927. There is, therefore, no expected increase in transportation business in the territory involved. According to the testimony of Mr. Cool, Mayor of Westminster, the number of potential passengers residing in Westminster and adjacent thereto that could use this service amounts to approximately one hundred. There is also some testimony in the record to the effect that the private automobile is taking most of the passengers now, and that this situation will perhaps increase rather than decrease.. Mr. Edmunds, Vice-President of the Motor Company, testified that the travel during the winter months is somewhat less than it is in the summer months, and that the operations they propose to discontinue are not operated on a paying basis but are losing money continually.

Under the record as it stands, it would seem to the Commission that the traveling public at Westminster could patronize this bus operation more than it has in the past. It is our understanding that the respondent stands willing to do everything reasonably necessary to bring that situation about, and that this curtailment is to continue only while the number of passengers using the service is low. In that connection, it should be stated the record shows that the respondent has a commission agency at Westminster and the public cannot always purchase a round trip ticket because the agent is not there at all convenient times to sell the same. Where the passenger has not been successful in purchasing a round trip ticket, he is required to pay 30 cents one way. The privilege of the purchase of a round trip ticket saves the passenger 10 cents on each round trip. Since the drivers of the motor vehicles are bonded, it would seem to the Commission that the Motor Company should authorize the drivers to sell round trip tickets from Westminster so that the public may enjoy every rate advantage possible.

The protestants' testimony indicates considerable dissatisfaction with the reasonableness of the rates now charged by the Motor Company, but this is a matter that is not now before us for disposition. The only matter that the Commission now has before it is the curtailment of service as indicated by Time Schedule No. 10.

After a careful consideration of the evidence, the Commission is of the opinion and finds that the suspended schedules have been justified, An order will be entered vacating the order of suspension and discontinuing this proceeding.

O R D E R

IT IS THEREFORE ORDERED, That the order heretofore entered in this proceeding suspending the operation of said schedules be, and it is hereby, vacated and set aside as of February 1, 1929, and that this proceeding be discontinued.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 15th day of January, 1929.

(Decision No. 2040)

36

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
L. B. WILSON, DOING BUSINESS AS THE)
PLATTE VALLEY TRANSPORTATION COMPANY,) APPLICATION NO. 1161.
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY.)

January 16, 1929.

Appearances:

E. H. Houtchens, Greeley, Colorado,
attorney for applicant;

C. R. Morse, Sidney, Nebraska,
for American Railway Express Company.

STATEMENT

By the Commission:

L. B. Wilson, doing business as The Platte Valley Transportation Company, has held for some time a certificate of public convenience and necessity, under which he has been transporting passengers by motor bus between the city of Greeley and the city of Sterling, Colorado, and intermediate points. The application herein is for authority to transport express over the same route to and from all points thereon. Union Pacific Railroad Company, American Railway Express Company, and the Chicago, Burlington & Quincy Railroad Company each filed its written answer and protest. The applicant proposes to carry the express in and on top of his busses which are now used in the transportation of passengers. He would, therefore, not be required to purchase or operate any additional equipment. One of his busses leaves Greeley in the morning at 9:45, arriving in Sterling at 1:20 P. M. Another bus leaves Greeley at 1:40 P.M., arriving in Sterling at 5:15 P.M. One bus leaves Sterling at 8:00 A.M., arriving in Greeley at 11:35 A. M., and another leaves Sterling at

2 P.M., arriving in Greeley at 5:35 P.M.

The cities of Fort Morgan and Sterling are served by both the Union Pacific and the Burlington. Brush, the most important point intermediate to Fort Morgan and Sterling, is served by the Burlington only. A number of small villages between the two are served by one or the other of the said railroads. All points between Fort Morgan and Greeley are served by the Union Pacific only. Express shipped to and from Greeley via Union Pacific has to be transferred at La Salle.

Leave was given to the Express Company, which was the only one of the protestants appearing at the hearing, to file a complete schedule of service rendered the points on the route in question. This it has not done. Moreover, no evidence was introduced in opposition to the application.

Without going into the details of the railway express schedules and service, which, in view of the state of the record, it would be impossible to do with accuracy, it is sufficient to say that said service cannot be said to be adequate. Most of the points on the route receive their express from one or the other, or both, of the railroads from trains passing through at night, or from a motor car operating out of La Salle, which carries on a back-haul express originating in Fort Morgan or east thereof and destined to points intermediate to Fort Morgan and La Salle. A number of business men testified as to the ease and expedition with which machinery parts, ice cream, drugs and other commodities can be carried by the busses of the applicant. Calls are being constantly made upon the applicant to carry various small articles.

The evidence shows that there is no demand for the transportation by the applicant of any heavy express unless ice cream and containers therefor be considered heavy.

After careful consideration of the evidence, the Commission is of the opinion, and so finds, that the public convenience and necessity

requires transportation by the applicant between the cities of Sterling and Greeley and intermediate points, of ice cream, irrespective of weight, and other commodities and articles not weighing in excess of fifty pounds each.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the transportation by the applicant between the cities of Sterling and Greeley and intermediate points, of ice cream and containers therefor, irrespective of weight, and other commodities and articles not weighing in excess of fifty pounds each, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedules filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dana S. Jones

Dated at Denver, Colorado,
this 16th day of January, 19291

(Decision No. 2041)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE TOWN OF CASTLE ROCK AND COMMONWEALTH UTILITIES CORPORATION FOR THE TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 1255.

January 16, 1929.

Appearances: Grant, Ellis, Shafroth & Toll, by Morrison Shafroth, Esq., Denver, Colorado, for applicants.

STATEMENT

By the Commission:

This is an application by the Town of Castle Rock, Colorado, and the Commonwealth Utilities Corporation for authority to transfer from the former to the latter a certificate of public convenience and necessity issued on February 28, 1928, Decision No. 1602, to the Town of Castle Rock.

The record made at the public hearing herein shows that notice of this hearing was given to the Mayor of Castle Rock and the Board of County Commissioners of Arapahoe County, Colorado. No protests were filed against this application.

The evidence given in previous hearings before this Commission, in Applications Nos. 980 and 982, showing the financial ability, incorporation, etc., of the Commonwealth Utilities Corporation, by stipulation was ordered admitted as part of the record in this hearing.

After a careful consideration of the record made herein, the Commission is of the opinion, and so finds, that the assignment and transfer requested herein should be authorized.

O R D E R

IT IS, THEREFORE, ORDERED, That the Town of Castle Rock be, and it is hereby, authorized to transfer to the Commonwealth Utilities Corporation, a corporation organized under the laws of the State of Colorado, the certificate of public convenience and necessity issued to it by this Commission on February 28, 1928, Decision No. 1602.

IT IS FURTHER ORDERED, That the Commonwealth Utilities Corporation adopt all tariffs and rules and regulations now on file by the Town of Castle Rock in the territory involved in said certificate unless changed as provided by law.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 16th day of January, 1929.

(Decision No. 2042)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

37

* * * *

IN THE MATTER OF THE APPLICATION OF LESTER AUGUSTUS AND CHARLES L. WALKER FOR ASSIGNMENT AND TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 307A.

- - - - - - - - -
January 16, 1929.
- - - - - - - - -

Appearances:

Lester Augustus, Parker, Colorado, per se;

Charles L. Walker, Parker, Colorado, per se.

S T A T E M E N T

By the Commission:

This is an application for authority to assign and transfer the certificate of public convenience and necessity issued to Lester Augustus in Application No. 307, Decision No. 838, on May 6, 1925, to Charles L. Walker.

The testimony taken at the public hearing held in this matter on January 16, 1929, shows that Charles L. Walker desires to purchase the transportation system of Lester Augustus at the purchase price of $5,600.00, $2,000.00 to be cash and the balance to be paid in 24 installments of $150 per month. In addition to the equipment purchased by Walker, he also is the owner of a 1½ ton Graham truck, valued at approximately $800. His financial worth is approximately $3,800. He has had considerable experience in the motor vehicle transportation business, having worked for Augustus during the last six years. He bears a good reputation morally and financially.

After a careful consideration of the testimony, the Commission is of the opinion, and finds, that the assignment and transfer herein from Augustus to Walker should be authorized.

O R D E R

IT IS THEREFORE ORDERED, That Lester Augustus be, and he is hereby, authorized to assign and transfer the certificate of public convenience and necessity issued to him on May 6, 1925, Decision No. 838, to Charles L. Walker.

IT IS FURTHER ORDERED, That all tariffs and rules and regulations filed by Lester Augustus shall continue in force and effect as to Charles L. Walker unless and until changed as provided by law.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 16th day of January, 1929.

(Decision No. 2043)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

THE DENVER AND INTERMOUNTAIN RAILROAD COMPANY, Complainant,	)	
vs.	)	CASE NO. 325
M. B. SWENA, Defendant.	)	

- - - - - - - - -

January 17, 1929.

- - - - - - - - -

Appearances: W. A. Alexander, Esq., Denver, Colorado, attorney for The Denver and Intermountain Railroad Company;

D. Edgar Wilson, Esq., Denver, Colorado, amicus curae.

S T A T E M E N T

By the Commission:

On August 18, 1927, The Denver and Intermountain Railroad Company made a written complaint to this Commission that M. B. Swena was operating a truck line as a motor vehicle carrier between the cities of Golden and Denver, and that he had not received the requisite authority from the Commission for such operations. The Commission, following the receipt of this complaint, made an order requiring the defendant, M. B. Swena within ten days from that date to answer the complaint in writing. No answer in writing was ever made in compliance with this order of the Commission, but on October 5, 1927, the applicant filed his application for a certificate of public convenience and necessity. Thereafter the written objections and protest were filed by W. G. Eldridge, doing business as The Eldridge Express Company, The Denver and Intermountain Railroad Company and the Board of County Commissioners of Jefferson County.

Both the complaint and the application were set for hearing before the Commission on February 3, 1928. At the time of the hearing the complaint of The Denver and Intermountain Railroad Company and the application of Mr.

Swena were consolidated for the purpose of the hearing. Following the taking of evidence and after the Commission was fully advised, it ordered as follows:

> "IT IS THEREFORE ORDERED, That the application of M. B. Swena, applicant herein, be, and the same is hereby, denied.
>
> "IT IS FURTHER ORDERED, That M. B. Swena, defendant in case No. 325, cease and desist from operating as a motor vehicle carrier, as defined in Section 1 (d) of Chapter 134, Session Laws 1927, State of Colorado, unless and until lawfully authorized by this Commission.
>
> "IT IS FURTHER ORDERED, That defendant pay the tax provided for in Section 7, Chapter 134, Session Laws 1927, for the period in which he was operating as a motor vehicle carrier, within ten days from the date of this order."

This order was signed by the Commission on the 23rd day of February, 1928.

On March 13,1928, W. A. Alexander, as attorney for The Denver and Intermountain Railroad Company, wrote the Commission that the defendant was defying the Commission's order and was continuing his operations as a motor vehicle carrier. Mr. Alexander again brought the matter to the attention of the Commission in his letter of June 2,1928, alleging, among other things, that "Mr. Swena has ever since the day of the order of the Commission openly violated the provision of that order and is still continuing to do so." The Commission thereupon had one of its inspectors make an investigation of the complaint, and thereafter on September 11 ordered the defendant to show cause in writing why the Commission should not impose a fine upon him for operating in defiance and violation of said order issued by the Commission on February 23. The Commission set the matter for hearing on November 26, promptly notifying the defendant of said hearing. At the hour set for the hearing, the defendant appeared without his regular attorney and without having filed any answer. At the request of the defendant, he was given until November 30 to file his answer, and the matter was then set for hearing on December 3. No answer was filed within the time fixed by the Commission. However, on December 1, a written objection and statement of the defendant was filed. The matter was heard in the hearing room of the Commission on the date fixed, but neither the defendant nor anyone in his behalf appeared.

The said objections of the defendant allege that the Commission is without authority or jurisdiction to impose a fine upon the respondent and that insofar as the law assumes to authorize the imposition thereof by this Commission, the same is unconstitutional and void. The objections further allege that the Commission is without authority to regulate or control the business or operations of the defendant for the reason that for a long time prior to September 11, 1928, the defendant had been operating as a contract or private carrier and not as a common carrier.

The evidence shows that the defendant has paid no attention whatever to the order of this Commission denying him a certificate and requiring him to cease and desist his operations as a motor vehicle carrier; that if there is any difference between his prior conduct and that since the order was entered, he has been more active and has done a more general business than he did before. Since February 23,1928, he or his employee and driver have been calling on practically every merchant in Golden soliciting their trucking business between Golden and Denver and transporting freight by motor truck between Denver and Golden for those who would give him the business.

We therefore find that the defendant has willfully, flagrantly and contemptuously violated the order of the Commission.

As to whether or not the defendant is a contract carrier, we do not know, as he did not see fit to appear and enlighten the Commission on any questions of fact. However, as we have previously pointed out In re Exhibitors Film Delivery & Service Company, Application No. 1009, Decision No. 1979, the question which we are called upon to decide is not whether one is a motor vehicle or common carrier, or a contract carrier, but whether he is a common carrier or a private carrier. One engaged in serving the public or a large part thereof, cannot convert himself from a common carrier by the mere expedient of making a lot of written or oral contracts, formal or informal.

Section 66 of the 1913 Session Laws, subdivision (a), being Section 2975, C.L. of Colo. 1921, provides as follows:

"Every public utility, corporation or person which shall fail to observe, obey or comply with any order, decision, rule, direction, demand or requirement, or any part or portion thereof, of the commission or any commissioner, except an order for the payment of money, shall be in contempt of the commission and shall be punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this action shall not be a bar to or affect any other remedy prescribed in this act, but shall be cumulative and in addition to such other remedy or remedies."

Section 27 of House Bill No. 430, being Chapter 134 of the Session Laws of 1927, reads as follows:

"All provisions of the Public Utilities Act of the state of Colorado, chapter 127, Laws of 1913, and all acts amendatory thereof or supplemental thereto, shall, insofar as applicable, apply to all motor vehicle carriers subject to the provisions of this act."

Prior to the passage of House Bill No. 430, motor vehicle carriers were subject to all applicable provisions of the Public Utilities Act, including Section 66, House Bill No. 430, when considered as a whole, shows clearly that the legislature intended to extend the jurisdiction and powers of this Commission over motor vehicle carriers. There is no provision to be found in the act restricting the jurisdiction theretofore held. It is a general rule of construction of statutes that repeal by implication is not favored. The only possible ground for saying that the legislature intended to repeal Section 66 of the Public Utilities Act is by resort to the maxim expressio unius est exclusio alterius. It is true that House Bill No. 430 does expressly grant some of the powers found enumerated in the Public Utilities Act. It is obvious, however, that the legislature did not intend to codify in House Bill No. 430 all the statutory provisions applicable to motor vehicle carriers. For instance, there is no provision in House Bill No. 430 for a review of the orders of this Commission but that it was intended that the provisions of the Public Utilities Act relating to review should apply is generally conceded.

The other question, namely, whether or not the provision referred to in Section 66 of the Public Utilities Act is constitutional, is one about which we cannot express any opinion. We are familiar with some two score cases in which the various state commissions have held that it is not within the province of a state utilities commission to pass upon the constitutionality of an act of

the legislature, particularly the one under which it operates. We quote as follows from the decision of this Commission in Public Service Company vs. City of Loveland, P.U.R. 1924E, 516,529:

> "As has been stated in numbers of Commissions' decisions, the Commission is bound to assume the validity of the statute under which it exists and which defines its duties and responsibilities until such time as the Commission shall be judicially advised."

Of course, if the provision in question is unconstitutional, it is immaterial that it might seem advisable that the Commission have such power. We might say, however, in passing, that the Commission, because of its constant experience with and administration of the act, is more familiar with the same and with what constitutes a violation thereof than other agencies. We find that the district attorneys of the state, while they have cooperated generously with the Commission in the enforcement of the laws relating to public utilities, have their hands full of many other matters, and that the power of the Commission to punish for contempt for violation of its orders, checked as it is, and as it should be, by the power of review, would tend towards a much more expeditious disposition of questions of the kind involved herein.

O R D E R

IT IS THEREFORE ORDERED, That the defendant, M.B.Swena, be, and he hereby is, assessed with a fine in the amount of Two Hundred Dollars ($200.00) for his wilful, flagrant and contemptuous violation of the said order of this Commission requiring the said Swena to cease and desist from operating as a motor vehicle carrier which said fine he is required to pay within twenty days from this date to the Secretary of this Commission to be turned in to the treasury of the State of Colorado, as in the case of any other money collected by the Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Doyle S. Jones

Commissioners.

Dated at Denver, Colorado, this
17th day of January, 1929.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
HENRY CRAWFORD AND ARTHUR COWLING,) APPLICATION NO. 1063.
DOING BUSINESS AS CRAWFORD AND COWLING.)

- - - - - - - - -
January 17, 1929.
- - - - - - - - -

S T A T E M E N T

By the Commission:

On January 7, 1929, this Commission issued an order on the above named respondents, Henry Crawford and Arthur Cowling, requiring them to show cause in writing within ten days why the certificate of public convenience and necessity issued to them on July 25, 1928, should not be cancelled for failure to pay the sum of $5.00 as a fee for the issuance of said certificate. The matter was set down for hearing at the Hearing Room of the Commission in Denver, Colorado, on January 16, 1929. No appearance was made by the respondents at that hearing. The testimony showed that no written statement was received from the respondents as required by the order. The record shows also that said $5.00 has not been paid.

O R D E R

IT IS THEREFORE ORDERED, That the certificate of public convenience and necessity issued on July 25, 1928, (Decision No. 1848), to Henry Crawford and Arthur Cowling, co-partners, doing business under the

firm name of Crawford and Cowling, be, and the same is hereby, revoked and cancelled.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 17th day of January, 1929.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF WILLIAM H. CONYERS.) APPLICATION NO. 843

- - - - - - - - -
January 17, 1929.
- - - - - - - - -

S T A T E M E N T

By the Commission:

On January 7, 1929, this Commission issued an order to show cause on William H. Conyers, the respondent, why his certificate of public convenience and necessity, issued to him on February 23, 1928, should not be revoked and cancelled for failure to pay the required fee of $5.00 for the issuance of said certificate. The order required a statement in writing within ten days from the respondent why said certificate should not be revoked and cancelled. The matter was set for hearing at the Hearing Room of the Commission in Denver, Colorado, on January 16, 1929.

At the hearing, a letter was introduced from G. R. McConnell, Esq., Attorney at law, Laramie, Wyoming, representing the respondent, in which he states that, "to save you as much inconvenience and expense as possible, in behalf of client, I wish to advise you that it is agreeable to him that the certificate be cancelled, and that he consents to the cancellation thereof on the grounds that he is financially unable to comply with the requirements thereof."

O R D E R

IT IS THEREFORE ORDERED, that the certificate of public convenience and necessity issued by this Commission to William H. Conyers,

respondent herein, on February 23, 1928, (Decision No. 1596), be, and the same is hereby, revoked and cancelled.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 17th day of January, 1929.

itself out to the public to give this service. For approximately two years the applicant carried the United States mail between Pueblo, Denver and Cheyenne, but is not now engaged in such transportation. That it has conformed to all federal and state laws as to pilots and ships, and that none of its passengers or pilots have ever been killed or injured. It has not now and has no present intention of operating between any fixed points.

After a careful consideration of the evidence the Commission is of the opinion, and so finds that the present and future public convenience and necessity requires the service of the applicant for the transportation by airplane of passengers, freight and express in and about Denver, and to any Colorado points.

O R D E R

IT IS THEREFORE ORDERED, That the present and future public convenience and necessity requires the service, upon call and demand only, by The Colorado Airways, Inc. for the transportation by airplane of passengers, freight and express in and about Denver, and to any Colorado points, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor, subject to the following conditions which, in our opinion, the public convenience and necessity requires:

(a) The applicant shall file with this Commission a certified copy of its Articles of Incorporation;

(b) That the equipment (including airports) operated by The Colorado Airways, Inc., and its pilots and employes, shall at all times be such as to conform to the standards prescribed by the Department of Commerce of the United States, and The Colorado Commission of Aeronautics, and certificates of such conformity at the present time shall be filed with the Commission within twenty days.

(c) That The Colorado Airways, Inc. shall carry liability insurance covering the passengers and the public, and shall submit the policy or

policies to the Commission for examination and approval.

(d) That The Colorado Airways, Inc. shall file semi-annual statements of the number of passengers carried and service furnished.

IT IS FURTHER ORDERED, That the applicant shall file tariffs of rates, rules and regulations within twenty days from the date of this order.

IT IS FURTHER ORDERED, That this order is made subject to compliance by the applicant with the rules and regulations now in force or to be hereafter adopted by this Commission and the Colorado Commission of Aeronautics with respect to airplane common carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Done at Denver, Colorado,
this 18th day of January, 1929.

(Decision No. 2046)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

* * *

IN THE MATTER OF THE APPLICATION OF COLORADO AIRWAYS, INCORPORATED, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 1220

January 18, 1929.

Appearances: Luke J. Kavanaugh, Esq., Denver, Colorado, for applicant.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity to operate airplanes for the carrying of passengers, freight and express for hire from Denver to any point within the State of Colorado. No protests were filed against the application. The Colorado Commission of Aeronautics submitted a recommendation to this Commission to the effect that the application be given favorable consideration.

At the public hearing held on this application testimony was introduced to show that The Colorado Airways, Inc. is a Colorado corporation; that it now has four licensed planes valued at approximately $15,000, and shop equipment and supplies valued at approximately $20,000; that the president and manager of the applicant has been operating airplanes from Denver for approximately three years, and has had experience in the operation of airplanes for approximately five years. This Company is the successor of operations heretofore conducted by Don Hogan and A.E.Humphreys, Jr. The testimony further shows that the applicant operates so-called sightseeing trips in and around the vicinity of Denver, and that it operates planes to any point in the State on call and demand, and that it holds

(Decision No. 2067)

X

At a session of the Public Utilities Commission of the State of Colorado, held at its office in Denver, Colorado, on the 21st day of January, 1929.

INVESTIGATION AND SUSPENSION DOCKET NO. 112

Re: Cancellation of classification exceptions on carriers or containers, empty, returned.

IT APPEARING, That there have been filed with the Public Utilities Commission of the State of Colorado by The Atchison, Topeka and Santa Fe Railway Company, by Charles Crosby, its Assistant General Freight Agent, Chicago, Burlington & Quincy Railroad Company, by L. H. Lamb, its Chief of the Tariff Bureau, The Chicago, Rock Island and Pacific Railway Company, by L. G. Tuttle, its Chief of the Tariff Bureau, The Colorado and Southern Railway Company, by J. E. Buckingham, its Traffic Manager, The Denver and Rio Grande Western Railroad Company, by E. J. Harley, its Assistant General Freight Agent, Missouri Pacific Railroad Company, by D. E. Lincoln, its Freight Traffic Manager, Union Pacific Railroad Company, by F. E. Choate, its General Freight Agent, and the Western Trunk Lines, by E. E. Boyd, its Agent, tariffs containing schedules stating new individual rates and charges and new individual regulations and practices affecting such rates and charges, to become effective on various dates designated as follows:

The Atchison, Topeka and Santa Fe Railway Company, Amendment B to Colo. P.U.C. No. 1117 to Tariff No. 6461-I, effective February 15, 1929. Also Supplement No. 9 to Colo. P.U.C. No. 1120 to Tariff No. 6461-K, effective February 15, 1929.

Chicago, Burlington & Quincy Railroad Company, Supplement No. 7 to Colo. P.U.C. No. 358 to Tariff No. 286-I, effective February 15, 1929.

The Chicago, Rock Island and Pacific Railway Company, Supplement No. 4 to Colo. P.U.C. No. 194 to Tariff No. 11691-G, effective February 15, 1929. Supplement No. 5 to Colo. P.U.C. No. 194 to Tariff No. 11691-G, effective February 25, 1929. Supplement No. 14 to Colo. P.U.C. No. 195 to Tariff No. 25000-H, effective February 15, 1929. Supplement No. 15 to Colo. P.U.C. No. 195 to Tariff No. 25000-H, effective February 25, 1929.

The Colorado and Southern Railway Company,
Supplement No. 39 to Cole. P.U.C. No. 449 to Tariff No. 1-G,
effective February 7, 1929.

The Denver and Rio Grande Western Railroad Company,
Supplement No. 5 to Cole. P.U.C. No. 45 to Tariff No. 5560-C,
effective February 1, 1929. Amendment No. 14 to Cole. P.U.C.
No. 76 to Tariff No. 5075-C, effective February 1, 1929.
Supplement No. 25 to Cole. P.U.C. No. 125 to Tariff No. 4900-F,
effective February 1, 1929. Supplement No. 13 to Cole. P.U.C.
No. 127 to Tariff No. 4961-I, effective February 1, 1929.
Amendment No. 2 to Cole. P.U.C. No. 150 to Tariff No. 6421,
effective February 1, 1929.

Missouri Pacific Railroad Company,
Supplement No. 16 to Cole. P.U.C. No. 116 to Tariff No. 1210-H,
effective February 15, 1929.

Union Pacific Railroad Company,
Supplement No. 15 to Cole. P.U.C. No. 302 to Tariff No. 100-I,
effective February 10, 1929.

Western Trunk Lines, by H. B. Boyd, Agent,
Supplement No. 11 to Cole. P.U.C. No. 35 to Circular No. 17-G,
effective February 1, 1929.

IT IS ORDERED, That the Commission, upon request, without formal pleading, enter upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the said schedules contained in said tariffs, viz:

The Atchison, Topeka and Santa Fe Railway Company,
Amendment 2 to Cole. P.U.C. No. 1117 to Tariff No. 6461-I,
Item No. 30-A. Supplement No. 2 to Cole. P.U.C. No. 1120 to
Tariff No. 6521-K, Items Nos. 17-A, 19-A, 21-A, 23-A, 25-A,
27-A, 29-A, 32-A, 34-A, 36-A, 38-A, 40-A and 42-A.

Chicago, Burlington & Quincy Railroad Company,
Supplement No. 7 to Cole. P.U.C. No. 382 to Tariff No. 286-I,
Item No. 65-A.

The Chicago, Rock Island and Pacific Railway Company,
Supplement No. 4 to Cole. P.U.C. No. 194 to Tariff No. 11691-G,
Item No. 95-A. Supplement No. 5 to Cole. P.U.C. No. 194 to
Tariff No. 11691-G, Items Nos. 20-A, 30-A, 50-A and 70-A.
Supplement No. 14 to Cole. P.U.C. No. 195 to Tariff No. 25000-K,
Item No. 5910-A. Supplement No. 15 to Cole. P.U.C. No. 195 to
Tariff No. 25000-K, Items Nos. 135-A and 140-A.

The Colorado and Southern Railway Company,
Supplement No. 39 to Cole. P.U.C. No. 449 to Tariff No. 1-G,
Items Nos. 60-B, 65-C, 70-B, 110-A, 142-A, 145-A, 227-B, 230-A
and 230-A.

The Denver and Rio Grande Western Railroad Company,
Supplement No. 5 to Cole. P.U.C. No. 45 to Tariff No. 5560-C,
Items Nos. 55-A, 60-A, 90-A and 225-A. Amendment No. 14
to Cole. P.U.C. No. 76 to Tariff No. 5075-C, Item No. 55-A.
Supplement No. 25 to Cole. P.U.C. No. 125 to Tariff No. 4900-F,
Items Nos. 90-C, 90-A, 91-A, 95-A, 102-A, 105-A, 106-A, 110-A,
115-A, 116-A, 130-A, 142-A and 144-A. Supplement No. 13 to
Cole. P.U.C. No. 127 to Tariff No. 4961-I, Items Nos. 35-A,
40-A, 45-A, 50-A and 60-A. Amendment No. 2 to Cole. P.U.C. No.
150 to Tariff No. 6421, Item No. 17-A.

Missouri Pacific Railroad Company,
Supplement No. 14 to Cole. P.U.C. No. 124 to Tariff No. 1210-E,
Items Nos. 305-A, 306-A and 315-A.

Union Pacific Railroad Company,
Supplement No. 18 to Cole. P.U.C. No. 288 to Tariff No. 190-I,
Items Nos. 1250-E, 1260-A, 1265-A, 1265-E, 1270-A, 1275-A and
1280-A.

Western Trunk Lines, by H. R. Boyd, Agent,
Supplement No. 11 to Cole. P.U.C. No. 55 to Circular No. 17-E,
Rules Nos. 145-A, 150-A, 225-A, 230-A, 295-A and 470-A.

IT FURTHER APPEARING, That the said schedules make certain increases in rates for the intrastate transportation of empty containers, returned, whereby the rights and interests of the public may be injuriously affected, and it being the opinion of the Commission that the effective date of the said schedules contained in the said tariffs should be postponed pending said hearing and decision thereon;

IT IS FURTHER ORDERED, That the operation of the said schedules contained in said tariffs be suspended and that the use of the rates, charges, regulations and practices therein stated be deferred 120 days, or until the first day of June, 1929, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension.

IT IS FURTHER ORDERED, That the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of or until the period of suspension or any extension thereof has expired.

IT IS FURTHER ORDERED, That a copy of this order be filed with the said schedules in the office of the Commission and that copies hereof be forthwith served upon The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island and Pacific Railway Company, The Colorado and Southern Railway Company, The Denver and Rio Grande Western Railroad Company, Missouri Pacific Railroad Company, Union Pacific Railroad Company and the Western Trunk Lines, by H. R. Boyd, Agent.

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing at a future date to be determined by the Commission, due notice of such date and place of hearing being given all interested parties.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

(S E A L)

OTTO ROLZ

DAN E. KEYES

HERON ALLEN

Dated at Denver, Colorado, this
21st day of January, 1938.

A true copy:

Secretary.

FHD
H.

(Decision No. 2048)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF CHARLES H. SMITH AND CLARENCE L. SMITH, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF SMITH AND SON TRUCK LINE FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1069

January 23, 1929.

Appearances: Clyde T. Davis, Esq., La Junta, Colorado, for applicant;
D. A. Maloney, Esq., Denver, Colorado, for The Camel Truck Line.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity to operate a motor vehicle carrier system for the transportation of freight and express "from Pueblo, Colorado, to Lamar, Colorado, and intermediate points, and between intermediate points, except the carrying of freight and express from Pueblo, Colorado, to Fowler, Manzanola and Las Animas, Colorado, and from those points to Pueblo; also as irregular motor vehicle carriers of freight and express to and from any point within the City of La Junta, and from any place within a radius of fifteen miles of the City of La Junta to any point between Pueblo and Lamar."

Protests were filed against this application by Jackson's Transfer & Storage Company, The Vaughn Transfer and Transportation Company, The Camel Truck Line and The Atchison, Topeka and Santa Fe Railway Company. The Camel Truck Line in its protest also embodied an application to the effect that if

the "Commission finds that a public convenience and necessity exists as between Rocky Ford, Colorado, and La Junta, Colorado, whereby goods may be shipped direct from Pueblo to La Junta and points west of La Junta as far as Rocky Ford, that said certificate be granted to" it, The Camel Truck Line, for the reasons alleged in its protest and application. Subsequently, The Camel Truck Line filed an amended protest and application in which it prayed, "That if your Commission finds a public convenience and necessity exists as between Rocky Ford, Colorado, and Lamar, Colorado, whereby goods may be shipped direct from Pueblo, Colorado, to Lamar, Colorado, and intermediate points, including the towns of McClave and Wiley located on the branch of the Atchison, Topeka & Santa Fe railroad running from La Junta to Holly via Swink, with the exception of the rights granted in the certificate of public convenience and necessity issued to the said H. Hayhurst doing business under the name of The Las Animas Transfer Company, said certificate be granted to this applicant, The Camel Truck Line, for the reasons as hereinbefore stated."

To the application of The Camel Truck Line protests were filed by Jackson's Transfer & Storage Company and The Vaughn Transfer and Transportation Company.

The evidence adduced at the public hearing held herein shows that there is a public convenience and necessity existing for a motor vehicle system for the transportation of freight and express east of Rocky Ford, Colorado, as far as Lamar. The testimony shows that between Pueblo and Rocky Ford and intermediate points, considering the present motor vehicle carrier transportation facilities, there is no public convenience and necessity existing for any such additional service. The Commission does not deem it necessary to further discuss that phase of the issues involved herein.

The motor vehicle carrier operations of C. H. Smith and Son, applicants, have been before this Commission heretofore. On February 3, 1928, the Commission on its own motion issued an order to show cause why they should not cease and desist from operating as motor vehicle carriers as defined under our act. A

public hearing was had on this matter and on February 14 we issued a decision and order (Case No. 344, Decision No. 1581) in which we stated:

> "The evidence is undisputed that these parties have conducted a motor vehicle carrier operation from Pueblo to Lamar and intermediate points for the past three years; that for a good part of that time this service has been daily on somewhat regular schedule; that they have served the public in this territory indiscriminately, and have held themselves out to the public as common carriers within the definition contained in Section 1 (d), Chapter 134, Session Laws of Colorado 1927."

The order issued in that case contained the following paragraph:

> "IT IS, THEREFORE, ORDERED, that said Charles H.Smith and Clarence L. Smith, copartners doing business under the name and style of Smith and Sons truck line, be and they are hereby commanded to cease and desist from operating on the public highways between Pueblo and Lamar, Colorado, and intermediate points as motor vehicle carriers as defined in Chapter 134, Session Laws 1927, unless and until they first have obtained from the Public Utilities Commission of Colorado a certificate of public convenience and necessity authorizing such operation."

The evidence indicates that notwithstanding this order of the Commission made against the applicants, Smith and Son, they have continued to operate as motor vehicle carriers between Pueblo and Lamar. Practically all of the witnesses who testified in the instant application for the applicants stated that they have been doing business with Smith and Son ever since they carried on the transportation business and that there was no intermission in or cessation of this operation. The shipping bills submitted as evidence to this Commission covering a period from September 3 to December 6, 1928, indicate that they have transported goods of innumerable kinds and character to approximately seventy business concerns and received payment of the freight from approximately sixty-five per cent thereof. The record also indicates that while counsel for the applicants advised them under no circumstances to do business with other persons than ten certain business houses in order that they might acquire a private carrier status, yet they evidently ignored the advice of their counsel and operated in such an extensive way that in our opinion they brought themselves within the definition of a motor vehicle carrier under Chapter 135, Session Laws 1927. From what we have said we are not now passing upon the question as to whether if they had followed

the advice given them by counsel they would have been conducting a private carrier operation. That matter is not now before us for determination. We desire, however, to direct applicants to our opinion in the application of The Exhibitors Film Delivery & Service Company, Application No. 1009, Decision No. 1865, which is our last expression of what constitutes a private carrier. Having found the applicants to be operating as common carriers they should pay the tax provided by law for such operations since February 1,1928.

The Camel Truck Line in its answer and protest also asked for affirmative relief to the effect that if the Commission should find that a public convenience and necessity exists between Rocky Ford and La Junta, Colorado, that it should then issue a certificate of public convenience and necessity to it. The Camel Truck Line filed an application with this Commission for a certificate of public convenience and necessity on July 10, 1923, (Application No. 260) in which it asked for authority to operate a motor vehicle carrier system over an established public highway known as the Santa Fe Trail between Pueblo and Holly, Colorado. On September 26, 1924, the Commission issued an order (Decision No. 748) denying the application from Pueblo to any points east of Rocky Ford, but issued a certificate of public convenience and necessity to it, authorizing operations between Pueblo and Rocky Ford and intermediate points. It has conducted a motor vehicle transportation operation between Pueblo and Rocky Ford ever since although the control of same has changed hands once or twice. Under the present management of The Camel Truck Line the Commission has had no complaints whatsoever relative to its service. Because of considerable wild-cat competition The Camel Truck Line has had a difficult time in sustaining itself on a paying basis but has nevertheless complied with the orders of this Commission. Since the granting of the certificate to The Camel Truck Line the Commission has also issued other certificates for motor vehicle carrier freight and express service between Pueblo and Rocky Ford which has affected its earnings. The evidence shows that The Camel Truck Line has sufficient facilities and financial

standing to procure any and all equipment necessary to take care of all the motor vehicle transportation business between Pueblo and Lamar. Since the granting of a certificate to The Camel Truck Line it has not operated and is not now operating east of Rocky Ford.

The question for the Commission to determine upon the record as made is to which applicant, since there is an existence of public convenience and necessity, should this Commission grant the certificate. We believe that the preference, between a motor vehicle carrier operating lawfully under a certificate and one operating unlawfully without a certificate after an order issued by this Commission to cease and desist, should be given to the former.

The Commission sometime ago granted a certificate of public convenience and necessity to H. Hayhurst for the transportation of freight from and to Pueblo and Las Animas but not to or from any intermediate points, and neither of the applicants herein asked to duplicate such service, it being understood that the Hayhurst operation is sufficient to take care of all the needs of the shipping public as involved in that certificate. The order issued herein will therefore not grant any authority conflicting with the Hayhurst operation.

The Commission, after a careful consideration of all the testimony, is of the opinion and so finds that the present and future public convenience and necessity requires a motor vehicle transportation system for the transportation of freight and express by The Camel Truck Line as an extension of its present route from Rocky Ford to Lamar, Colorado, and all intermediate points along the public highway known as the Santa Fe Trail and all points located within a distance of approximately one mile north and south thereof including the towns of Wiley and McClave, but not from Pueblo to Las Animas or from Las Animas to Pueblo.

Smith and Son's application also includes a request for a certificate authorizing an intra-city motor vehicle carrier system of freight and express in La Junta. None of the protestants are opposed to the granting of

this certificate. Furthermore there is not now such an authorized motor vehicle carrier serving the public within the city of LaJunta. The Commission is of the opinion and so finds that the public convenience and necessity requires a motor vehicle carrier system for the transportation of freight intra-city in La Junta by Charles H. Smith and Clarence L. Smith co-partners doing business under the name of Smith and Son Truck Line.

The Commission also finds that the public convenience and necessity does not require the proposed motor vehicle carrier system of Smith and Son except as heretofore stated.

O R D E R

IT IS THEREFORE ORDERED, That the present and future public convenience and necessity requires a motor vehicle transportation system for the transportation of freight and express by The Camel Truck Line as an extension of its present route from Rocky Ford to Lamar and all intermediate points along the public highway known as the Santa Fe Trail and all points located within a distance of approximately one mile north and south thereof including the towns of Wiley and McClave, but not from Pueblo to Las Animas or from Las Animas to Pueblo, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That The Camel Truck Line shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That The Camel Truck Line shall operate such motor vehicle carrier system according to the schedules filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this

order is made subject to compliance by The Camel Truck Line with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

IT IS FURTHER ORDERED, That the present and future public convenience and necessity requires a motor vehicle carrier system for the transportation of freight by Charles H. Smith and Clarence L. Smith, co-partners, doing business under the name of Smith and Son Truck Line intra-city in the city of La Junta and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That Charles H. Smith and Clarence L. Smith, co-partners, doing business under the name of Smith and Son Truck Line, shall file tariffs of rates, rules and regulations as required by the Rules and Regulations of this Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That Charles H. Smith and Clarence L. Smith, co-partners, doing business under the name of Smith and Son Truck Line, shall operate such motor vehicle carrier system except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by Charles H. Smith and Clarence L. Smith, co-partners, doing business under the name of Smith and Son Truck Line, with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

IT IS FURTHER ORDERED, That in all other respects the application of Charles H. Smith and Clarence L. Smith, copartners, doing business under the name of Smith and Son Truck Line, be, and the same is hereby, denied.

IT IS FURTHER ORDERED, That except as herein authorized, said Charles H. Smith and Clarence L. Smith, co-partners, doing business under the name of Smith and Son Truck Line, shall cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws 1927.

IT IS FURTHER ORDERED, That said Charles H. Smith and Clarence L. Smith, co-partners, doing business under the name of Smith and Son Truck Line, pay the tax required by Section 7, Chapter 134, Session Laws 1927, from February 1, 1928, within twenty days from the date hereof.

IT IS FURTHER ORDERED, That the said The Camel Truck Line and the said Charles H. Smith and Clarence L. Smith, co-partners, doing business under the name of Smith and Son Truck Line be, and the same are hereby, required to file their written acceptance of the certificates of public convenience and necessity herein granted within a period not to exceed twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 23rd day of January, 1929.

Commissioners.

(Decision No. 2049)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
* * *

IN THE MATTER OF THE APPLICATION OF LEROY SHELLER FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 1112

January 24, 1929.

S T A T E M E N T

By the Commission:

On August 28, 1928, the Commission entered an order herein granting a certificate of public convenience and necessity to LeRoy Sheller. On September 24, Sheller filed a petition asking for permission to amend his said order. He alleges therein that the limitation contained in said order makes it impossible for him to operate at a profit on a regular schedule; that the order made fails to grant him the right to transport freight from farms within a radius of twenty miles of Briggsdale to Briggsdale.

The petition concludes with a prayer that the said order be amended and modified and that the applicant be granted a certificate of public convenience and necessity as follows:

> "1. For the transportation of freight from farms within a radius of twenty (20) miles of Briggsdale to Briggsdale.
>
> "2. For the transportation from Briggsdale to Denver of livestock in less than railroad car lots.
>
> "3. For the transportation from Denver to Briggsdale of repairs for machinery.
>
> "4. That petitioner be not required to act under such order upon regular schedule, but be permitted to operate at such times as the need arises."

A copy of the said petition was mailed to the General Attorney for Union Pacific Railroad Company on the date the petition was filed. No protest

against the amendment has been made. The evidence already introduced is broad enough to warrant the conclusion, and the Commission does find, that the public convenience and necessity requires the granting of a certificate as prayed.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle operation of LeRoy Sheller on call and demand only for the transportation of freight from farms within a radius of twenty miles of Briggsdale to Briggsdale; for the transportation from Briggsdale to Denver of livestock in less than railroad car lots; for the transportation from Denver to Briggsdale of repair parts for machinery, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the said order of August 28, 1928, remain in full force and effect except as herein modified and amended.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 24th day of January, 1929.

Commissioners.

(Decision No. 2050)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

* * *

IN THE MATTER OF THE APPLICATION OF)
RAY S. HALL AND FLOSSIE M. HALL,) APPLICATION NO. 848.
CO-PARTNERS, DOING BUSINESS UNDER THE)
NAME OF HALL'S BLACK AND WHITE CAB.)

- - - - - - - - -
January 24, 1929.
- - - - - - - - -

S T A T E M E N T

By the Commission:

On January 7, 1929, this Commission issued an order to show cause why the certificate of public convenience and necessity issued to the above named applicants should not be cancelled for failure to pay the fee for said certificate, in the amount of $5.00. The matter was set down for January 16, 1929, and at that time continued to January 24, 1929. At the hearing held on the latter date, the record shows that the Commission received the sum of $5.00 on January 23, 1929. The order to show cause has therefore been satisfied.

O R D E R

IT IS, THEREFORE, ORDERED, That the order to show cause issued herein on January 7, 1929, be and the same is hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bock

Dana S. Jones

Commissioners.

Dated at Denver, Colorado,
this 24th day of January, 1929.

(Decision No. 2051)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF)
COLORADO FOR A CERTIFICATE OF) APPLICATION NO. 1254
PUBLIC CONVENIENCE AND NECESSITY.)

January 24, 1929.

Appearance: George H. Shaw, Esq., Denver, Colorado,
attorney for applicant.

S T A T E M E N T

By the Commission:

This is an application of Public Service Company of Colorado, a Colorado corporation, organized and existing to and doing business as a public utility by virtue of the laws of the State of Colorado, for a certificate of public convenience and necessity authorizing the construction, maintenance and operations of a transmission line from Alamosa, Colorado, to Blanca, Ft. Garland, San Luis, San Pedro, San Pablo and Chama, and for authority to serve electrical energy for heat, light, power and other purposes to whomsoever may desire the same, and as may be practicable along the route of said transmission line and particularly in the towns named.

The route of the proposed transmission line is shown on Exhibit B. In general it parallels the right-of-way of The Denver and Rio Grande Western Railroad Company between Alamosa and Ft. Garland, and runs in a southerly direction from Ft. Garland to San Luis, and from the latter town in a south-easterly direction to the other three towns named.

The cost of construction of the transmission line, the distribution systems, secondary lines, etc. is Sixty-eight Thousand dollars ($68,000). This figure, however, shall not be binding upon the Commission in any hearing held for the purpose of determining reasonable rates.

Of the six towns into which the proposed extension is to be made, only Blanca is incorporated. The applicant proposes to secure from the town of Blanca a franchise and later secure from the Commission a certificate of public convenience and necessity authorizing the exercise of the rights and privileges therein granted.

There is no public utility serving electrical energy in any of the territory along which the proposed transmission line is to be built, with the exception of the San Luis Power Company, which has been rendering service on a limited scale in San Luis. That company has written the Commission favoring the granting of the certificate sought herein. The evidence shows that it has sold its equipment in San Luis to the applicant for a nominal consideration.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity requires the proposed construction, maintenance and operation of a transmission line from Alamosa to Blanca, Ft. Garland, San Luis, San Pedro, San Pablo and Chama by, and that authority be granted to, Public Service Company of Colorado, to serve electrical energy for light, heat, power and other purposes to whomsoever may desire the same and as may be practicable along the route of said transmission line and particularly in the towns named.

Of course the Commission cannot and does not herein purport to usurp any of the functions and prerogatives of the town of Blanca. The right to build a transmission line through and a distribution system in, said town and to serve electrical energy to the residents thereof is subject to all further legal requirements with reference thereto, one of which being that the applicant herein, before exercising any franchise rights in said town, shall procure a certificate of public convenience

and necessity therefor from this Commission.

O R D E R

IT IS THEREFORE ORDERED, That the present and future public convenience and necessity requires the proposed construction, maintenance and operation of a transmission line from Alamosa, Colorado, to Blanca, Ft. Garland, San Luis, San Pedro, San Pablo and Chama, by, and that authority be granted to, Public Service Company of Colorado, to serve electrical energy for light, heat, power and other purposes to whomsoever may desire the same and as may be practicable contiguous to the route of said transmission line and particularly in the towns named, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That Public Service Company of Colorado shall file its tariffs, rate schedule and rules and regulations as required by this Commission at least twenty days before the date service will commence.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Wm. S. Jones

Commissioners.

Dated at Denver, Colorado,
this 24th day of January, 1929.

(Decision No. 2052)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF THE WESTERN COLORADO POWER COMPANY, A COLORADO CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1257

- - - - - - - - -
January 24, 1929.
- - - - - - - - -

Appearances: C. J. Moynihan, Esq., Montrose, Colorado, Attorney for applicant.

S T A T E M E N T

By the Commission:

This is an application by The Western Colorado Power Company, a Colorado corporation, for a certificate of public convenience and necessity, authorizing the construction and operation of a transmission and service line from the city limits of the city of Delta, Colorado, to and through the town of Cedaredge, Colorado, to serve all available consumers en route along said transmission line, and within a reasonable connecting distance therefrom, electricity for heating, lighting and power purposes; to operate a distribution system within the town of Cedaredge, Colorado, for the distribution of electric energy for heating, lighting and power purposes under a franchise to be granted to the said applicant, a copy of said franchise being attached to the application.

At a public hearing held on this application in the hearing room of the Commission, Denver, Colorado, on January 22, 1929, evidence in support of same was received. No protest was filed against this application. The Western Colorado Power Company is a Colorado corporation operating under certificates of public convenience and necessity heretofore issued by this Commission, and is engaged in the business of generating, and distributing

electric energy for heating, lighting and power purposes in what is commonly called the Western Slope territory of the State of Colorado. Since approximately 1914 it has been serving and distributing electric energy in the city of Delta. The balance sheet of the applicant, contained in its annual report for the year 1927, shows assets of approximately $8,300,000, and the testimony shows that there has been no substantial change in its financial structure.

Some time ago applicant entered into negotiations with the town of Cedaredge, located approximately 18 miles northeast of Delta, for a franchise. Cedaredge is now being served with electric energy under a franchise granted to Warren L. Parker and Fred J. Parker, Ordinance No. 1, Series 1920. The annual report filed with the Commission for the year ending December 1, 1927, gives the trade name of the company as Cedaredge Electric Light and Power Company, F. J. Parker, owner, and states that this utility began selling service on August 1, 1921. No certificate of public convenience and necessity authorizing the construction or operation of an electric plant and distribution system in Cedaredge was ever issued by this Commission, nor was there any certificate of public convenience and necessity issued by this Commission to exercise any rights or privileges granted by the town of Cedaredge to this utility.

The applicant has obtained an option from F. J. Parker to purchase the plant and distribution system in Cedaredge at the sum of $25,000. The exercise of this option depends upon the granting of a franchise to the applicant by the town of Cedaredge. A franchise has been introduced and is now up for consideration by the town of Cedaredge, granting to the applicant the right and privilege to erect, construct, maintain and operate until February 1, 1949, on the streets, alleys, roads and public places of the town of Cedaredge, electric light and power lines, together with all the necessary or desirable appurtenances for the purpose of supplying electricity to said town and the inhabitants thereof, and to persons and corporations beyond the limits thereof for light, heat, power and other purposes. This franchise comes up for final disposition by the Board of Trustees of Cedaredge on January 30, 1929. There are at present approximately 140 consumers of electric energy at Cedaredge being served by Parker, who operates a steam plant. It is the intention of the applicant to retain this steam plant as a stand-by service.

The Board of Trustess of the town of Cedaredge filed with this Commission a certified copy of a resolution passed by them on January 3, 1929, in which they state that "J. B. Ratikin, Mayor of the town of Cedaredge, be and he is hereby authorized and directed to accept service of a copy of said petition for and on behalf of the town of Cedaredge, and join in the petition of the said The Western Colorado Power Company for a certificate of public convenience and necessity, and request that said petition be allowed by the aforesaid Commission, all to be done with the approval, consent and ratification herewith given by the said Board of Trustees of the town of Cedaredge."

The testimony further shows that the applicant desires to build a transmission and service line from its present terminal at Delta to and through the town of Cedaredge, and to furnish all available consumers en route along said transmission line, and within a reasonable connecting distance thereof, with electric energy for heating, lighting and power purposes. The cost of construction of this line will be approximately $1500 per mile, making a total cost of approximately $27,000. The construction of the transmission line is contingent upon the procurement of operation rights in Cedaredge.

After a careful consideration of all the evidence introduced in support of this application, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the construction and operation of a transmission and service line for the purpose of carrying electric energy from the city limits of the city of Delta, Colorado, to and through the town of Cedaredge, Colorado, and to furnish all available consumers en route contiguous to said transmission line with electricity for heating, lighting and power purposes, and to operate a distribution system within the town of Cedaredge, Colorado, and contiguous thereto, for the distribution of electric energy for heating, lighting and power purposes.

The Commission further finds that the public convenience and necessity requires that a preliminary order issue that the Commission will hereafter, upon application, issue a certificate of public convenience and necessity to the applicant authorizing it to exercise such rights and

privileges granted to the applicant by the town of Cedaredge as the public convenience and necessity may require, after the applicant has obtained said contemplated franchise and has submitted the same to this Commission for final disposition, the Commission for the present retaining jurisdiction over this phase of the application herein.

O R D E R

IT IS THEREFORE ORDERED, That the present and future public convenience and necessity requires the construction and operation by the applicant of a transmission and service line for the purpose of carrying electric energy from the city limits of the city of Delta, Colorado, to and through the town of Cedaredge, Colorado, and the furnishing of all available consumers en route contiguous to said transmission line with electricity for heating, lighting and power purposes, and the operation of a distribution system within the town of Cedaredge, Colorado, and in territory contiguous thereto for the distribution of electric energy for heating, lighting and power purposes and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the public convenience and necessity requires that this preliminary order issue to the effect that the Commission will hereafter, upon application, issue a certificate of public convenience and necessity to the Western Colorado Power Company, applicant herein, authorizing it to exercise such rights and privileges granted to it by the town of Cedaredge as the public convenience and necessity may require after the applicant has obtained said contemplated franchise and has submitted the same to this Commission for final disposition.

IT IS FURTHER ORDERED, That the Commission will retain jurisdiction over that part of this application relating to the exercise of franchise rights in the town of Cedaredge, Colorado.

IT IS FURTHER ORDERED, That the applicant shall file with this

Commission its rates, rules and regulations covering the territory involved herein within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Walt Allen

Commissioners.

Dated at Denver, Colorado,
this 24th day of January, 1929.

FMC*

(Decision No. 2053)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE MONTROSE AUTO STAGE AND TAXI COMPANY TO SUSPEND FOR A PERIOD OF NINETY DAYS.	))))	APPLICATION NO. 89-A.

January 25, 1929.

S T A T E M E N T

By the Commission:

The Montrose Auto Stage and Taxi Company is a motor vehicle carrier for the transportation of passengers and express between Montrose and Telluride, Colorado. On January 25, 1929, it filed an application with this Commission to suspend its operation over the road covered by its certificate for a period of ninety days from January 15, 1929, and as grounds therefor allege that a portion of the road passes over what is known as Dallas Divide, which has an altitude of more than nine thousand feet, and that during the period from January 15 to April 15, heavy snowfalls cover the road at said point and render the operation of the automobile line expensive and hazardous and reduce the use of said line by the traveling public so that the same cannot be operated except at a great loss to the stage company, and that it is practically impossible to maintain the schedule during that period; that recently the Smugglers Union Mine, the largest operator at Telluride, closed down, putting out of employment a large number of men and reducing the necessity for the operation of said stage line during the ninety-day period.

Attached to the application are the consents of the Mayor and Chamber of Commerce of Montrose, Colorado, the Board of County Commissioners of San Miguel County, the Lions Club of Telluride and the

Mayor of the City of Telluride. The consents filed are to the effect that they they waive notice of any hearing and consent to the suspension.

Because of the consents filed, which in a large measure represent the public, the Commission is of the opinion and so finds that the Montrose Auto Stage and Taxi Company be authorized to suspend its operations from the date of this order until April 15, 1929.

O R D E R

IT IS THEREFORE ORDERED, That the Montrose Auto Stage and Taxi Company be, and the same is hereby, authorized to suspend its operations over the road covered by its certificate from the date of this order to and including April 15, 1929.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 25th day of January, 1929.

(Decision No. 2054)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE MOTOR VEHICLE OPERATIONS)
OF WILLIAM JOHN HONEYMAN AND)
THE HONEYMAN TRANSPORTATION) CASE NO. 388
COMPANY, A CORPORATION.)

January 28, 1929.

Appearances: David P. Strickler, Esq., Colorado Springs, Colorado, and A. P. Anderson, Esq., Denver, Colorado, attorneys for respondent; Jack Garrett Scott, Esq., Denver, Colorado, as amicus curiae.

S T A T E M E N T

By the Commission:

On October 10 last this Commission entered an order requiring William John Honeyman to show cause by written statement to be filed with the Commission why the Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws 1927. He filed his answer admitting certain allegations made by the Commission in its order with reference to proceedings already had relating to his operations. He denied that he is operating as a motor vehicle carrier and alleged that his operation is that of a private carrier and that as such he is not under the supervision of this Commission.

He further alleged that heretofore he filed with this Commission his application for a certificate and that the same was denied on March 7, 1927; that the Commission denied the application for the reason that the business of carriage of freight by motor vehicle had not so far

sufficiently developed as to demonstrate that there was public convenience and necessity therefor when the same came in competition with rail carriers; that since that time the business of carrying freight by motor vehicle has so far developed as to conclusively demonstrate that it performs a service for the public which is one of public convenience and necessity, even where such service is in competition with the rail carriers, and that for that reason this Commission has since said time granted various certificates of public convenience and necessity to other applicants therefor for service in competition with rail carriers, including the identical route over which respondent operates.

The facts hereinafter stated are those developed at the hearing on the order to show cause. The respondent began operating as a motor vehicle or common carrier in 1923 and has ever since been engaged in transporting freight between Denver, Colorado Springs and Pueblo. The business was built up by active solicitation. He applied for a certificate of public convenience and necessity on April 25, 1925. The application was denied in March, 1927. In April following an injunction was issued by the District Court prohibiting his continued operation as a common carrier, an appeal was perfected to the Supreme Court of this State, resulting in an affirmance of the District Court. The respondent then sought an injunction in the United States District Court for the District of Colorado. That court denied the injunction. He then went into the District Court in El Paso County on a writ of certiorari, which later was dismissed on his motion. During all of the period from the time he began his operations in 1922 or 1923 to the month of August, 1928, the respondent, according to his own admission, was operating as a common carrier in spite of the order denying his application and of the injunction issued thereafter requiring him to cease and desist.

In or about August, 1928, he retained new counsel, being one of the attorneys herein, who advised him in order to avoid a violation of the

law to enter into written contracts with his customers. A formal printed contract was prepared. A large number of contracts were introduced in evidence at the hearing. Still others were sent in by the respondent thereafter with his letter of January 12, 1929. The total number of these printed contracts is 165.

In October Honeyman organized The Honeyman Transportation Company, a corporation, controlled by Honeyman. At the hearing it having developed that the corporation had succeeded Honeyman in the ownership and operation of the business, the said corporation was added as a party respondent.

Honeyman admitted that his company had been transporting goods for quite a number of firms or corporations who have no written contracts, saying that in those cases the freight had been accepted through error. He first testified that his agents in Denver, Pueblo and Colorado Springs have contracts on hand by which they are able to determine whether or not a shipment offered is from or destined to a customer having a written contract. He thereafter testified when asked whether his employees in these three cities have a list of all the persons with whom his company has contracts, "No, they haven't a list of all of them."

Honeyman was asked at the hearing if he would produce all of his freight bills showing freight carried on January 4 and 5 of this year. This he thereafter did. Concerning these bills the attorney for the certificate holder operating over the route in question who appeared at the hearing as "amicus curiae" makes the following statements which have not been contradicted.

> "An analysis of the information contained in these freight bills shows that there were 97 individual shipments. Of these, there was only one shipment in which he had a contract with both the consignor and the consignee; and even in this case there is some question about it . . .
>
> "Furthermore, of the 97 shipments, it appears that only four were in cases where Honeyman had contracts with the shipper, or consignor. Of the total number, there are 36 cases in which he had no contracts with either the consignor or the consignee."

The 45 contracts enclosed with Honeyman's letter of January 12

were collected after the hearing. Concerning these contracts and others which he claims he was unable to locate, we quote as follows from Honeyman's letter:

> "In the forty-five contracts enclosed, all these contracts were left with the shippers and were signed by them at the time, but for some reason we had neglected to take them up, but they were signed by the shippers at the time noted thereon.
>
> "There are two dated in Jan. 1929, these were also left with the parties in August but had been neglected to be signed at the time, although a complete agreement to do so had been entered into.
>
> "The Commission will note that in the list of bills enclosed there a number of bills for which shipments were made where we have been unable to send the contracts. In all these cases contracts were left with the shippers, and to my personal knowledge in most instances we did have contracts with these parties, but at the present time we have been unable to find them. In many of these cases the shippers claim that they have signed a contract with us but we have been unable to find them."

Honeyman testified that he imagines there are four or five hundred business concerns in Colorado Springs, somewhat more in Pueblo and more in Denver than in Colorado Springs and Pueblo combined. When Honeyman purported to begin operating under the contracts he sought contracts from all of the customers which he had developed in the five or six years he had been in business. At the time of the hearing his company was using in the operation in question nine trucks, one of which was bought in August or September of last year.

We believe it is of some possible significance that the so-called contracts do not bind any of the customers to ship all of their freight over his line.

The testimony is somewhat conflicting as to the uniformity of his rates, although it appears clearly that they are not strictly uniform. We deem this question of uniformity of rates as having no great bearing on the issue raised, for the reasons hereinafter stated.

Concerning one shipment which Honeyman referred to in his testimony as having been offered his company and refused, he testified: "We had no contract with them and we couldn't come to an agreement on price." When

asked the question: "That was the main thing, you couldn't agree on price? If you had agreed on price you would have made the shipment?" He answered: "If we agreed on the price that would have been a contract."

Honeyman was asked what was the ultimate limit in number of customers that he proposed to serve. He answered: "As far as I can see and have been informed, the number makes no difference," and that he did not propose to limit the company to any particular number. It appeared that quite a number of the consignees of freight shipped from Denver have no contracts while the wholesale or jobbing houses in Denver do. He was asked this question: "Who do you think you are hauling for, if Jones, a wholesaler here (Denver), ships some tires, we will say to Colorado Springs, with the Colorado Springs dealer paying the freight?" He answered: "Well, ordinarily the one who pays the freight." He was then asked, "Well, do you turn down any of those shipments where they are f.o.b. the warehouse or place of business of the consignee unless you have a contract with the consignee?" He answered: "No, because I don't think there would be a great deal of difference there, because it is really both of them, the goods belong to the consignor until they are delivered to the consignee."

The Commission does not believe that determination of this case depends upon the answer to the question whether the customers are the consignees who pay the charges or the shipper. In the first place, the evidence shows quite clearly that the respondent has taken any and all business offered him irrespective of whether he had the so-called contract with either the consignor or the consignee.

Moreover, as this Commission has held before, the question is not whether a carrier is a contract carrier or not, but whether he is a public or private carrier.

We quote as follows from our decision in the application of The Exhibitors Film Delivery & Service Company, No. 1009:

"In order that a carrier be a common carrier it is not necessary that he serve the whole public. No common carrier does. In Terminal Taxicab Co. v. Dist. of Col., 241 U. S. 252, it appears that the company was 'under contracts with hotels by which it agreed to furnish taxicabs and automobiles within certain hours reasonably to meet the needs of the hotel, receiving the exclusive right to solicit in and about the hotel, but limiting itself to serve guests of the hotel.' The court, speaking through Mr. Justice Holmes, held, 'We do not perceive that this limitation removes the public character of the service, or takes it out of the definition in the act. No carrier serves all the public. His customers are limited by place, requirements, ability to pay and other facts. But the public generally is free to go to hotels if it can afford to as it is free to travel by rail, and through the hotel door to call on the plaintiff for a taxicab* * * The service affects so considerable a fraction of the public that it is public in the same sense in which any other may be called so. German Alliance Ins. Co. v. Kansas 233, U. S. 389. The public does not mean everybody all of the time.' This case was cited and quoted from with approval in Davis v. People, ex rel., 79 Colo. 642, 644.

"In the case we have here the applicant is indiscriminately serving the whole film exhibitor public with the exception of one exhibitor whom it obviously is very desirous of serving. It is true that it may not be advertising. There is no need therefor. If it is indiscriminately accepting, discharging and laying down express, advertisement is unnecessary.* * *

"In a few isolated cases there is found language indicating that one who operates under private contracts is not a common carrier. An examination of all the authorities, however, leads one irresistibly to the conclusion that in determining whether or not a given operator is a common carrier, the test is not whether he has separate written or other kind of formal contracts with each and every one of his customers. On the contrary, the test is whether he is serving a sufficiently large portion of the public in the carrying of those kinds of goods which he accepts. As is stated in the Campbell case, (supra) (174 S.W. 140) 'For if the defendant, by reason of the circumstances, is a common carrier as to the goods in question, it cannot by any special contract change its status as such or exempt itself from the responsibilities growing out of that relationship.' It is true that once it is determined that a carrier is a common carrier the law steps in and imposes upon him the duty of making uniform rates and rendering equal service to all persons, but the fact that the law imposes upon a common carrier such a duty has nothing whatever to do with the test as to whether he is a common carrier."

In Board of County Commissioners of Weld County v. Leach, Case No. 332, it appeared that Leach transported freight between Denver and Greeley for some fifty or seventy-five customers in the city of Greeley, all of which was done under separate written contracts. Respondent admitted that under those facts he was a motor vehicle carrier and agreed to the issuance of an order by this Commission requiring him to cease and desist.

In Smitherman v. McDonald, Inc. et al v. Mansfield Hardwood Lumber Company, 6 Fed. (2nd) 29, it appears that the lumber company extended its private railroad line some three miles to carry oil for one party who for a time was its only shipper. Later it made contracts with four other shippers of oil and held itself willing and ready to haul oil and oil supplies for any others under private contract, although it professed not to be a common carrier. The court held that it was a common carrier. Here a corporation not only is hauling freight for a multitude of people who have so-called contracts, but it is hauling for any and everybody who offers freight irrespective of the existence of any contract with the shipper or consignee.

In Wayne Transportation Co. v. Leopold et al, P.U.R. 1924C, 382, the Pennsylvania Public Service Commission held that two men, both working in a mill, one owning a five-passenger car, the other a seven-passenger car, making morning trips from home to the mill and evening trips in return, carrying on these trips with them eleven other workmen who resided in the same place and were also employed at the mill, or in the town in which it was located, were common carriers. The contention of the operators in that case was much the same as that in this one. According to the Commission, "They sustained this contention mainly upon the allegation that they do not hold themselves out as carriers for the public at large, or for passengers indiscriminately, inasmuch as the passengers they carry, practically speaking, are the same persons every day. In effect, the contention of respondents is that their passengers are carried under private contract." The Commission continuing, said: "With this contention the Commission cannot agree. Courts and commissions have repeatedly held that the distinction between common and private carriage does not necessarily depend upon whether written or oral contracts have been entered into but rather upon the nature and character of the carriage or service rendered and upon actual conditions of service as disclosed by testimony." (Underscoring ours). The Commission quoted from another case decided by it, one significant sentence

of the quoted matter being: "There are numerous acts which tend to establish common carriage; that all of them must exist in a particular case in order to establish common as distinguished from private carriage, is not the law."

The California Railroad Commission held in Forsythe v. San Joaquin Light and Power Corp. P.U.R. 1926C, 344, that a corporation in transporting its employees and their families by auto stage on public highways between a city and its construction camps for definite fares fixed by written instructions to its labor agent and noted on employment contracts for deduction from wages, is a transportation company as defined by the auto stage and truck transportation act of 1917.

The Maryland Court of Appeals in Goldsworthy et al v. Malloy et al 141 Md. 674, 119, Atl. 693, P.U.R. 1923C, 626, said concerning what it considered an evasion of the law, "The owners certainly should not too readily be permitted to enter into contracts or adopt measures which will enable them to readily evade the laws or the spirit of the statutes intended to govern them."

We believe this Commission has never had a case before it in which it appeared more clearly that the carrier was a common carrier.

In respondent's brief he states that if the Commission should find that he has in any respect violated the law he would like the advice of the Commission with reference thereto so that he may "earnestly and honestly try to confine himself to that operation only which can be carried on by a private carrier." While it is somewhat refreshing at this late day, after respondent has for so long openly and contemptuously violated the law with respect to the subject and an injunction sustained by the Supreme Court, and has failed to follow the advice of his present attorney, to hear him say that he desires to observe the law, this Commission cannot properly assume the role of an advisor and bind itself as to just what sort of operations the respondent may engage in without violating the law. Each case must necessarily stand on its own facts.

In Barbour et al, v. Walker et al, 259 Pac. (Okla.) 552, it appeared that the defendants were associated in the transportation of freight and merchandise between Oklahoma City and Shawnee under separate contracts with five individuals and firms in Oklahoma City. These concerns with which the defendants held contracts "were of the principal business houses engaged in their respective line of commodities in Oklahoma City." The court held that "since the defendants were operating under five separate, distinct contracts with as many principal concerns of Oklahoma City, they had in effect resolved themselves from the character and status of private motor carriers not subject to regulation, if such in fact was the case, to that of public motor carriers,* * *"

This Commission held in Re Clayburg, Case No. 331, that Clayburg hauling freight for some six persons and firms in the city of Greeley, where, according to stipulation filed there are some four hundred mercantile establishments, was not a common carrier.

It obviously would be improper to attempt to say in advance what respondent could do in order to become a private carrier. It is clear, however, that the operations would have to be far different from what they ever have been.

Concerning the allegations that after the respondent's application was denied the Commission issued a certificate authorizing another carrier to operate over the route in question, and that since the order had been entered motor truck transportation has developed to such an extent that what was once considered not to be a public convenience and necessity has now developed to be such, we must answer that this Commission is a fact-finding body. We decided the respondent's application upon the facts introduced in evidence. Our order and the reasonableness thereof was subject to review. If the applicant had respected the order and taken such steps as were possible to preserve his priority until such time as he could, as has been done since by another operator, make a case showing

public convenience and necessity, he would be in quite a different position than he is today. We do not see how the question whether or not he is now operating in violation of the law can be made to turn upon any such collateral facts as he relies upon.

The Commission is of the opinion and so finds that The Honeyman Transportation Company, a corporation, has, continuously since its organization, been operating as a motor vehicle carrier and that William John Honeyman, the other respondent herein as president and general manager thereof, has been and is aiding and abetting in such operation in violation of the law.

O R D E R

IT IS THEREFORE ORDERED, That The Honeyman Transportation Company, a corporation, respondent herein, immediately cease and desist from operating as a motor vehicle carrier as defined in Section 1 (d) of Chapter 134 of the Session Laws of 1927, of the State of Colorado.

IT IS FURTHER ORDERED, That William John Honeyman immediately cease and desist from violating the law of the State of Colorado by conducting a motor vehicle common carrier operation without a certificate of public convenience and necessity either by his personal conduct of such an operation or through participation in such conduct by The Honeyman Transportation Company or any other agency.

IT IS FURTHER ORDERED, That the Secretary of this Commission be, and he is hereby, instructed to send a copy of the decision and order herein to the District Attorney of the City and County of Denver.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 28th day of January, 1929.

Commissioners.

(Decision No. 2055)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

IN RE PROPOSED CONSTRUCTION OR EXTENSION OF LINE BY PUBLIC SERVICE COMPANY OF COLORADO.

CASE NO. 393.

- - - - - - - - - -

January 30, 1929.

- - - - - - - - - -

S T A T E M E N T

By the Commission:

Complaint has been made to this Commission by the Town of Julesburg, Colorado, that Public Service Company of Colorado is in process of constructing an electric line in Sedgwick County, connecting on the north of said town with the transmission line running from Julesburg to Big Springs, Nebraska, and on the west with the transmission running from Julesburg to Sedgwick, Colorado; that the nature and purpose of said construction or extension is such that under the law said Public Service Company of Colorado is required to secure authority from this Commission therefor, and that said utility in constructing or extending its said line will interfere with the operation of the line, plant or system of the municipally owned electric light plant and system of the town of Julesburg.

The Commission is of the opinion and so finds that sufficient ground exists for it, on its own motion, to issue an order requiring said Public Service Company of Colorado to show cause.

O R D E R

IT IS THEREFORE ORDERED, That Public Service Company of Colorado be, and it is hereby, required to show cause by written answer to be filed within ten days from this date:

(a) Why before constructing or extending its line so as to connect the said Julesburg-Big Springs line with the Julesburg-Sedgwick line, it should

not procure from this Commission a certificate of public convenience and necessity therefor, and

(b) why in so constructing or extending its line, irrespective of whether a certificate of public convenience and necessity therefor is required by law, it will not so interfere with the operation of the line, plant or system of the electric light plant or system of the town of Julesburg as to require this Commission to prohibit such construction or extension or to prescribe such terms and conditions as to it may seem just and reasonable.

IT IS FURTHER ORDERED, That this matter be set down for hearing at an early date to be fixed by the Commission after the answer of Public Service Company has been filed.

IT IS FURTHER ORDERED, That until a final order is entered in this case that the Public Service Company refrain from any work on the construction of the extension of its line involved herein.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 30th day of January, 1929.

(Decision No. 2056)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE) APPLICATION NO. 765
AND NECESSITY.)

January 30, 1929.

Appearances: Paul W. Lee, Esq., Denver, Colorado,
and L. E. Anderson, Esq., Brush,
Colorado, attorneys for applicant;
G. E. Hendricks, Esq., Julesburg, Colorado,
attorney for the town of Julesburg.

STATEMENT

By the Commission:

The town of Julesburg on October 26, 1928, filed a petition asking that the order theretofore entered herein granting a certificate of public convenience and necessity to Public Service Company of Colorado be reopened and reconsidered and upon reconsideration this Commission deny to Public Service Company -

> "a Certificate of Public Convenience and Necessity to add to its investment by the construction of power plants and station or new transmission line or lines, or to duplicate the investment of your petitioner, within said territory, to provide any other source of supply of electrical energy than from the power station of your petitioner so long as your petitioner has ample capacity therefor."

Public Service Company filed its answer consisting of some twelve pages. The Matter was set for hearing and was heard in the court house in Julesburg on the 28th day of November. The parties have since filed briefs which the Commission has read and considered carefully.

For a period of some twenty years last past Julesburg has owned, operated and maintained a municipal plant for the generation and distribution of electric energy. On June 9, 1919, it entered into a contract with the town of Sedgwick situated about fifteen miles southwest thereof in the same county, containing a recital to the effect that the parties were desirous of entering into an agreement -

> "whereby Julesburg is to furnish Sedgwick sufficient electrical current, during the life of this contract, for the use of Sedgwick for light and power purposes and for the purpose of furnishing current for light and power to consumers along the transmission line and under the Sedgwick system of distribution."

Sedgwick agreed to make exclusive use of electrical current furnished by Julesburg under the terms of this contract for lighting the streets and for power for pumping water for the Sedgwick water system. The contract was to continue for a term of ten years, expiring June 9 of this year. The town of Sedgwick built between Sedgwick and Julesburg a transmission line which it has at all times owned and operated. Julesburg built a transmission line to its town limits, at which place a substation was constructed. At this substation the electric energy has at all times been delivered to Sedgwick.

Ovid is a town intermediate to Julesburg and Sedgwick. The distribution system in Ovid was owned and operated until in the year 1926 by The Julesburg Co-Operative Grain Company, a corporation, which purchased its energy from Sedgwick. The energy distributed in Ovid has been transmitted thereto over a short transmission line running north a short distance from Ovid, connecting with the Julesburg-Sedgwick line. In 1926 the Grain Company sold its distribution system to Public Service Company, which procured an ordinance from the town of Ovid in the same year granting, as is stated in the title thereof:

> "TO PUBLIC SERVICE COMPANY OF COLORADO, A CORPORATION ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF COLORADO, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND AUTHORITY TO ERECT, CONSTRUCT, MAINTAIN AND OPERATE A SUBSTATION OR SUBSTATIONS, ELECTRIC LIGHT AND POWER PLANTS, TRANSMISSION LINES, AND A DISTRIBUTION SYSTEM FOR THE DISTRIBUTION

AND SALE OF ELECTRICITY WITHIN THE CORPORATE LIMITS OF THE TOWN OF OVID, SEDGWICK COUNTY, COLORADO."

This Commission on June 24, 1927, without Julesburg being named as or being a party to the record, made an order as follows:

> "IT IS THEREFORE ORDERED, That the public convenience and necessity does now, and in the future will, require the exercise by the applicant of said franchise rights by ordinance granted to it by the town of Ovid, as aforesaid, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.
>
> "IT IS FURTHER ORDERED, That the public convenience and necessity does now and in the future will require that the applicant be permitted to furnish electrical current for light, power and other purposes to whomsoever may desire the same and as it may be practicable along the route of its transmission lines situate in said county; and that the applicant be granted the privilege of extending its facility or line, plant or system, situate in said town of Ovid and said county of Sedgwick, into territory contiguous to said facility or line, plant or system, provided any extension is made before the territory into which the extension is to be made may be lawfully served by another public utility."

On the same date the Commission made a similar order granting authority to exercise similar franchise rights which had by ordinance been granted by the town of Sedgwick, the latter having sold its distribution system and transmission line to Public Service Company.

Public Service Company has continued to the present time to take from Julesburg at its town limits all energy which the former has distributed in Sedgwick and Ovid. It appears also that Julesburg is and has for some years been supplying electricity for distribution in Big Springs, Nebraska, and that Public Service Company has bought the distribution system there and the transmission line leading to Julesburg. Public Service Company, at the hearing, expressed its intention to continue to perform the said contract between Julesburg and Sedgwick until it expires.

Shortly before the filing of the petition herein by Julesburg a transmission line leading from Ogallala, Nebraska, to Big Springs, has been constructed. Thus a transmission line extended from Ogallala to Julesburg.

Public Service Company at the date of filing of the petition was in the course of constructing a connecting line between the Julesburg-Big Springs line and the Julesburg-Sedgwick line, the connection with the former being at a point about half a mile north of Julesburg and with the latter at a point about half a mile west of Julesburg. This connecting line runs west for a mile along the Colorado and Nebraska line and south for about a mile and a quarter in Colorado. The purpose of making this connection appears to be to enable Public Service Company to procure electric energy for Ovid and Sedgwick from a generating plant situated in Ogallala, from and after the date of the expiration of the contract between Julesburg and Sedgwick and, possibly, as stated in the answer of Public Service Company, to afford the latter an additional source of energy to be drawn on in case of breakdown in the Julesburg plant or other interruption of service therefrom.

The evidence shows that negotiations in the past were conducted by the Public Service Company and Julesburg for the sale of the Julesburg municipal plant to Public Service Company; that the matter was submitted at an election and the sale was rejected by the electors. Much of the evidence was devoted towards proof of an alleged conspiracy on the part of Public Service Company to force Julesburg to sell its plant. We are unable to see how a determination of this question has any bearing upon the issues now raised herein.

If Julesburg had been made a party to the original proceeding herein it might properly be argued that in view of the fact that Julesburg had a generating plant, and of the further fact that no evidence was introduced showing that the public convenience and necessity required the construction of another plant in Ovid, the Commission would not and should not have entered an order authorizing the exercise of that part of the franchise which authorized the construction of an electric light and power plant. We are of the opinion that the Commission went too far in authorizing the exercise of

all the rights and privileges granted in that ordinance, particularly that portion which relates to the construction of a plant. We believe it is likewise true that we went too far in the order with respect to the franchise granted by the town of Sedgwick. It is true that the town of Sedgwick could, without any authority from this Commission, have constructed its own plant, (People ex rel Utilities Commission v. City of Loveland, 76 Colo. 188) but the mere fact that the town of Sedgwick could have constructed a plant without authority from this Commission does not mean that the vendee of its distribution system could do the same. The reasons why a town needs no authority and a private corporation does need authority to construct a plant have been set forth in the cases decided by the Supreme Court of this State and need not be restated here. The reasons why the authority is needed in the case of a private corporation apply with the same force in the case of a utility whose property has been purchased from a municipality as in any other case. We are unable, therefore, to agree with the reasoning that since Sedgwick could have constructed a plant without a certificate the vendee of its distribution system may do the same. However, as the petition of the town of Julesburg was filed in this case only and not in the Sedgwick case, we will make no further order herein with reference to the exercise of the franchise rights granted by Sedgwick. It may be necessary to reopen the Sedgwick case and to modify the order therein in conformity with the views stated.

Even though the town of Julesburg had been a party to the original application herein, we are unable to see what further questions it them could properly have raised herein. We do not understand how the issues could have covered the question of Public Service Company making a new contract with the town of Julesburg by which the latter should

furnish all of the electrical energy that might be distributed by the former in Sedgwick and Ovid and along the transmission line leading to said towns.

Neither do we understand how there could have been involved in this particular application the questions, (1) whether the construction of the connecting line in question is "an extension within or to territory already served by it (Public Service Company), necessary in the ordinary course of its business", and (2) whether the construction of said line is such interference "with the operation of the line, plant or system" of Julesburg as to require an "order prohibiting such construction or extension or prescribing such terms and conditions . . . as to it (this Commission) may seem just and reasonable."

Of course, the practice before this Commission is not very formal. However, on the second question, whether the construction or extension is such an interference with the operation of Julesburg's plant as to warrant the Commission in prohibiting the same or making an order prescribing terms and conditions, the evidence is insufficient to warrant a determination. It is not every interference with another utility that should be prohibited. One important consideration which would have to enter into the decision of the question would be what the best interests of the consumers to be served by the extension are. In determining this question, the Commission would have to know, among other things, the comparative cost of energy that might be brought in over the extension and that to be furnished by the Julesburg plant.

We are not unmindful of the primary duty of a municipality to use the product of its plant for its own inhabitants, and that when the time comes that it has no surplus, it doubtless cannot be required to deliver energy, even though a contract for the furnishing thereof may not have expired. But in this case, it clearly appears not only that there is now, but that there will continue in the future to be, a

surplus of electric energy produced by the Julesburg plant. In view, therefore, of the decision in the case of Lamar v. Wiley, 80 Colo. 18, the municipal plant in Julesburg has certain aspects of a public utility which entitles the municipality to invoke proper protection under the provision of the statute with reference to interference.

As the parties are desirous of having an early determination of the controversy, the Commission has concluded therefore, in order to expedite the matter, instead of giving leave to Julesburg to file another complaint, to enter immediately on its own motion an order on Public Service Company to show cause. This it is doing this date.

It would seem quite desirable and reasonable that the evidence already taken in this proceeding should be made a part of the record in the new case and that there is no need of duplicating the same.

O R D E R

IT IS THEREFORE ORDERED, That the order heretofore entered herein be, and the same is hereby, reopened.

IT IS FURTHER ORDERED, That the order heretofore entered herein on June 24, 1927 be, and the same is hereby, altered and amended so as to read as follows:

> "IT IS THEREFORE ORDERED, That the public convenience and necessity does now and in the future will require the exercise by the applicant of said franchise rights by ordinance granted to it by the town of Ovid except as that relates to the erection, construction, maintenance and operation of an electric light and power plant, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.
>
> "IT IS FURTHER ORDERED, That the public convenience and necessity does now and in the future will require that the applicant be permitted to distribute electric energy for light, power and other purposes to whomsoever may desire the same and as it may be practicable in territory contiguous to its present

transmission line and distribution system situated in the county of Sedgwick, State of Colorado, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor."

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 30th day of January, 1929.

Commissioners.

(Decision No. 2057.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

IN THE MATTER OF THE APPLICATION OF THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, STATE OF COLORADO, FOR A CHANGE IN THE LOCATION OF THE PUBLIC HIGHWAY CROSSING AT BONDAD, COLORADO.

APPLICATION NO. 1221.

- - - - - - - - -

January 31, 1929.

- - - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises out of the application of the Board of County Commissioners of La Plata County, Colorado, filed with the Commission on October 31, 1928, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the authorization of a change in the location of a public highway crossing near Bondad at Mile Post 462.59 to a new location at Mile Post 462.78 of the Denver and Rio Grande Western Railroad.

The application alleges that the change in location of crossing is necessary because of a reconstruction of State Highway No. 19 and a change in the location of the highway at this place.

An investigation of the matter by the Commission discloses that the State Highway Department has State Highway No. 19 from Durango southward toward Farmington under reconstruction; and that at Bondad the old highway makes a right angle turn and crossed the Denver and Rio Grande Western Railroad and the Animas River and then followed a route along the west side of the river. The highway has been relocated so as to continue on a straight line to a new crossing over the river lower down. This change in location of the highway requires a change in the location of the crossing on this highway over the railroad to a point about one thousand feet south of the old

location. The new location of crossing will be much safer than the old location because of better view of the train approaching the highway. Also a better alignment in the highway will be obtained by the change.

The new highway will not be completed for several months yet, and the old crossing at Bondad will have to be used till the new highway and new bridge over the river is completed. After this has been done, then the old highway crossing at Bondad Station can be discontinued as a public highway crossing at that point, although it may be necessary to have a private crossing to the station for patrons of the railroad. But the old highway on the east side of the track will be abandoned and will not be used. It is understood a county road will be constructed from the old bridge over the Animas River to the new highway crossing along the west side of the railroad for the accommodation of people residing on the west side of the river at Bondad in reaching the new highway. By this arrangement the old public highway crossing will not be needed as a public crossing.

A copy of the application was duly served on the respondent, The Denver and Rio Grande Western Railroad Company, and on January 24, 1929, the Commission was advised by the General Attorney for the railroad company that no objection would be interposed to the issuance of an order authorizing the change in the crossing referred to in the application upon the usual terms.

Since, therefore, there appears to be good reasons for a change in the crossing herein referred to , and the Commission so finds, and there are no objections to the proposed change by anyone concerned therein, the Commission will issue its order granting the application.

O R D E R

IT IS THEREFORE ORDERED, In accordance with Section 29 of the Public Utilities Act, as amended April 16, 1917, that the public highway crossing at grade over the tracks and right-of-way of The Denver and Rio Grande Western Railroad Company, located at Bondad, and which point is at or near Mile Post 462.59 of said railroad, be, and the same is hereby, permitted to be moved or transferred and relocated at the point where the reconstructed State Highway No. 19 crosses said railroad which point is at or near Mile Post 462.78; con-

ditioned, however, that prior to the opening of said relocated crossing to public travel it shall be constructed in accordance with plans and specifications as prescribed in the Commission order "In re Improvements of grade crossings in Colorado," 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the aforesaid crossing at Bondad shall not be moved or transferred and relocated as heretofore described until the said reconstructed highway has been completed and open to public travel over and across the Animas River at the new bridge on the reconstructed highway.

IT IS FURTHER ORDERED, That the expense of the construction and maintenance of grading for the highway up to the track at the new location of the aforesaid crossing, including the necessary drainage therefor, shall be borne by the State of Colorado, and the expense for the re-installation or installation and maintenance of said relocated crossing, including necessary cattle guards, crossing plank and signs, shall be borne by the respondent, The Denver and Rio Grande Western Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 31st day of January, 1929.

(Decision No. 2082)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * * * * *

IN THE MATTER OF THE INVESTIGATION BY THE COMMISSION UPON ITS OWN MOTION OF THE COMPLAINT OF CHARLES BAILEY, AGAINST THE ROARING FORK WATER, HEAT AND POWER COMPANY.	CASE NO. 366

January 26, 1929.

S T A T E M E N T

By the Commission:

On January 24 the Commission received a motion made by the attorneys for the complainant herein which reads as follows:

> "COMES NOW Charles Bailey, Sr., the Complainant above named, by his undersigned Attorneys, and respectfully moves the Public Utilities Commission of the State of Colorado to make and enter of record an order suspending the force and effect of Decision Number 2064 herein, rendered under date of January 8th, 1929, insofar and only insofar as said Decision may be considered to establish any effective date, whereby the provisions of Section 2940, Compiled Laws of Colorado, 1921, may become applicable as establishing a time within which the attached Motion and Application for Rehearing on the part of Complainant shall be heard or determined by the Commission, as affecting the right of Complainant to apply for a writ of review as to those parts of said Decision No. 2064 which are complained of in the attached Motion and Application for Rehearing."

The Commission on January 8 reviewed the evidence herein and made certain findings and conclusions. Because of the Commission's belief that the evidence with reference to payments made by the complainant was not satisfactory, he was given thirty days in which to file a definite statement and the company was required to file its written objections within twenty days from the date of receipt of a copy of said statement. It was further provided that if the

parties could not agree, a further hearing with respect to these payments would be had. To avoid having either of the parties lose any right to a review of the final order, findings and conclusions of the Commission we concluded as follows:

> "In the meantime no reparation order whatever will be entered and the Commission will retain jurisdiction over the entire case, as the Commission is desirous that both parties may have the unquestioned and unfettered right to review when this Commission has finished with the case."

We doubt whether anything more is necessary. But out of an abundance of caution and because both complainant and respondent are desirous that both shall have full opportunity to seek a review of any and all findings, conclusions and orders which may be entered herein we have concluded to make the following order.

O R D E R

IT IS THEREFORE ORDERED, That on motion of the attorneys for complainant herein, the effective date of the findings and conclusions made by the Commission on January 8, 1929, be, and the same is hereby, suspended until such time as the Commission shall hereafter by order determine and fix such date.

IT IS FURTHER ORDERED, That in accordance with the original intention of the Commission the whole of the said decision, findings and conclusions of January 8, except that portion relating to further procedure herein with respect to payments made by the complainant be, and the same is hereby, held to be tentative in its nature.

IT IS FURTHER ORDERED, That for the purpose of seeking a review neither party shall be required or expected to file a petition for rehearing until the Commission has entered a final order fixing the effective date of both the findings and conclusions and the order proper to be made herein.

IT IS FURTHER ORDERED, That nothing herein shall affect that portion of the Commission's tentative decision, findings and conclusions with reference to the filing of the statement relating to payments, the filing of written objections thereto, etc.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

OTTO BOCK

(S E A L)

DAN S. JONES

WOMEN ALLEN

Dated at Denver, Colorado,
this 26th day of January, 1920.

Commissioners.

ATTEST: A TRUE COPY.

SECRETARY.

(Decision No. 2059)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF THE BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY, COLORADO, FOR THE OPENING OF A PUBLIC HIGHWAY CROSSING OVER THE TRACKS OF THE COLORADO AND SOUTHERN RAILWAY COMPANY AT BLUFF STREET IN THE CITY OF BOULDER.

APPLICATION NO. 927

February 1, 1929.

STATEMENT

By the Commission:

This proceeding arises out of the application of the Board of County Commissioners of Boulder County, Colorado, filed with the Commission on June 14,1927, in compliance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16,1917, for the authorization of the opening of a public highway crossing over the tracks and right-of-way of The Colorado and Southern Railway Company at a point where Bluff Street in Walker's Subdivision of the city of Boulder, Colorado, extended would cross the tracks of said railroad.

The application alleges that the crossing is necessary to provide a method of egress and ingress to resident or residents residing on the east side of said railroad.

An investigation of the matter by the Commission's engineer, in company with Mr. J. Q. Dier, attorney for the railroad company and parties directly interested in the crossing on June 21,1927, developed that Bluff Street now ends at the west line of the right-of-way of The Colorado and Southern Railway Company, and there is no extension of this street authorized by the proper legal authority, and so far as known none is contemplated. If a crossing were installed on an extension of Bluff Street over the tracks of the railroad company as desired, it would only accommodate the owner of the property abutting the east line of the right-of-way. The owner of this property is Mrs. Lillian E. Swain and is now

occupied by a Mr. Foote. If a crossing were to be installed at the place desired it would be purely a private crossing. In no sense could it be for the general use of the public, or could it be designated as a public crossing.

However, at this investigation counsel for the railroad offered the occupant of Mrs. Swain's property to provide an outlet for the property to county road No. 16 about 400 feet north of this property on the right-of-way at each side of the track, said outlet to be provided in a contract that would protect the interests of all parties concerned, but the Commission is now advised that Mrs. Swain has refused to sign the contract. The Commission will issue its order dismissing the application for lack of jurisdiction.

O R D E R

IT IS THEREFORE ORDERED, That the application of the Board of County Commissioners of Boulder County, No. 927, be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 1st day of February, 1929.

(Decision No. 2060)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE MOTOR VEHICLE OPERATIONS)
OF ROBERT A. HAZELL.) CASE NO. 392

February 4, 1929.

Appearances: Leo P. Kelly, Esq., Pueblo, Colorado,
attorney for respondent;
Jack Garrett Scott, Esq., Denver, Colorado,
as amicus curiae.

S T A T E M E N T

By the Commission:

On January 4 this Commission entered an order requiring Robert A. Hazell to show cause by written statement to be filed with the Commission why the Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927. The respondent in his answer filed alleges that he is not now, nor has he at any time heretofore been, operating as a motor vehicle carrier; that his operation is that of a private carrier and that therefore the Commission has no jurisdiction thereof.

The evidence shows that the respondent is engaged in the transportation of freight regularly between Pueblo and Denver; that he is engaged also in transporting freight anywhere his customers in Pueblo direct, naming among other points, Trinidad and Montrose, and that his operating equipment consists of two trucks, one having a capacity of 1½ tons and the other 2 tons. The respondent testified that he keeps these trucks busy. He claims that all of the business done by him is under contracts which he holds with his various customers. At

the hearing there was introduced as an exhibit a written statement filed by some twelve concerns reading as follows;

> "This is to certify that we have a verbal contract with the Hazell Truck Line to do our hauling between Denver and Pueblo, Colo. and intermediate points; Unless some other route is specified on order."

After the hearing, pursuant to an understanding had thereat, the attorney for the respondent submitted a copy of a list of respondent's customers which is kept upon the desk of the Morgan Transfer and Storage Company in Denver. This transfer company acts as the agent in Denver for respondent. Seventeen concerns are included in this list. The total number of customers appearing on the two lists is twenty-five. On cross examination it appeared also that respondent had hauled freight for Libby, McNeill & Libby, Sherman Mercantile Company, Weicker Transfer and Storage Company and Piggly-Wiggly, and that he had had a contract with Swift and Company.

Respondent was asked to submit his freight bills for the months of November and December. We have not sought to make an exhaustive check of these freight bills, but we do find from a hurried examination thereof a number of customers which were not previously named. The following are some of the shipments which we note. We state first the name of the consignor. On the same line and opposite the consignor's name is that of the consignee. Following the consignee's name is found either a P or a C. P means prepaid; C means that the shipment was sent "collect." The names of the persons or concerns not having a contract are underscored.

Goodyear Tire Company	Bailey Bros.	C
Cowen Battery Co.	Klusemeyer	C
Booth Fisheries	Arapahoe Shop	C
Orchard Products	J. S. Brown	C
Booth Fisheries	Kruppenburg	C
National Rubber Co.	J. H. White	C
Weicker Transfer & Storage Co.	J. S. Brown	C
Williard Storage Battery Co.	Harley Battery Co.	C
Mrs. O. E. Henderson	Mrs. O. E. Henderson	C
Bluebird Co.	Piggly Wiggly	C
Orchard Products	Piggly Wiggly	C
National Rubber Sup.	John H. White	C
United States Transfer	Wiswell Wells	C
Williard Battery Co.	Trinidad Battery	C
Liquid Carbonic	Coca-Cola	P
Firestone Tire Co.	Sasso Bros.	C
C. R. Hurd	Pressey Fruit Co.	C
C. R. Hurd	Colo. Supply Co.	C

Fitts Mfg. Co.	Catherine Schlesinger	C
Cowen Battery	Western Battery Supply	C

It will be noted that in some of the above shipments neither the consignor nor the consignee is a contract customer of the respondent. In other cases the consignor is, but the consignee paying the freight is not.

The question arose in this case whether or not customers are the many retail dealers who pay the freight and who probably have no so-called contract, or the wholesalers or jobbers who have the so-called contract and who ship the freight "collect." We are inclined to believe that in arriving at the number of customers served by a carrier the Commission must treat as customers those consignees who pay the charges on freight shipped to them. If the consignor is selling the goods f.o.b. the store or shop of his customers, then it is none of their concern or business, in the absence of some special contract to the contrary, how or by whom the freight is delivered. However, where the goods are sold f.o.b. the dock of the wholesaler or jobber, it seems to us that the receiving customer would have the right to insist that the goods be brought to him by a certain carrier and would also have the right to refuse said goods unless so brought.

However, we do not believe the case now before us necessarily turns upon the answer to this question. As in many other like cases, the contracts seem to amount to very little if anything. A large percentage of the contracts are verbal. Apparently none of them purport to bind customers to give to respondent all shipments moving over his route. Some four formal written contracts were introduced in evidence. We note that they all provide with reference to the freight charges; "which said charge the party of the second part agrees to pay for said service." However, when we examine the freight bills we find that with rare exceptions the consignee pays the freight irrespective of the fact that the so-called customer who signed the contract may be the consignor. In fact

it appears rather obvious that the sole and only purpose of collecting the so-called contracts is to impress upon the respondent a character which he otherwise would not have.

As this Commission has pointed out repeatedly, the question whether a given operator is a common or private carrier depends very largely upon two considerations, the number of the public being served by the carrier and the relationship between the number of the public served and the capacity of his equipment.

We quote as follows from our decision in the application of The Exhibitors Film Delivery & Service Company, No. 1009:

> "In order that a carrier be a common carrier it is not necessary that he serve the whole public. No common carrier does. In Terminal Taxicab Co. v. Dist. of Col., 241 U. S. 252, it appears that the company was 'under contracts with hotels by which it agreed to furnish taxicabs and automobiles within certain hours reasonably to meet the needs of the hotel, receiving the exclusive right to solicit in and about the hotel, but limiting itself to serve guests of the hotel.' The court, speaking through Mr. Justice Holmes, held, 'We do not perceive that this limitation removes the public character of the service, or takes it out of the definition in the act. No carrier serves all the public. His customers are limited by place, requirements, ability to pay and other facts. But the public generally is free to go to hotels if it can afford to as it is free to travel by rail, and through the hotel door to call on the plaintiff for a taxicab * * * The service affects so considerable a fraction of the public that it is public in the same sense in which any other may be called so. German Alliance Ins. Co. v. Kansas 233, U. S. 389. The public does not mean everybody all of the time.' This case was cited and quoted from with approval in Davis v. People, ex rel., 79 Colo. 642,644.
>
> "In the case we have here the applicant is indiscriminately serving the whole film exhibitor public with the exception of one exhibitor whom it obviously is very desirous of serving. It is true that it may not be advertising. There is no need therefor. If it is indiscriminately accepting, discharging and laying down express, advertisement is unnecessary. * * *
>
> "In a few isolated cases there is found language indicating that one who operates under private contracts is not a common carrier. An examination of all the authorities, however, leads one irresistibly to the conclusion that in determining whether or not a given operator is a common carrier, the test is not whether he has separate written or other kind of formal contracts with each and every one of his customers. On the contrary, the test is whether he is serving a sufficiently large portion of the public in the carrying of those kinds of goods which he accepts, As is stated in the Campbell case, (supra) (174 S.W. 140) 'For if

the defendant, by reason of the circumstances, is a common carrier as to the goods in question, it cannot by any special contract change its status as such or exempt itself from the responsibilities growing out of that relationship.' It is true that once it is determined that a carrier is a common carrier the law steps in and imposes upon him the duty of making uniform rates and rendering equal service to all persons, but the fact that the law imposes upon a common carrier such a duty has nothing whatever to do with the test as to whether he is a common carrier."

In Board of County Commissioners of Weld County v. Leach, Case No. 332, it appeared that Leach transported freight between Denver and Greeley for some fifty or seventy-five customers in the city of Greeley, all of which was done under separate written contracts. Respondent admitted that under those facts he was a motor vehicle carrier and agreed to the issuance of an order by this Commission requiring him to cease and desist.

In Smitherman v. McDonald, Inc. et al v. Mansfield Hardwood Lumber Company, 6 Fed. (2nd) 29, it appears that the lumber company extended its private railroad line some three miles to carry oil for one party who for a time was its only shipper. Later it made contracts with four other shippers of oil and held itself willing and ready to haul oil and oil supplies for any others under private contract, although it professed not to be a common carrier. The court held that it was a common carrier. Here a corporation not only is hauling freight for a multitude of people who have so-called contracts, but it is hauling for any and everybody who offers freight irrespective of the existence of any contract with the shipper or consignee.

In Wayne Transportation Co. v. Leopold et al, P.U.R. 1924C, 382, the Pennsylvania Public Service Commission held that two men, both working in a mill, one owning a five-passenger car, the other a seven-passenger car, making morning trips from home to the mill and evening trips in return, carrying on these trips with them eleven other workmen who resided in the same place and were also employed at the mill, or in the town in which it was located, were common carriers. The contention of the operators in that case was much the same as that in this one. According to the Commission, "They sustained this contention mainly upon the allegation that they do

not hold themselves out as carriers for the public at large, or for passengers indiscriminately, inasmuch as the passengers they carry, practically speaking, are the same persons every day. In effect, the contention of respondents is that their passengers are carried under private contract." The Commission continuing, said: "With this contention the Commission cannot agree. Courts and commissions have repeatedly held that the distinction between common and private carriage does not necessarily depend upon whether written or oral contracts have been entered into, but rather upon the nature and character of the carriage or service rendered and upon actual conditions of service as disclosed by testimony." (Underscoring ours). The Commission quoted from another case decided by it, one significant sentence of the quoted matter being: "There are numerous acts which tend to establish common carriage; that all of them must exist in a particular case in order to establish common as distinguished from private carriage, is not the law."

The California Railroad Commission held in Forsythe v. San Joaquin Light and Power Corp. P.U.R. 1926C, 344, that a corporation in transporting its employees and their families by auto stage on public highways between a city and its construction camps for definite fares fixed by written instructions to its labor agent and noted on employment contracts for deduction from wages, is a transportation company as defined by the auto stage and truck transportation act of 1917.

The Maryland Court of Appeals in Goldsworthy et al v. Malloy et al, 141 Md. 674, 119 Atl. 693, P.U.R. 1923C, 626, said concerning what it considered an evasion of the law, "The owners certainly should not too readily be permitted to enter into contracts or adopt measures which will enable them to readily evade the laws or the spirit of the statutes intended to govern them."

It appears clearly that respondent is serving as many of the public as his capacity permits, because he testified that he could not serve

additional customers with the equipment which he possesses. At common law no common carrier owed any duty to serve the public beyond the capacity of his equipment. As is said by the Supreme Court of the United States in Pennsylvania Railroad v. Puritan Coal Co., 237 U. S. 121,133, "The common law of old in requiring the carrier to receive all goods and passengers recognizes that 'if his coach be full' he was not liable for failing to transport more than he could carry . . . The same principle is applicable to those who transport freight in cars drawn by steam locomotives."

In Michigan Public Utilities Commission et al v. Duke, 266 U.S. 570, P.U.R. 1925C, 231, 234, the court said: "One bound to furnish transportation to the public as a common carrier must serve all, up to the capacity of his facilities . . ."

After careful consideration of the evidence the Commission is of the opinion and so finds that the respondent is now, was at the time of the making of the order and previous thereto, operating as a motor vehicle carrier.

O R D E R

IT IS THEREFORE ORDERED, That Robert A. Hazell immediately cease and desist from operating as a motor vehicle carrier as defined in Section 1 (d) of Chapter 134 of the Session Laws of 1927, of the State of Colorado.

IT IS FURTHER ORDERED, That the respondent, Robert A. Hazell, be, and he is hereby, required to pay to the Secretary of this Commission within twenty days from this date the motor vehicle tax imposed by law on account of his operations from December 1, 1927.

IT IS FURTHER ORDERED, That the Secretary of the Commission be, and he is hereby, instructed to send a copy of this Decision and Order

herein to the District Attorney at Pueblo, Colorado, and another to the District Attorney of the City and County of Denver.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 4th day of February, 1929.

(Decision No. 2061)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE SAN ISABEL TRANSPORTATION COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 565.

IN THE MATTER OF THE APPLICATION OF THE SAN ISABEL TRANSPORTATION COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 590.

IN THE MATTER OF THE APPLICATION OF THE SAN ISABEL TRANSPORTATION COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 591.

IN THE MATTER OF THE APPLICATION OF THE SAN ISABEL TRANSPORTATION COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 1066.

IN THE MATTER OF THE APPLICATION OF THE SAN ISABEL TRANSPORTATION COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 1067.

IN THE MATTER OF THE APPLICATION OF JOSEPH B. ROBERTS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF SAN ISABEL FOREST TOURS COMPANY, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 717.

- - - - - - - - - -

February 8, 1929.

- - - - - - - - - -

Appearances: William B. Stewart, Esq., Pueblo, Colorado, for The San Isabel Transportation Company;

George B. Swerer, Esq., Denver, Colorado, for Joseph B. Roberts.

William Hatton, Esq., Denver, Colorado, for The Denver and Rio Grande Western Railroad Company.

S T A T E M E N T

By the Commission:

The above applications, except one, contemplate a tourist passenger, baggage and express operation by motor vehicle during the summer season in what is known as the San Isabel National Forest, located approximately thirty to forty miles from Pueblo. All applications, therefore, were consolidated for hearing.

The applications were heard in the Court House, Pueblo, Colorado, on September 5, 1928, at which time evidence in support of the same was received. The San Isabel Transportation Company, as well as the San Isabel Forest Tours Company have been conducting tourist operations into the San Isabel Forest since approximately 1921. The operations of The San Isabel Transportation Company were not profitable until this year. The operations of the San Isabel Forest Tours Company so far have never been profitable. The San Isabel Transportation Company transported in 1928 to this territory 1208 tourists. The San Isabel Forest Tours Company transported during the same period 336 tourists. The equipment of The San Isabel Transportation Company consists of five Cadillac 7-passenger touring cars, valued at $5,000; one 14-passenger White open sightseeing bus, valued at $5,000, and one 16-passenger White closed bus valued at $3,000. The Company's assets are valued at approximately $13,725. The evidence shows this applicant to be financially responsible.

The equipment of the San Isabel Forest Tours Company consists of four Cadillac cars, valued at approximately $4,000. The financial responsibility of this applicant is satisfactory.

Since both applicants have been operating for some time prior to the enforcement of regulatory power over such motor operations, the Commission believes that both should receive a certificate. However, since

the operations are not profitable, the Commission deems it necessary, in the public interest, to limit the equipment in the certificate as it now exists.

Application No. 1066 by The San Isabel Transportation Company contemplates a regular scheduled passenger service between Pueblo and Beulah, Colorado, and intermediate points, in addition to irregular tourist service. Beulah is located approximately 28 miles from Pueblo, and has a good sized colony living there during the summer season. No other motor vehicle carrier service is offered to the public to that point, nor is the same located on the line of any rail carrier.

The applicants herein have designated various routes into the San Isabel National Forest, some of which compete with the Denver and Rio Grande Western Railroad, notably Canon City and the Royal Gorge. The San Isabel Transportation Company voluntarily dismissed its application No. 1064, asking for authorization in that territory, in order to eliminate this competition with the rail carrier. Joseph B. Roberts, doing business under the name and style of San Isabel Forest Tours Company, stated at the hearing that he would be willing to withdraw from his application the request to operate in the Canon City and Royal Gorge region, but that he would have a further conference with certain officials of The Denver and Rio Grande Western Railroad Company looking to a definite agreement. The delay in writing this opinion has mainly been caused by waiting for such an agreement. To date no such agreement has been filed. Moreover, the testimony shows that applicant Roberts has transported very few tourists into this territory, and that there is not any public demand at this time for this service.

Under these circumstances, the Commission believes that under the evidence it should limit both applicants to that territory in the San Isabel National Forest south of Fremont County and east of the crest of the Sangre de Cristo Range. So far there has not been a great deal of

tourist development in this territory, and in our opinion the territory designated should be developed first before any wider extension of territory is made.

Under all the circumstances, we believe the certificate should issue to the above designated territory, leaving it to each applicant to select its definite routes within twenty days from the date of this order, and setting them out more fully in the tariffs and schedules to be filed. Of course, after said routes have been selected by the applicants, no change therein can be made except by filing of supplemental tariffs.

After a careful consideration of all the evidence introduced in these hearings, the Commission is of the opinion and so finds that the public convenience and necessity requires a motor vehicle system for the transportation of passengers and express on regular schedule during the summer season by The San Isabel Transportation Company between Pueblo and Beulah, Colorado, and intermediate points.

The Commission further finds that the public convenience and necessity requires the motor vehicle systems of the applicants herein for the transportation of tourist passengers, baggage and express, from Pueblo, Colorado, to any point within the San Isabel National Forest south of the south line of Fremont County, Colorado, and east of the crest of the Sangre de Cristo Range.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires a motor vehicle system for the transportation of passengers and express on regular schedule during the summer season by The San Isabel Transportation Company between Pueblo and Beulah, Colorado, and intermediate points, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the public convenience and necessity requires a motor vehicle system for the transportation of tourist passengers,

baggage and express by The San Isabel Transportation Company from Pueblo, Colorado, to any point within the San Isabel National Forest south of the south line of Fremont County and east of the crest of the Sangre de Cristo Range, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor, subject to certain conditions hereinafter stated.

IT IS FURTHER ORDERED, That the public convenience and necessity requires a motor vehicle system for the transportation of tourist passengers, baggage and express by Joseph B. Roberts, doing business under the firm name and style of San Isabel Forest Tours Company, from Pueblo, Colorado, to any point within the San Isabel National Forest south of the south line of Fremont County and east of the crest of the Sangre de Cristo Range, and this order shall be deemed and held to be a certificate of public convenience and necessity therefor, subject to certain conditions hereinafter stated.

IT IS FURTHER ORDERED, That the certificates of public convenience and necessity on tourist passenger operations herein granted to The San Isabel Transportation Company and Joseph B. Roberts, doing business under the name and style of San Isabel Forest Tours Company, are subject to the following terms and conditions, which in the opinion of the Commission the public convenience and necessity requires:

(a) That all tourist operations by the applicants herein shall be limited to round trips with privilege of stop over, originating and terminating at Pueblo, Colorado.

(b) That the quantity of equipment to be used in the operation of The San Isabel Transportation Company shall be limited to five 7-passenger touring cars and two 16-passenger motor busses.

(c) That the quantity of equipment to be used in this operation by Joseph B. Roberts, doing business under the firm name and style of

San Isabel Forest Tours Company, shall be limited to four 7-passenger automobiles.

IT IS FURTHER ORDERED, That the applicants herein shall file tariffs of rates, routes, rules and regulations and distance schedules, as required by the Rules and Regulations of the Commission Governing Motor Vehicle Carriers, within a period not to exceed twenty days from the date hereof, and that the certificates issued herein are subject to compliance by the applicants with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 8th day of February, 1929.

(Decision No. 2062)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF)
THE SAN ISABEL TRANSPORTATION COMPANY)
FOR A CERTIFICATE OF PUBLIC CONVENIENCE) APPLICATION NO. 1064
AND NECESSITY.)
-)

- - - - - - - - - -
February 8, 1929.
- - - - - - - - - -

Appearances: William B. Stewart, Esq., Pueblo, Colorado,
for applicant.

S T A T E M E N T

By the Commission:

This application was set down for hearing at the Court House, Pueblo, Colorado, on September 5, 1928, at which time counsel for the applicant moved that the same be dismissed.

O R D E R

IT IS THEREFORE ORDERED, That the application of The San Isabel Transportation Company, No. 1064, be and the same is hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Brick

Jacques S. Jones

Commissioners.

Dated at Denver, Colorado, this
8th day of February, 1929.

(Decision No. 2063)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

M. L. Moauro,
Complainant,

vs.

Wolf Creek Railroad Company and
The Denver and Salt Lake Railway
Company,
Defendants.

CASE NO. 321

- - - - - - - - - -

February 11,1929.

- - - - - - - - - -

S T A T E M E N T

By the Commission:

On January 5,1929 M. L. Moauro, complainant herein, filed with this Commission his petition for rehearing. After a careful consideration of the reasons stated therein why a rehearing should be granted, the Commission is of the opinion that the petition should be denied.

O R D E R

IT IS THEREFORE ORDERED, That the petition for rehearing of M. L. Moauro, the complainant herein, be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado, this
11th day of February,1929.

(Decision No. 2064)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
M. L. MILLER AND RICHARD A. SPURLOCK)
FOR ASSIGNMENT OF TRANSFER OF CERTI-) APPLICATION NO. 1053-A
FICATE OF PUBLIC CONVENIENCE AND)
NECESSITY.)

February 11, 1929.

Appearances: Richard A. Spurlock, Fairplay, Colorado, pro se;
John Q. Dier, Esq., Denver, Colorado, for The Colorado and Southern Railway Company.

S T A T E M E N T

By the Commission:

This is an application for authority to transfer to Richard A. Spurlock the certificate of public convenience and necessity issued by this Commission on June 12, 1928, to M. L. Miller. This matter was heard by the Commission on February 11, 1929. The testimony shows that subsequent to the issuance of the certificate to M. L. Miller, the Federal government entered into a contract with Spurlock to transport the United States mail from Como to Fairplay and Alma, and sometime thereafter the American Railway Express Company entered into a contract with him to transport its express between the same points. Under these circumstances, M. L. Miller concluded, subject to the approval of this Commission, to transfer and assign his certificate to Spurlock.

The Commission is of the opinion and so finds that the assignment and transfer from M. L. Miller to Richard Spurlock is in the public interest and should be authorized.

O R D E R

IT IS THEREFORE ORDERED, That M. L. Miller be, and he is hereby, authorized to assign and transfer his certificate of public convenience and necessity issued to him on June 12, 1928, (Decision No. 1815), to Richard A. Spurlock.

IT IS FURTHER ORDERED, That said Richard A. Spurlock shall file with this Commission tariffs, rules and regulations and time schedules, as provided by the Rules and Regulations of this Commission, within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Gay S. Jones

Commissioners.

Dated at Denver, Colorado,
this 11th day of February, 1929.

(Decision No. 2065)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * *

IN RE HAZARD OR UNSAFE CONDITION UPON COLORADO UTILITIES CORPORATION 13000 VOLT TRANSMISSION LINE TO PHIPPSBURG EXISTING UPON THE FARM OF AUGUST MARTENS, OAK CREEK.	)))))	CASE NO. 390

- - - - - - - - -
February 16, 1929
- - - - - - - - -

S T A T E M E N T

By the Commission:

Complaint having been made to the Commission by August Martens of Oak Creek on June 23, 1928, against the unsafe condition of the Colorado Utilities Corporation's 13000 volt transmission line where it crosses the farm of said Martens near Oak Creek, it being claimed that said hazard existed because the transmission line had been improperly built, the Commission entered an order on its own motion on November 7, 1928, requiring said Colorado Utilities Corporation to file a written statement within ten days of the date of said order with the Commission showing why an order should not be entered requiring it to immediately start such construction as might be necessary to correct the hazardous condition of the transmission line on and over the farm of said Martens and to proceed diligently and without delay to its completion to the end that such construction should be entirely completed before December 1, 1928.

This case was set down for hearing in the Commission's office, 318 State Office Building, Denver, December 3, 1928. This hearing was vacated by the Commission on November 27, 1928. On November 27, 1928, Mr. A. E. Anderson, General Manager of said Colorado Utilities Corporation, wrote the Commission as follows:

"This Company having been successful in its application for restraint order in the above numbered case, August Martens, low wires, the hazardous condition was corrected yesterday by setting another pole."

The Commission then wrote to the complainant, August Martens, under date of December 12th calling attention to the above statement of Mr. Anderson, which, if true, of course, removed the cause in said complaint. To this letter the Commission received the information that Mr. Martens had met with a fatal accident in the mines on December 12th.

The cause in this complaint now having been removed apparently in a satisfactory manner and the complainant now being deceased, it appears that further action in this complaint is unnecessary.

O R D E R

IT IS THEREFORE ORDERED, That this proceeding be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 16th day of February, 1929.

(Decision No. 2066)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF H. A. JOHNSON, AGENT, BY G. R. GLOVER, COLORADO-NEW MEXICO COAL AND COKE TARIFF FOR AUTHORITY TO PUT IN FORCE THE FOLLOWING RATES TO BECOME EFFECTIVE ONE DAY AFTER THE FILING THEREOF WITH THE COMMISSION: "SLACK AND PEA COAL FROM THE COLORADO AND SOUTHERN RAILWAY STATIONS LOCATED IN GROUP NO. 7, NORTHERN COLORADO DISTRICT TO BRUSH AND FT. MORGAN, COLORADO, $1.40 PER TON OF 2000 POUNDS."

CASE NO. 391

February 16, 1929.

S T A T E M E N T

By the Commission:

On December 10, 1928, this Commission entered an order on its own motion requiring the respondents to file with the Commission a written answer showing why the tariff involved herein should not be cancelled and rescinded. On December 17, 1928, respondents filed a statement with this Commission which under all the circumstances the Commission will consider as sufficient answer to the complaint made. An order will, therefore, be entered dismissing the same.

O R D E R

IT IS THEREFORE ORDERED, That the complaint in Case No. 391 be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 16th day of February, 1929.

(Decision No. 2067)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE MOTOR VEHICLE OPERATIONS)
OF HARVEY COX.) CASE NO. 394

February 16, 1929.

S T A T E M E N T

By the Commission:

Complaint has been made to this Commission against Harvey Cox that he is operating as a motor vehicle carrier of freight between Denver, Colorado Springs and Pueblo, Colorado, and other points in those vicinities, and that he is holding himself out to the public as a motor vehicle carrier of freight at and between said named places without a certificate of public convenience and necessity from this Commission.

The information submitted to this Commission as to his operations is such as to cause sufficient grounds to exist to make an investigation and for it to issue an order requiring the respondent, Harvey Cox, to show cause why an order should not be entered by this Commission requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

O R D E R

IT IS THEREFORE ORDERED, That Harvey Cox be, and he is hereby, ordered to show cause by written statement filed with the Commission within ten days from the date hereof, why this Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing before the Public Utilities Commission of the State of Colorado at its Hearing Room, 305 State Office Building, Denver, Colorado, on February 27, 1929, at 10:00 A. M., at which time said respondent shall appear and give such testimony and introduce such evidence relating to his operations as may be proper.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado,
this 16th day of February, 1929.

(Decision No. 2068)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE MOTOR VEHICLE OPERATIONS)
OF FRANK PLESS.) CASE NO. 395

February 16, 1929.

S T A T E M E N T

By the Commission:

Complaint has been made to this Commission against Frank Pless, as successor to the partnership of Pless & Davis, that he is operating as a motor vehicle carrier between Denver, La Salle and Greeley, Colorado, and other points in that vicinity, and that he is holding himself out to the public as a motor vehicle carrier of freight at and between said named places without a certificate of public convenience and necessity from this Commission.

November 15, 1927, Frank Pless and Walter Davis individually and as Pless and Davis, a partnership, filed application No. 987 for a certificate of public convenience and necessity from this Commission to operate between Denver and La Salle. January 7, 1928, a certificate was issued to transport milk and cream only between Denver and La Salle. Thereafter, on May 17, 1928, after another hearing, a certificate was denied. On January 7, 1928, Case No.336, an order was entered by this Commission for Pless and Davis to cease and desist from operating as a motor vehicle carrier.

The information now before this Commission as to the operations of Frank Pless is such as to cause sufficient grounds to exist to make an investigation and for the Commission to issue an order requiring the respondent, Frank Pless, to show cause why an order should not be entered by this Commission requiring him to cease and desist from operating as a motor vehicle carrier

as defined in Chapter 134, Session Laws of 1927.

ORDER

IT IS THEREFORE ORDERED, That Frank Pless be, and he is hereby, required to show cause by written statement filed with the Commission within ten days from the date hereof why this Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing before the Public Utilities Commission of the State of Colorado at its Hearing Room, 305 State Office Building, Denver, Colorado, on February 27, 1929, at 10:00 A. M., at which time said respondent shall appear and give such testimony and introduce such evidence relating to his operations as may be proper.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 16th day of February, 1929.

Commissioners.

(Decision No. 2069)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN RE MOTOR VEHICLE OPERATIONS)
OF N. J. FITZMORRIS.)
- - - - - - - - - - - - - - - - -)

CASE NO. 396

- - - - - - - - -
February 16, 1929
- - - - - - - - -

STATEMENT

By the Commission:

Complaint has been made to this Commission against N. J. Fitzmorris that he is operating as a motor vehicle carrier between Denver and Greeley, Colorado, and the Wyoming-Colorado state line, and that he is holding himself out to the public as a motor vehicle carrier of freight at and between said named places without a certificate of public convenience and necessity from this Commission.

On November 15, 1927, said N. J. Fitzmorris, doing business under the name of The Fitzmorris Transportation Company, filed application No. 989 for a certificate of public convenience and necessity to operate a truck between Denver and Eaton and Ault, Colorado. January 4, 1928, this Commission ordered the respondent to cease and desist from operating as a motor vehicle carrier. The certificate applied for in Application No. 989 was denied by this Commission after a hearing April 9, 1928. Thereafter, the applicant had a writ of certiorari sued out of the District Court of Weld County and July 17, 1928, the decree of that court was entered upholding the findings and orders of this Commission. September 13, 1928, respondent filed Application No. 1210 with this Commission for a certificate of public convenience and necessity between Denver, Colorado, and all points between Greeley, Colorado and the Colorado-Wyoming state line, which application is now pending.

The information submitted to this Commission as to his operations

is such as to cause sufficient grounds to exist to make an investigation and for it to issue an order requiring the respondent, N. J. Fitzmorris, to show cause why an order should not be entered by this Commission requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

O R D E R

IT IS THEREFORE ORDERED, That N. J. Fitzmorris be, and he hereby is, required to show cause by written statement filed with the Commission within ten days from the date hereof, why this Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing before the Public Utilities Commission of the State of Colorado at its Hearing Room, 305 State Office Building, Denver, Colorado, on February 27, 1929 at 10:00 A. M., at which time said respondent shall appear and give such testimony and introduce such evidence relating to his operations as may be proper.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Jno. S. Jones

Commissioners.

Dated at Denver, Colorado,
this 16th day of February, 1929.

(Decision No. 2070)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

* * *

IN RE MOTOR VEHICLE OPERATIONS)
OF ROBERT A. HAZELL.) CASE NO. 392.

February 19, 1929.

S T A T E M E N T

By the Commission:

The Commission has read and considered carefully the application for rehearing filed herein by Robert A. Hazell. It is of the opinion and so concludes that there is no ground for rehearing.

O R D E R

IT IS THEREFORE ORDERED, That the application for rehearing filed herein be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 19th day of February, 1929.

(Decision No. 2071)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * *

IN THE MATTER OF THE APPLICATION OF C. E. SCHOFIELD, DOING BUSINESS AS SCHOFIELD TRUCKING COMPANY, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.	APPLICATION NO. 1169
IN THE MATTER OF THE APPLICATION OF W. C. WATTS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.	APPLICATION NO. 1183

February 21, 1929.

Appearances: R. L. Ellis, Esq., Pueblo, Colorado, attorney for applicant Schofield;
C. H. Allen, Esq., Monte Vista, Colorado, attorney for applicant Watts;
Thos. R. Woodrow, Esq., Denver, Colorado, attorney for The Denver and Rio Grande Western Railroad Company and American Railway Express Company, protestants;
Todd C. Storer, Esq., Pueblo, Colorado, attorney for The Colorado and Southern Railway Company, protestant;
William B. Stewart, Esq., Pueblo, Colorado, attorney for Jess Kenner, doing business as The White Truck Line Company, protestant.

S T A T E M E N T

By the Commission:

The applicant Schofield seeks a certificate of public convenience and necessity authorizing the operation of a motor truck line for the transportation of freight "between Pueblo and Walsenburg, Colorado, on the one hand and the following towns on the other hand:

La Veta	Alamosa
Russell	Romeo
Ft. Garland	Antonito
Blanca	Sanford
	Manassa."

The applicant W. C. Watts seeks a certificate authorizing the operation of a motor freight line "for the transportation of freight and express between Pueblo, Colorado, and Del Norte, Colorado, and intermediate points."

At the hearing the attorney for the applicant Schofield stated that the applicant does not desire to transport any freight to and from the points, Russell, Ft. Garland and Blanca, or from Pueblo to Walsenburg or from Walsenburg to Pueblo.

The applicant Watts stated that the intermediate points which he desires to serve are Alamosa, Center and Monte Vista, and Walsenburg on eastbound trips only.

After these statements were made the protestants, The Colorado and Southern Railway Company and Jess Kenner withdrew their protests.

We do understand, however, that Watts, and possibly Schofield, desire to transport household goods along their routes to all points.

The applicant Schofield resides in Antonito and proposes to use in the service two 2-ton International trucks of the market value of $5500.00. He proposes to operate three round trips per week.

The applicant Watts resides in Monte Vista. He has two 2-ton trucks having a market value of $5900.00 which he proposes to use in the service. His service is to be bi-weekly.

The evidence shows that there are wholesale fruit and grocery houses having branches in Alamosa; that those houses deliver merchandise to the merchants on the Antonito line south and the Del Norte line west without any freight charges; that, therefore, competing wholesale houses not having branches in Alamosa are unable to compete with those houses having the branches unless they avail themselves of the services of motor vehicle carriers. The evidence shows also that by using motor truck service for shipments of fresh meats the cost of from twenty-five to thirty dollars of preparing a railroad car for shipment is eliminated, and that meat shipped by truck at night is delivered in satisfactory condition.

The evidence shows also that the more fruit and meat is handled the less satisfactory is its condition. All freight shipped to points south and west of Alamosa by rail has to be transferred at Alamosa.

Schofield proposes to leave Pueblo at 4:00 o'clock P.M. arriving in Alamosa at midnight and at Antonito at 12:45 P.M. after passing through and delivering freight at the intermediate points of La Jara, Sanford, Manassa and Romeo.

The applicant Watts proposes to leave Pueblo at 6:00 P. M., delivering freight in Alamosa at 7:00 A. M., Monte Vista at 10:00 A. M. and Del Norte at 11:45 A. M.

Schofield's rates are based on five classifications termed - 1, 2, 3, 4 and "Rule 10." The classifications 1 to 4 inclusive are railroad classifications found in P.U.C. Colo. Western Classification No. 9. The rates on freight from Pueblo to Alamosa vary from $1.30 per cwt. on Class 1 freight to 60¢ on Rule 10 freight; and from Pueblo to Antonito from $1.38 on Class 1 to 60¢ on Rule 10. However, by exceptions made by applicant the rate on sugar from Pueblo to all points south of Alamosa is 60¢, and the rate on cheese to Pueblo from Manassa, Sanford and La Veta is 50¢. Rule 10 classification applies to fruits, vegetables, meats and groceries, except crackers.

Watt's rates also are based upon the same classifications, his rates from Pueblo to Alamosa varying from $1.90 on Class 1 commodities to 60¢ on those charged under Rule 10. The rates from Pueblo to Del Norte vary from $2.35 to 65¢, from Alamosa to Monte Vista from 25¢ to 15¢. However, what commodities his Rule 10 classification covers does not appear. In general his class rates so greatly exceed those of the railroad, that it would appear that in order to compete with the railroad he would be required to make the scope of Rule 10 very broad.

The rates of The Denver and Rio Grande Western Railroad Company

from Pueblo on Classes 1, 2, 3, 4 and 5 are as follows:

Between Pueblo and	1	2	3	4	5
Alamosa	130½	112	94	72	53½
Monte Vista	144½	114	95½	72½	55
Del Norte	156½	123	103	78	61
Antonito	138	126	104	76	58

At the hearing the railroad company announced that it proposed immediately, and it has since, put into effect on Rule 10 shipments of all freight classified as 5th Class and lower, including also the following commodities or items, a rate of 40¢ from Denver to Alamosa:

Candy and confectionery,
Cereals and Cereal Food preparations,
Cheese,
Cleaning compounds,
Scouring and Washing Powders and Liquids,
Crackers, including cheese crackers,
Extracts, in boxes
Dried Fruits,
Fruit juices, including Grape Juice,
Strained Honey,
Edible Nuts,
Olive Oil, in cases,
Rope,
Twine,
Spices,
Chocolate,
Tea,
Dry Yeast.

A large number of groceries, fruit and fresh meat would not take the 40¢ rate even in Rule 10 cars. Both of the applicants' Rule 10 rates are as to many commodities much lower than the railroad rates. Schofield's rates on the first four classes of rates are substantially the same as those of the rail carrier.

There is no showing of any public convenience and necessity for the transportation of anything other than household goods and merchandise from Pueblo to Alamosa and the points east and west thereof, and merchandise received by rail in Alamosa to such points south and west.

The Commission is inclined to believe that the public convenience and necessity does not require the operation of two motor vehicle common carrier lines between Pueblo and Alamosa; that at the most the public convenience and necessity would require only one which could divide its shipments at Alamosa, using smaller trucks to deliver that part of the freight destined south and west therefrom. The public is interested in dependable service. It is contrary to fundamental principles of utility regulation to authorize operation by a second carrier over a route over which another is adequately serving. Likewise it seems contrary to sound regulation to start out with two until experience has shown that the best interests of the territory require more than one. Certain economies often can be effected by confining the business to one utility. That economies need to be effected on the route in question leading over a mountain divide, sometimes rendered impassable by snow, is obvious when it appears that applicants propose to transport much high class freight for distances ranging from one hundred and thirty three to one hundred and sixty four miles at the "Rule 10" rates of 60 and 65 cents.

While the routes of the applicants are the same to Alamosa, the greater part of the mileage of both routes, they are different to points beyond. We do not believe we can properly grant a certificate to either of the applicants because to grant one would leave some of the towns beyond Alamosa without motor vehicle service. So far as the Commission is advised there may be a possibility of combining these operations and thereby strengthening the financial dependability and service. We believe that under all the facts and circumstances an opportunity should be given to these operators to effect a consolidation of their interests. We, therefore, at this time conclude not to enter

an order in this matter until after sixty days from the date of this opinion. In the meantime the Commission will retain jurisdiction over all the issues involved herein.

Commissioners.

Dated at Denver, Colorado,
this 21st day of February, 1929.

(Decision No. 2072)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - - -

IN THE MATTER OF AN APPLICATION OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY FOR AN ORDER AUTHORIZING WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $53.74 ON ONE CARLOAD SHIPMENT OF SCRAP IRON (97,700 pounds) FROM HAMILTON SPUR, COLORADO, TO DENVER, COLORADO, JUNE 11, 1928.

APPLICATION NO. 1270

- - - - - - - - -
February 21, 1929.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company under its claim No. S-21835 for an order by the Commission authorizing waiving collection of undercharges amounting to $53.74 on one carload shipment of scrap iron (97,700 pounds) from Hamilton & Gleason Company, Hamilton Spur, Colorado, consigned to the National Iron & Metal Company, Denver, Colorado, June 11, 1928.

At the time this shipment moved the legal rate applicable was 10½¢ per cwt., from Hamilton Spur to Denver, minimum carload weight 40,000 pounds. The Western Classification provides a class D rating on scrap iron, carload minimum weight 40,000 pounds. The Class D rate between Hamilton Spur and Denver is 10½¢ cwt., as published in Freight Tariff D. & R. G. W. G.F.D. No. 4900-F, Colo. P.U.C. No. 126, same being the 10 mile distance rate applicable for 8.52 miles on page 230 of above mentioned tariff.

At the time this shipment moved there was in effect a rate of $1.00 per ton of 2,000 pounds, carload minimum weight 50,000 pounds, from Military Junction to Denver, Military Junction being 1/10 of a mile east of Hamilton Spur. When this matter was called to the attention of the carrier it recognized the fact that a rate of $1.10 per cwt., for a haul of 1/10 of a mile was an

unreasonable rate.

Effective July 15, 1928, in Amendment No. 166 to D. & R. G. W. Tariff No. 4900-F. supra, The Denver and Rio Grande Western Railroad Company published a rate of $1.00 per ton of 2,000 pounds, carload minimum weight 50,000 pounds, from Hamilton Spur to Denver, same being published to expire August 15, 1928. Effective February 1, 1929, in Amendment No. 206 to the above tariff, the same rate was again published and is now in effect.

It is admitted by The Denver and Rio Grande Western Railroad Company that the charges to be collected on the basis of a rate of 10½¢ cwt., are unreasonable and upon authority of the Commission it will waive collection of undercharges amounting to $53.74.

The Commission finds that the charges assessed on the basis of a 10½ rate per cwt., were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of a rate of $1.00 per ton of 2,000 pounds, and an order will be issued authorizing waiving collection of undercharges amounting to $53.74.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company be and is hereby authorized and directed to waive collection of undercharges amounting to $53.74 on one carload shipment of scrap iron (97,700 pounds) from Hamilton & Gleason Company, Hamilton Spur, Colorado, consigned to National Iron & Metal Company, Denver, Colorado, covered by Hamilton Spur to Denver billing issued in Denver, waybill No. 2569, dated June 11, 1928, and

IT IS FURTHER ORDERED, That a rate of $1.00 per ton of 2,000 pounds on scrap iron from Hamilton Spur, Colorado to Denver, Colorado, shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
21st day of February, 1929.

(Decision No. 2073)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE MOTOR VEHICLE OPERATIONS)
OF F. B. BRYANT, DOING BUSINESS) CASE NO. 375
AS THE BRYANT AUTO LIVERY.)

AMENDED ORDER TO SHOW CAUSE

February 21, 1929.

STATEMENT

By the Commission:

On August 15, 1928, the Commission made an order, the first part of which preceding the order proper reads as follows:

> "Complaint has been made to this Commission that F. B. Bryant, doing business as The Bryant Auto Livery, on August 5, 1928, transported four passengers on two trips, known as the Little Circle and the Pikes Peak, at rates less than those fixed by the tariff of said Bryant on file with the Commission and effective on said date.
>
> "If passengers were transported by the respondent at less than the rates fixed by his tariff, he violated Rule 8 of the Rules and Regulations of this Commission, which violation, under Rule 35, is as he should, and doubtless does fully well know, ground for cancelling and revoking the certificate held by the respondent.
>
> "The Commission is of the opinion that sufficient ground exists for it to issue an order requiring the respondent herein to show cause why his certificate of public convenience and necessity issued by this Commission should not be revoked and cancelled."

The order proper then required said F. B. Bryant to show cause "by written statement filed with the Commission within ten days of the date hereof, why the Commission should not revoke and cancel the certificate of public convenience and necessity heretofore issued to him."

The remaining portion of the order simply set the matter for hearing at a time and place stated.

At the time the order to show cause was made, the Commission had in its possession two reports made by one Maberry and one Field. One

report dated August 4, 1928, related to a trip taken by those two gentlemen in an automobile belonging to Bryant. The other dated August 5, 1928, related to a trip taken on that day in one of Bryant's automobiles. Each report was made on a separate sheet of paper, one covering about the same portion of a sheet as the other. One report in the possession of the Commission is an original and the other is a carbon copy. The Commission assumed that one was a copy of the other, hence the Commission's order to show cause related to the trip taken on only one of the days in question.

The Commission is of the opinion and so finds that sufficient ground exists for it to issue an amended order requiring the respondent herein, said F. B. Bryant, operating under a certificate of public convenience from this Commission, to show cause why his certificate of public convenience and necessity issued by this Commission should not be revoked and cancelled or suspended because (1) of transporting the said Maberry and said Field on August 4, 1928, on what is known as the Big Circle trip at a rate less than that specified in his tariff at that time on file with the Commission and in legal effect, and (2) transporting said Maberry and said Field on August 5, 1928, to the summit of Pike's Peak and to the Garden of the Gods and Cave of the Winds at a rate less than that specified in his tariff at that time on file with the Commission and in legal effect.

O R D E R

IT IS THEREFORE ORDERED, That this case be, and the same is hereby, reopened.

IT IS FURTHER ORDERED, That F. B. Bryant, doing business as The Bryant Auto Livery, be, and he is hereby, required to show cause by written statement filed with this Commission within fifteen days of the date hereof, why the Commission should not revoke and cancel or suspend the certificate

of public convenience and necessity heretofore issued to him because (1) of transporting the said Maberry and said Field on August 4, 1928, on what is known as the Big Circle trip at a rate less than that specified in his tariff at that time on file with the Commission and in legal effect, and (2) transporting said Maberry and said Field on August 5, 1928, to the summit of Pike's Peak and to the Garden of the Gods and Cave of the Winds at a rate less than that specified in his tariff at that time on file with the Commission and in legal effect.

IT IS FURTHER ORDERED, That this matter be set down for hearing at a time and place hereafter to be fixed by the Commission, at which time and place said respondent shall appear and give such testimony and make such showing as he may deem proper, and at which time such other evidence as is proper shall be received in support of the complaint.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 21st day of February, 1929.

(Decision No. 2074)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE UNLAWFUL MOTOR VEHICLE OPERATIONS)
OF F. W. SULLIVAN, DOING BUSINESS AS) CASE NO. 398.
THE LONGMONT MOTOR EXPRESS.)

- - - - - - - - - -
February 25, 1929.
- - - - - - - - - -

S T A T E M E N T

By the Commission:

Complaint has been made to this Commission against F. W. Sullivan, doing business as The Longmont Motor Express, that he is operating as a motor vehicle carrier between Denver and Longmont, and that he is holding himself out to the public as a motor vehicle carrier without a certificate of public convenience and necessity from this Commission.

On April 13, 1926, Lyle G. Rice, doing business as The Longmont Motor Express, filed application No. 539 for a certificate to operate as a motor vehicle carrier. December 1, 1927, this application was amended by substituting F. W. Sullivan as sole owner of the Longmont Motor Express. December 28, 1927, after a hearing, the certificate was denied and the applicant was ordered to desist operating as a motor vehicle carrier.

The information submitted to this Commission as to his operations is such as to cause sufficient grounds to exist to make an investigation and for it to issue an order requiring the respondent, F. W. Sullivan, doing business as The Longmont Motor Express, to show cause why an order should not be entered by this Commission requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

O R D E R

IT IS THEREFORE ORDERED, That F. W. Sullivan, doing business as The Longmont Motor Express, be, and he is hereby, required to show cause, if any he may have, by written statement filed with this Commission within ten days from the date hereof why this Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing before the Public Utilities Commission of the State of Colorado at its Hearing Room, 305 State Office Building, Denver, Colorado, on March 12, 1929, at 10:00 A. M., at which time said respondent shall appear and give such testimony and may introduce such evidence relating to his operations as may be proper.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 25th day of February, 1929.

(Decision No. 2075)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE UNLAWFUL MOTOR VEHICLE)
OPERATIONS OF LINDLEY N. WHITE.) CASE NO. 399

February 25, 1929.

S T A T E M E N T

By the Commission:

Complaint has been made to this Commission against Lindley N. White that he is operating as a motor vehicle carrier between Brighton and Denver and that he is holding himself out to the public as a motor vehicle carrier without a certificate of public convenience and necessity from this Commission.

The respondent filed application No. 794 on October 28, 1926, and after hearing, on March 21, 1928 this application was denied. Application for rehearing was filed and this was denied August 7, 1928. A writ of review in the District Court of the City and County of Denver, dated September 6, 1928, was thereafter sued out, returnable November 10, 1928.

On September 10, 1926, an injunction suit was brought against the respondent in the name of "The People of the State of Colorado, Plaintiff, vs. L. N. White, doing business as The L. N. White Transfer Company," and in April, 1927, a temporary injunction of the District Court restrained the respondent from operating as a motor vehicle carrier.

The information submitted to this Commission as to his operations is such as to cause sufficient grounds to exist to make an investigation and for it to issue an order requiring the respondent, Lindley N. White, to show cause why an order should not be entered by this Commission requiring

him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

O R D E R

IT IS THEREFORE ORDERED, That Lindley N. White be, and he is hereby, required to show cause, if any he may have, by written statement filed with this Commission within ten days from date hereof why this Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing before the Public Utilities Commission of the State of Colorado at its Hearing Room, 305 State Office Building, Denver, Colorado, on March 12, 1929, at 10:00 A. M. at which time said respondent shall appear and give such testimony and may introduce such evidence relating to his operations as may be proper.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dave L. Jones

Commissioners.

Dated at Denver, Colorado,
this 25th day of February, 1929.

(Decision No. 2076)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE UNLAWFUL MOTOR VEHICLE)
OPERATIONS OF ALBERT SCHWILKE.) CASE NO. 400

February 25, 1929.

S T A T E M E N T

By the Commission:

Complaint has been made to this Commission against Albert Schwilke that he is operating as a motor vehicle carrier between Denver and Estes Park and other points in that vicinity, and that he is holding himself out to the public as a motor vehicle carrier without a certificate of public convenience and necessity from this Commission.

May 10, 1926, the respondent herein filed application No. 631, which was denied after hearing October 13, 1927, except for the transportation of freight between Fort Collins and Estes Park, for which he declined the certificate of public convenience and necessity and the certificate was revoked February 9, 1928.

The information submitted to this Commission as to his operations is such as to cause sufficient grounds to exist to make an investigation and for it to issue an order requiring the respondent, Albert Schwilke, to show cause why an order should not be entered by this Commission requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

O R D E R

IT IS THEREFORE ORDERED, That Albert Schwilke, be, and he is hereby, required to show cause, if any he may have, by written statement filed with

this Commission within ten days from date hereof why this Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing before the Public Utilities Commission of the State of Colorado at its Hearing Room, 305 State Office Building, Denver, Colorado, on March 12,1929, at 10:00 A. M., at which time said respondent shall appear and give such testimony and may introduce such evidence relating to his operations as may be proper.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado,
this 25th day of February,1929.

(Decision No. 2077)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE UNLAWFUL MOTOR VEHICLE)
OPERATIONS OF E. V. MORRISON,)
DOING BUSINESS AS THE INTER) CASE NO. 401
CITY TRUCK LINE.)

February 25, 1929.

S T A T E M E N T

By the Commission:

Complaint has been made to this Commission against E. V. Morrison, doing business as the Inter City Truck Line, that he is operating as a motor vehicle carrier between Denver, Windsor and Severance, Colorado, and that he is holding himself out to the public as a motor vehicle carrier without a certificate of public convenience and necessity from this Commission.

E. V. Morrison, doing business as Denver-Windsor Truck Line, filed application No. 988 for a certificate to operate as a motor vehicle carrier between Denver, Windsor, Severance and Milliken, Colorado, which was denied after hearing January 4, 1928. Thereafter on January 25, 1928, petition for rehearing was denied. Thereafter on February 29, 1928, a writ of certiorari was sued out of the District Court of Weld County, and on July 17, 1928, the findings and conclusions of the Commission were affirmed by the District Court of Weld County. On October 2, 1928, the respondent, E. V. Morrison, doing business as the Inter City Truck Line, filed application No. 1211 for a certificate of public convenience and necessity to operate as a motor vehicle carrier between Denver, Windsor and Severance, Colorado, which is now pending.

The evidence submitted to this Commission as to his operations is such as to cause sufficient grounds to exist to make an investigation and for it to issue an order requiring the respondent, E. V. Morrison, to show cause why an order should not be entered by the Commission requiring him to cease

and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

O R D E R

IT IS THEREFORE ORDERED, That E. V. Morrison, doing business as the Inter City Truck Line, be, and he is hereby, required to show cause, if any he may have, by written statement filed with this Commission within ten days from date hereof why this Commission should not enter an order requiring him to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing before the Public Utilities Commission of the State of Colorado at its Hearing Room, 305 State Office Building, Denver, Colorado, on March 12, 1929, at 10:00 A. M., at which time said respondent shall appear and give such testimony and may introduce such evidence relating to his operations as may be proper.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

John S. Jones

Commissioners.

Dated at Denver, Colorado,
this 25th day of February, 1929.

(Decision No. 2078)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE UNLAWFUL MOTOR VEHICLE OPERATIONS OF FAY ELLIOTT, THE FORT LUPTON MERCHANTS' ASSOCIATION, B. F. BROWN, PRESIDENT, M. A. DEVEREAUX, TREASURER, AND MRS. FAY ELLIOTT, THE SECRETARY OF SAID FORT LUPTON MERCHANTS' ASSOCIATION.	)	CASE NO. 402

- - - - - - - - -
February 25, 1929.
- - - - - - - - -

S T A T E M E N T

By the Commission:

Complaint has been made to this Commission against Fay Elliott, the Fort Lupton Merchants' Association, B. F. Brown, president, M. A. Devereaux, treasurer, and Mrs. Fay Elliott, secretary of said Fort Lupton Merchants' Association, that they are operating as a motor vehicle carrier between Denver and Fort Lupton without a certificate of public convenience and necessity from this Commission.

Application No. 398 was filed December 31, 1924, by Fay Elliott for a certificate to operate between Fort Lupton and Denver and intermediate points. May 22, 1925, hearing was held on this application and July 21, 1925, the application was denied.

The information submitted to the Commission is such as to cause sufficient grounds to exist for it to make an investigation and for it to issue an order requiring the respondents, Fay Elliott, the Fort Lupton Merchants' Association, B. F. Brown, president, M. A. Devereaux, treasurer, and Mrs. Fay Elliott, secretary of said Fort Lupton Merchants' Association, to show cause why an order should not be entered by this Commission requiring

them to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

O R D E R

IT IS THEREFORE ORDERED, That Fay Elliott, the Fort Lupton Merchants' Association, B. F. Brown, president, M. A. Devereaux, treasurer, and Mrs. Fay Elliott, secretary of said Fort Lupton Merchants' Association, be, and they hereby are, required to show cause, if any they may have, by written statement filed with the Commission within ten days from the date hereof, why this Commission should not enter an order requiring them to cease and desist from operating as a motor vehicle carrier as defined in Chapter 134, Session Laws of 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing before the Public Utilities Commission of the State of Colorado at its Hearing Room, 305 State Office Building, Denver, Colorado, on March 12, 1929, at 10:00 A. M., at which time said respondents shall appear and give such testimony and may introduce such evidence relating to their operations as may be proper.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 25th day of February, 1929.

(Decision No. 2079)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE APPLICATION OF F. W. RODDY,)
DOING BUSINESS AS BRANSON TELE-)
PHONE COMPANY, FOR AUTHORITY TO) APPLICATION NO. 1277
SUSPEND SWITCHBOARD SERVICE.)

February 25, 1929.

S T A T E M E N T

By the Commission:

F. W. Roddy, doing business as Branson Telephone Company, has filed with the Commission an application for authority to suspend temporarily switchboard service in the town of Branson, Colorado. He alleges that the entire vicinity has undergone long series of crop failures owing to droughts which have depopulated the country supporting the town; that the farms have been abandoned by the settlers and at this time not twenty per cent of the lands in the vicinity are tenanted; that business generally has shrunk and the income from his system for the year 1928 was only $407.00; that he is unable longer under the present conditions to operate switchboard service.

He further alleges:

> "However, I will make it a point that this rural line will be connected with some place here, before I leave, just as I will see that the toll line between here and Kim have connection with this place, which will answer all emergencies."

He accompanied the application with a written communication signed by his patrons in which they agree to the temporary suspension of said service until further business justifies resumption thereof. He submitted also a written consent of the board of trustees of said town.

The Commission, desiring to afford the people of the town and community a reasonable toll connection, communicated with the Mountain States Telephone and Telegraph Company which, in a letter dated February 20, agreed with Roddy's statement as to the conditions in the Branson territory and offered to attempt to secure an agent "who will be willing to do such switching service as is desired on the part of the people who construct and maintain lines to the toll station."

After careful consideration of all the facts and circumstances the Commission is of the opinion and so concludes that the application of said Roddy should be granted.

O R D E R

IT IS THEREFORE ORDERED, That the application of F. W. Roddy, doing business as Branson Telephone Company, for permission to discontinue switchboard service in the town of Branson be, and the same is hereby, granted.

IT IS FURTHER ORDERED, That such discontinuance shall continue until further order of the Commission herein.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Edward L. Jones

Commissioners.

DATED AT DENVER, COLORADO,
this 25th day of February, 1929.

(Decision No. 2080)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF THE CONSOLIDATED TRUCK COMPANY)
FOR A CERTIFICATE OF PUBLIC CON-) APPLICATION NO. 467-B.
VENIENCE AND NECESSITY.)

February 25, 1929.

Appearances: Lang & Wildy, Ft. Collins, Colorado, for applicant;
Swerer & Johnson, Denver, Colorado, for The McKie Transfer Company;
Hodges, Wilson & Rogers and Thomas Keely, Esq., Denver, Colorado, for Rocky Mountain Motor Company and Colorado Motor Way, Inc.;
G. H. Logan, Esq., Denver, Colorado, for The Colorado and Southern Railway Company.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity, authorizing a motor vehicle transportation service from Ft. Collins, Colorado, only to intermediate points south between Ft. Collins and Denver. While the application does not expressly state it in those words, yet the record shows expressly that is what the applicant intends and requests.

Protests were filed against this application by the Colorado and Southern Railway Company and the Rocky Mountain Motor Company and Colorado Motor Way, Inc.

A public hearing was held on this application at the Court House, Ft. Collins, Colorado, on February 18, 1929.

The applicant on May 10, 1926, was granted a certificate of public convenience and necessity to operate a motor vehicle system for the transportation of freight from Denver to Ft. Collins, but not between any inter-

mediate points. The testimony shows that the applicant has carried on this operation successfully since that time, and has fully complied with the orders of the Commission. There is now no motor vehicle transportation facilities for the transportation of heavy freight from Ft. Collins to the points intermediate to Fort Collins and Denver. The Colorado Motor Way, Inc. is operating an express service into that territory from Ft. Collins, but it serves only in the transportation of small packages limited to approximately 50 pounds per package. The applicant stated on the record that it is willing to accept a certificate of public convenience and necessity limited to the transportation of freight by motor vehicle to all shipments over 50 pounds, unless a shipment weighing under 50 pounds would not be accepted for transportation by any other authorized motor vehicle carrier.

There are several good sized towns in this territory; we mention only Loveland and Longmont. The route traversed is upon a paved highway from Ft. Collins to Denver. The applicant has sufficient equipment now to fully serve the public in this additional territory.

After a careful consideration of the evidence introduced at the hearing herein, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the motor vehicle transportation system for the transportation of freight by the applicant from Ft. Collins only south to intermediate points between Ft. Collins and Denver, conditioned that as to shipments weighing 50 pounds or less they shall not be accepted for transportation by the applicant unless any other authorized motor vehicle carrier refuses to transport the same.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires a motor vehicle transportation system by The Consolidated Truck Company for the transportation of freight from Fort Collins only, south to intermediate points between Fort Collins and Denver, and this order shall be deemed and held to be a certificate of public convenience and necessity

therefor, subject to the following conditions:

(a) That the applicant shall not accept any shipments weighing fifty pounds or less unless such shipment or shipments are not accepted for transportation by any other authorized motor vehicle carrier.

(b) That the applicant herein shall not accept for transportation any shipments originating at Denver to the intermediate points in question.

(c) That the applicant shall file tariffs of rates, rules, regulations and time schedules, as required by the Rules and Regulations of this Commission Governing Motor Vehicle Carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedule filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers, and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 25th day of February, 1929.

Commissioners.

(Decision No. 2081)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF)
COLORADO FOR A CERTIFICATE OF) APPLICATION NO. 1262.
PUBLIC CONVENIENCE AND NECESSITY.)

- - - - - - - - - -
February 26, 1929.
- - - - - - - - - -

Appearances: Lee, Shaw and McCreery, Esqs., Denver, Colorado, attorneys for applicant.

S T A T E M E N T

By the Commission:

This is an application made by Public Service Company of Colorado, a corporation, for an order preliminary declaring that the Commission will hereafter issue a certificate of public convenience and necessity authorizing the exercise by the applicant of franchise rights which it now proposes to secure from the town of Blanca, Colorado.

No protests have been filed. The town of Blanca by its mayor has written a letter to the Commission in which it states that: "The people of the Town are glad to have this improvement come to the Town, and approve the granting of the application." One William P. Tessler who has been serving in a limited way a few people with electrical energy in Blanca, wrote the Commission: "I think this would be a great benefit to this community and would heartily urge that this certificate be granted." The said Tessler has sold his equipment to the applicant for a nominal consideration and will immediately cease doing business in the town.

Authority to construct the distribution line along the route on

which this town is located was authorized in the certificate issued by the Commission in Application No. 1254 on January 24 of this year.

Satisfactory financial responsibility of the applicant was shown.

The cost of the distribution system to be constructed in the town of Blanca is some $2500.00.

The applicant proposes to serve some 65 residences and 25 business concerns. No other utility of like nature, except the one operated by said Tessler, is or has been serving said town. The proposed ordinance which has been submitted to the board of trustees of said town purports to grant authority -

> " . . .TO CONSTRUCT, ACQUIRE, MAINTAIN AND OPERATE A PLANT OR PLANTS, AND WORKS FOR THE GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICITY, AND TO FURNISH, SELL AND DISTRIBUTE SAID PRODUCT TO THE SAID TOWN OF BLANCA AND THE INHABITANTS THEREOF FOR LIGHT, HEAT AND POWER, OR OTHER PURPOSES, BY MEANS OF CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, OR OTHERWISE, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL STREETS, ALLEYS AND PUBLIC WAYS AND PLACES IN THE TOWN OF BLANCA, AND FIXING THE TERMS AND CONDITIONS THEREOF."

After careful consideration of the matter the Commission is of the opinion and so finds that the public convenience and necessity requires the exercise by the applicant of those franchise rights or privileges which grant authority to the applicant to construct, acquire, maintain and operate a distribution system within the town of Blanca for the transmission, distribution and sale of electrical energy to the said town and inhabitants thereof for light, heat, power and other purposes.

However, no evidence was offered showing any public need for the construction or acquisition of any power plant or plants.

O R D E R

IT IS THEREFORE ORDERED, That The Public Utilities Commission of the State of Colorado will upon application by the Public Service Company

of Colorado issue to the applicant a certificate of public convenience and necessity upon such terms and conditions as the public convenience and necessity may require, after the applicant has obtained the contemplated franchise or ordinance, which said certificate shall authorize the applicant to construct, acquire, maintain and operate a distribution system within the town of Blanca for the transmission, distribution and sale of electrical energy to the said town and inhabitants thereof for light, heat, power and other purposes.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 26th day of February, 1929.

(Decision No. 2082)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

* * *

IN RE UNLAWFUL MOTOR VEHICLE)
OPERATIONS OF JAKE WEILER) CASE NO. 403.
AND FRED HAUF.)

February 26, 1929.

S T A T E M E N T

By the Commission:

Complaint has been made to this Commission against Jake Weiler and Fred Hauf that they are operating as motor vehicle carriers between Lafayette and the Morrison Mine and other points in that vicinity, and that they are holding themselves out to the public as motor vehicle carriers without a certificate of public convenience and necessity from this Commission.

On September 28, 1928, Jake Weiler and Fred Hauf filed application No. 1206 for a certificate of public convenience and necessity to operate a motor bus between Lafayette in Boulder County, and Erie, State Mine, and Clayton or Morrison Mine, all in Weld County, Colorado.

After hearing on January 3, 1929, of this matter before the Commission, its order was entered January 5, 1929, denying said application and the respondents were ordered to forthwith cease and desist from operating as motor vehicle carriers of passengers.

The information submitted to this Commission as to the operations of respondents is such as to cause sufficient grounds to exist to make an investigation and for it to issue an order requiring the respondents, Jake Weiler and Fred Hauf, to show cause why an order should not be entered by this Commission requiring them to cease and

desist from operating as motor vehicle carriers as defined in Chapter 134, Session Laws of 1927.

O R D E R

IT IS THEREFORE ORDERED, That Jake Weiler and Fred Hauf be, and they are hereby, required to show cause, if any they have, by written statement filed with the Commission within ten days from date hereof why this Commission should not enter an order requiring them to cease and desist from operating as motor vehicle carriers as defined in Chapter 134, Session Laws of 1927.

IT IS FURTHER ORDERED, That this matter be set down for hearing before the Public Utilities Commission of the State of Colorado at its Hearing Room, 305 State Office Building, Denver, Colorado, on March 12, 1929, at 10:00 A. M. at which time said respondents shall appear and give such testimony and may introduce such evidence relating to their operations as may be proper.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 25th day of February, 1929.

(Decision No. 2083)

At a General Session of the Public Utilities Commission of the State of Colorado, held at its office in Denver, Colorado, on the 23rd day of February, 1929.

INVESTIGATION AND SUSPENSION DOCKET NO. 120

Re: Notification under National Car Demurrage Rules and Charges.

IT APPEARING, That there has been filed with The Public Utilities Commission of the State of Colorado by the American Railway Association Tariff Bureau, by B. T. Jones, Agent, a tariff containing schedules stating new individual rates and charges, to become effective on the 24th day of February, 1929, designated as follows:

American Railway Association Tariff Bureau, by B.T.Jones, Agent, Freight Tariff No. 4-1, Colo. P.U.C. No. 23.

IT IS ORDERED, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the rates and charges stated in the said schedule contained in said tariff, viz:

American Railway Association Tariff Bureau, by B.T.Jones, Agent, Freight Tariff No. 4-1, Colo. P.U.C. No. 23, page 21, paragraph 1, note 2, "or constructively."

AND IT FURTHER APPEARING, That the said schedule makes certain increases in rates, whereby the rights and interests of the public may be injuriously affected; and it being the opinion of the Commission that the effective date of said schedule contained in said tariff should be postponed, pending said hearing and decision thereon.

IT IS FURTHER ORDERED, That the operation of the said schedule contained in said tariff be suspended and that the use of the regulations and practices therein stated be deferred 120 days, or until the 24th day

of June, 1929, unless otherwise ordered by the Commission, and no change shall be made in such regulations and practices during the said period of suspension.

IT IS FURTHER ORDERED, That the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of, or until the period of suspension or any extension thereof has expired, and

IT IS FURTHER ORDERED, That a copy of this order be filed with said schedule in the office of the Commission and that copies hereof be forthwith served upon the American Railway Association Tariff Bureau, by B. T. Jones, Agent, Chicago, Illinois, and

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing at a future date to be determined by the Commission, due notice of such date and place of hearing being given all interested parties.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado, this
23rd day of February, A. D. 1929.

(Decision No. 2084)

At a session of The Public Utilities Commission of the State of Colorado, held at its office at Denver, Colorado on the 27th day of February, 1929.

INVESTIGATION AND SUSPENSION DOCKET NO. 121

Re: Weighing livestock moving between country points.

IT APPEARING, That there have been filed with The Public Utilities Commission of the State of Colorado by the Western Trunk Lines, E. B. Boyd, Agent, and Union Pacific Railroad Company, by F. B. Choate, General Freight Agent, tariffs containing schedules stating new individual rules and regulations to become effective on the 1st day of March, 1929, and the 10th day of March, 1929, designated as follows:

Western Trunk Lines, E. B. Boyd, Agent, Supplement No. 12, to Circular No. 17-G, Colo. P.U.C. No. 55;
Union Pacific Railroad Company, Supplement No. 9 to U. P. R. R. Tariff No. 3035-E, Colo. P.U.C. No. 248,

IT IS ORDERED, That the Commission upon its own motion, without formal pleading, enter upon a hearing concerning the lawfulness of the rules and regulations stated in the said schedules contained in said tariffs, viz:

Western Trunk Lines, E. B. Boyd, Agent, Supplement No. 12, Circular No. 17-G, Colo. P.U.C. No. 55, page 22, Item No. 2025-A;
Union Pacific Railroad Company, Supplement No. 9 to U. P. R. R. No. 3035-E, Colo. P.U.C. No. 248, Page 5, Item No. 1009.

IT FURTHER APPEARING, That the said schedules make certain increases in rates for the transportation of livestock moving between country points, whereby the rights and interests of the public may be injuriously affected; and it being the opinion of the Commission that the effective date of said schedules contained in said tariffs should be postponed pending said hearing and decision thereon,

IT IS FURTHER ORDERED, That the operation of the said schedules contained in said tariffs be suspended and that the use of the rates, charges, regulations and practices therein stated, be deferred 120 days, or until the 28th day of June, 1929, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during

the said period of suspension.

IT IS FURTHER ORDERED, That the rates, charges, regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of or until the period of suspension or any extension thereof has expired, and

IT IS FURTHER ORDERED, That a copy of this order be filed with said schedules in the office of the Commission and that copies thereof be forthwith served upon E. B. Boyd, Agent, Western Trunk Lines, 517 W. Adams Street, Chicago, Illinois and Union Pacific Railroad Company, F. B. Choate, General Freight Agent, 1416 Dodge Street, Omaha, Nebraska, and

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing at a future date to be determined by the Commission, due notice of such date and place of hearing being given all interested parties.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Geo Bock

Jay L. Jones

Commissioners.

Dated At Denver, Colorado, this
27th day of February, 1929.

(Decision No. 2085)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * *

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1230.

March 1, 1929.

Appearances: D. Edgar Wilson, Esq., Denver, Colorado, attorney for applicant.

S T A T E M E N T

By the Commission:

Public Service Company of Colorado, a corporation organized and existing and doing business as a public utility under and by virtue of the laws of the State of Colorado, filed its application alleging, inter alia, that the applicant heretofore acquired by purchase, and has received conveyance from the trustees of The Summit County Power Company of, all the property and assets of every kind and nature heretofore owned by the latter, including a hydro electric and an old stand-by steam plant situated near Dillon, and a distribution system located in Summit County and Park County. A very small portion of said distribution system extends over the Summit county line into Park County. The application further alleges that the amount of applicant's investment in the property so acquired is $418,827.00.

It is also alleged that the public convenience and necessity of the communities and territory in which said distribution system is located require the exercise of public utility rights through the use of the property so acquired by the applicant and the continued maintenance and operation thereof in order to furnish said communities and territory electrical current for

light, heat, power and other purposes. The application concludes with a prayer for an order, "authorizing applicant to exercise the rights hereinabove referred to, and granting to applicant a certificate of public convenience and necessity for the exercise of such rights, and for the operations proposed to be carried on by it in the communities and territory located within the County of Summit, State of Colorado, hereinabove referred to, and for the extension, construction, erection, maintenance and operation of its power plants, stations, transmission lines and distribution systems for the generation and distribution of electrical energy in the territory generally described in the foregoing application."

At the hearing it developed that no other similar utility than the applicant and its predecessor is or has been serving in the territory in question; that the distribution system in question is now connected with and has become a part of what is known as applicant's central system, connected with applicant's Valmont steam plant and its Boulder canon hydro plant on the east and its hydro plant at Shoshone and its Leadville steam stand-by plant on the west. The applicant proposes to make gradual improvements of the system so acquired and to reconstruct its Dillon hydro plant if it can acquire more water.

The town of Dillon filed a statement herein to the effect that before any certificate issues herein the matter of the new franchise should first be settled and that the contract under which the applicant sells to the town of Dillon should be agreed to. The question as to the repairs and changes in the distribution system were gone into at the time of the hearing, and the applicant's witnesses stated that they expect to make considerable repairs and improvements in the distribution system at Dillon. Section 2946 (c) provides that "Every applicant for a certificate shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the required consent, fran-

chise, permit, ordinance, vote or other authority of the proper county, city and county, municipal or other public authority." Before the Commission can issue a certificate authorizing the applicant to distribute electric energy in the town of Dillon said section should be complied with. This matter will be covered in the order to be entered herein.

After careful consideration of all the evidence, the Commission is of the opinion and so finds that the public convenience and necessity requires that Public Service Company of Colorado be granted a certificate of public convenience and necessity authorizing it to maintain and operate in the territory in question in Summit and Park counties the distribution system, transmission lines, power plants and stations so acquired from The Summit County Power Company, and the authority to transmit into and through said territory power generated at other points on its central system.

Section 2946, C. L. Colo. 1921, known as Section 35, expressly provides that said section shall not be construed to require any corporation to secure a "certificate for an extension within any city and county or city or town within which it shall have heretofore lawfully commenced operations, or for an extension into territory, either within or without a city and county or city or town, contiguous to its facility, or line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business."

Authority to make such extensions as are specified in the proviso just quoted from obviously need not be given by this Commission. At the hearing there was no evidence of any intention to make or of any public need for any definite extensions of lines, construction or reconstruction of plants requiring authority from this Commission. Therefore, no authority with reference to any extensions, construction or reconstruction other than that granted by the statute should at this time be granted.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires that the applicant, Public Service Company of Colorado, be granted authority to maintain and operate in the territory in question, in Summit and Park counties, the distribution system, transmission lines, power plants and stations so acquired from The Summit County Power Company, and to transmit into and through said territory power generated at other points on its central system, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the certificate of public convenience and necessity herein granted shall not become effective as to the town of Dillon until the applicant has filed with this Commission the required consent, franchise, permit or ordinance from said town, and a certificate has been issued authorizing exercise of the rights and privileges therein contained.

IT IS FURTHER ORDERED, That the applicant, Public Service Company of Colorado, shall file its tariffs, rate schedule and rules and regulations as required by this Commission within twenty days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado,
this 1st day of March, 1929.

(Decision No. 2086)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF BLUE AND WHITE STAGES, INC., A CORPORATION, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE PASSENGER MOTOR SERVICE BETWEEN DENVER, COLORADO, AND THE STATE LINES TO WYOMING, NEBRASKA AND KANSAS, IN INTERSTATE COMMERCE.

APPLICATION NO. 1130

March 4, 1929.

STATEMENT

By the Commission:

It has come to the attention of this Commission that Blue and White Stages, Inc., a corporation, the applicant in the above entitled application, has since the hearing was held herein discontinued its operations as a motor vehicle carrier in this State. The Commission is, therefore, of the opinion and so finds that there is sufficient cause to reopen this application for the purpose of determining whether or not the applicant intends to operate in this State as a motor vehicle carrier if and when a certificate of public convenience and necessity is issued to it.

ORDER

IT IS THEREFORE ORDERED, That the above entitled application be, and the same is hereby, reopened for the purpose of determining whether or not the applicant proposes to operate as a motor vehicle carrier if and when a certificate of public convenience and necessity is granted to it.

IT IS FURTHER ORDERED, That this matter be set down for hearing by the Commission in its Hearing Room in Denver, Colorado, on March 19, 1929, at 10:00 o'clock A. M.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

DATED at Denver, Colorado,
this 4th day of March, 1929.

(Decision No. 2087)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF AN INVESTIGATION BY THE COMMISSION, ETC. | CASE NO. 348.

March 2, 1929.

STATEMENT

By the Commission:

On motion of Keenan and Keenan, Esqs., attorneys for the complainant herein, Charles Dailey, Sr., and the attorneys for the respondent having heretofore consented, it is ordered that the time within which the complainant may file a statement of payments made and the dates thereof be, and the same is hereby, extended forty days beyond the time heretofore fixed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

OTTO ROCK

DAN S. JONES

(S E A L) NORTH ALLEN
Commissioners.

Dated at Denver, Colorado,
this 2nd day of March, 1929.

ATTEST: A TRUE COPY.

Secretary.

(Decision No. 2088)

At a session of The Public Utilities Commission of the State of Colorado, held at its office in Denver, Colorado, on the 4th day of March, 1929.

INVESTIGATION AND SUSPENSION DOCKET NO. 122.

Re: Cancellation of fares between stations on Salida Division, viz: Alamosa to Villa Grove, both inclusive.

IT APPEARING, That there has been filed with the Public Utilities Commission of the State of Colorado, by The Denver and Rio Grande Western Railroad Company, by H. I. Scofield, General Passenger Agent, a tariff containing schedules cancelling certain fares, to become effective on the 15th day of March, 1929, designated as follows:

"The Denver and Rio Grande Western Railroad Company, Supplement No. 1 to Colo. P.U.C. No. P-328."

IT IS ORDERED, That the Commission, upon its own motion, without formal pleadings, enter upon a hearing concerning the propriety of the changes stated in the said schedules contained in said tariff.

IT FURTHER APPEARING, That the said tariff makes certain increases in fares, whereby the rights and interests of the public may be injuriously affected, and it being the opinion of the Commission that the effective date of said schedules contained in said tariff should be postponed, pending said hearing and decision thereon.

IT IS FURTHER ORDERED, That the operation of the said schedules contained in said tariff be suspended and that the use of the fares, regulations and practices therein stated be deferred 120 days, or until the 12th day of July, 1929, unless otherwise ordered by the Commission.

IT IS FURTHER ORDERED, That the fares, regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule until this investigation and suspension proceeding has been disposed of, or until the period of suspension or any extension thereof has

expired, and

IT IS FURTHER ORDERED, That a copy of this order be filed with said schedules in the office of the Commission and that a copy hereof be forthwith served upon The Denver and Rio Grande Western Railroad Company, and

IT IS FURTHER ORDERED, That this proceeding be assigned for hearing at a future date to be determined by the Commission, due notice of such date and place of hearing being given all interested parties.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 4th day of March, 1929.

Commissioners.

(Decision No. 2089)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
THE LITTLETON AND ENGLEWOOD GAS AND) APPLICATION NO. 1203.
COAL COMPANY FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY.)

- - - - - - - -
March 8, 1929.
- - - - - - - -

S T A T E M E N T

By the Commission:

On motion of counsel for applicant, an order will be entered dismissing application.

O R D E R

IT IS THEREFORE ORDERED, That the application herein be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 8th day of March, 1929.

(Decision No. 2090)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF E. M. WOODWARD, DOING BUSINESS)
AS THE WOODWARD TRUCK LINE, FOR A) APPLICATION NO. 1260
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY.)

March 11, 1929.

Appearances: L. H. Snyder, Esq., Colorado Springs, Colo., attorney for applicant;
D. Edgar Wilson, Denver, Colorado, attorney for The Chicago, Rock Island and Pacific Railway Company.

S T A T E M E N T

By the Commission:

This is an application of E. M. Woodward, doing business as Woodward Truck Line, for a certificate of public convenience and necessity, authorizing the transportation of freight between Colorado Springs and Matheson and intermediate points. A written protest was filed by The Chicago, Rock Island and Pacific Railway Company.

The applicant owns three trucks, one three-ton Reo and two two-ton Dodges, the three having a total market value of $4,250.00. He has been hauling freight along the route in question for several years and has been paying to this Commission the motor vehicle tax imposed by law on those operating as motor vehicle or common carriers.

He leaves Colorado Springs on his trip east between eleven and twelve o'clock noon each day except Sunday, carrying to the merchants along the route fresh meats, groceries, vegetables and other commodities, which are delivered in the afternoon.

The applicant makes the trip west to Colorado Springs in the

late afternoon and evening, picking up freight, including cream, en route at the various towns at hours that appear to be convenient for the people served. In the summer time, when it is desirable to keep cream cold, he has access to the creamery or creameries in Colorado Springs and puts the cream in coolers even though the hour of his arrival in the city is somewhat late.

A strong showing of the need of this service was made. It even appeared that the truck line in question is patronized by one or more of the protestant's witnesses, most of whom were bankers and business men and women whose freight doubtless moves largely in car load lots. One of them testified that he not only avails himself of the service of the applicant, but that he in addition operates his own truck to and from Denver. A large percentage, if not all of the merchants on the line doing any substantial l.c.l. freight business have their goods from Colorado Springs shipped by truck. We believe that a mere detailed review of the evidence would serve no useful purpose.

The line parallels all the way the railroad of protestant. The latter's local business between Colorado Springs and points on the route has shrunk to almost nothing. That the protestant's railroad operations very largely contributed to the settlement and growth of the towns in question, and that the continued operation of the railroad is very vital to those towns, is quite clear. However, it is quite questionable whether the local l.c.l. business to and from Colorado Springs would move over this rail line if the application herein were denied. It doubtless would move in trucks owned by private carriers and individual merchants.

The protestant renders only tri-weekly freight service. Express from Colorado Springs reaches all of the towns on a midnight passenger train. The only train carrying express to Colorado Springs arrives in that city at 7:30 A. M. It passes through Matheson, Simla and Ramah before 6 o'clock. Express destined to Colorado Springs must, therefore, either lay over in the local stations all night or be taken to the stations very early in the morning.

After careful consideration of all the evidence, the Commission is of the opinion and so finds that the public convenience and necessity requires

the proposed motor vehicle operation of the applicant for the transportation of freight between Colorado Springs and Matheson and intermediate points.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the proposed motor vehicle operation of E. M. Woodward, doing business as Woodward Truck Line, for the transportation of freight between Colorado Springs and Matheson and intermediate points, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That the applicant shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That the applicant shall operate such motor vehicle carrier system according to the schedule filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 11th day of March, 1929.

Commissioners.

(Decision No. 2091)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
A. J. BORCK FOR A CERTIFICATE OF) APPLICATION NO. 1239
PUBLIC CONVENIENCE AND NECESSITY.)

March 11, 1929.

Appearances: David P. Strickler, Esq., Colorado Springs, Colorado, attorney for applicant;
Riley R. Cloud, Esq., Pueblo, Colorado, attorney for W. H. Anderson and F. G. Stegall, protestants;
Thos. R. Woodrow, Esq., Denver, Colorado, attorney for The Denver and Rio Grande Western Railroad Company.

S T A T E M E N T

By the Commission:

This is an application by A. J. Borck of Colorado Springs for a certificate of public convenience and necessity authorizing the transportation by him by motor truck of freight between Colorado Springs and Canon City and intermediate points. The Denver and Rio Grande Western Railroad Company's main line runs through Colorado Springs, Pueblo and Canon City. From Colorado Springs to Canon City by rail is some 86 miles. The distance by motor truck is about 50 miles. Penrose is not reached by the railroad although the highway leading from Colorado Springs to Canon City passes through said point.

The applicant proposes to devote to the service in question one G.M.C. truck and one Chevrolet truck of the market value of $2,000.00, and to purchase and use therein another truck costing some $2,500.00.

The applicant for a long time has been engaged in the wholesale fruit business in Colorado Springs and Canon City. In conducting that business it is necessary to make daily trips back and forth by truck.

There are some fifteen wholesale and jobbing houses in Colorado Springs. Some two or three of them have been served at their request and solicitation by the applicant. Because of the fact that he has no certificate, the applicant has refrained from doing a general common carrier business. However, he has been requested by some of the business concerns in Colorado Springs to secure a certificate of public convenience and necessity. Hence the filing of the application herein.

Without any question the business which the applicant is now doing for other people is not alone sufficient to warrant the operation of a common carrier truck line. However, as has been stated, the applicant has refrained from soliciting and securing a large volume of business because of his laudable desire not to operate as a common carrier contrary to law. The contention is made by the business men of Colorado Springs that much business can be developed by applicant.

The jobbing and wholesale houses of Colorado Springs suffer two disadvantages in competing with similar houses in Pueblo. One is the greater distance from Canon City, Florence and Penrose by rail. Another is the fact that there is a motor truck service being rendered between Pueblo and Canon City, Florence and Penrose under certificates issued by this Commission, whereas there is no authorized motor vehicle operator transporting freight from Colorado Springs to the towns in question.

The applicant's financial condition is adequate and satisfactory.

The applicant proposes to render daily service. The rail service between Colorado Springs and Canon City is only tri-weekly. We have the usual showing of the more expeditious local service by truck than by rail resulting not only from the fact that the service is daily but also from door-to-door service.

The protestant Stegall is operating a truck line between Canon City and Denver. The protestant Anderson is operating a truck line between Florence and Denver. Both are operating under certificates issued by this

Commission. Neither are authorized to haul freight to or from Colorado Springs.

The Commission has rather consistently taken the stand that before it would authorize a duplication of service over a route, a clear showing of public convenience and necessity for such duplication would have to be shown. Here, however, we have two very long routes being operated over by the protestants Stegall and Anderson. The most of their business doubtless would continue to be between Denver and their present southern terminal points. There is no contention or showing that either of their lines is not now making an ample return. The witnesses for the applicant contend that the service which they would receive from Stegall and Anderson would be too much of a side-issue with them. They believe they will be more adequately served by the applicant than by the protestants. The latter had practically no evidence other than their own testimony in support of their contention that if authority is granted to haul freight to and from Colorado Springs the application herein of Borck should be denied and their certificates extended.

After careful consideration of the evidence the Commission is of the opinion and so finds that the public convenience and necessity requires the motor vehicle operation of the applicant for the transportation of freight between Colorado Springs and Canon City and intermediate points.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle operation of the applicant, A. J. Borck, for the transportation of freight between Colorado Springs and Canon City and intermediate points and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That A. J. Borck shall file tariffs of rates, rules and regulations and time and distance schedules as required by the Rules and Regulations of this Commission governing motor vehicle

carriers, within a period not to exceed twenty days from the date hereof.

IT IS FURTHER ORDERED, That A. J. Borok shall operate such motor vehicle carrier system according to the schedules filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bock

John L. Jones

Commissioners.

Dated at Denver, Colorado,
this 11th day of March, 1929.

(Decision No. 2092)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)
FREDERICK H. VOTE FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY.) APPLICATION NO. 708.

March 11, 1929.

Appearance: D. Edgar Wilson, Esq., Denver, Colorado, for The Chicago, Rock Island and Pacific Railway Company.

S T A T E M E N T

By the Commission:

This application was set down for hearing at the City Hall, Colorado Springs, on March 5, 1929, at which time the applicant failed to appear. Counsel for protestant railway company moved that the application be dismissed.

O R D E R

IT IS THEREFORE ORDERED, That the above application be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 11th day of March, 1929.

(Decision No. 2093)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE MOTOR VEHICLE OPERATIONS)
OF WILLIAM IRVINE.) CASE NO. 380.

March 11, 1929

Appearance: Samuel H. Kinsley, Esq., Colorado Springs, Colorado, attorney for respondent.

S T A T E M E N T

By the Commission:

This is a complaint against the respondent, William Irvine, relative to the conduct in the motor vehicle operations of one of his employes. The testimony shows that as soon as the respondent's attention was called to the matter that employe was discharged. Moreover, the testimony shows that the employe's conduct was without the authority and knowledge of the respondent.

O R D E R

IT IS THEREFORE ORDERED, That the complaint herein be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 11th day of March, 1929.

(Decision No. 2094)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF JAMES J. LENT AND N.P.PETERSON FOR AUTHORITY TO TRANSFER AND ASSIGN CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1181-A

- - - - - - - - -

March 8, 1929.

- - - - - - - - -

S T A T E M E N T

By the Commission:

This is an application by the holders of the certificate of public convenience and necessity issued to them on September 29,1928, (Decision No.1923) for authorization to James J. Lent to sell, assign and transfer all of his interest in said certificate to W.H.Post. The consideration to be paid for this undivided one-half interest is $500.00. There are no persons having unpaid claims on account of obligations under such certificate. No protests have been filed against this application. The Commission is of the opinion, and so finds, that the sale, assignment and transfer should be authorized.

O R D E R

IT IS THEREFORE ORDERED, That James J. Lent be, and the same is hereby, authorized to sell, assign and transfer all of his interest in the certificate of public convenience and necessity issued to James J. Lent and N.P.Peterson on September 29,1928.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Jno. L. Jones

Commissioners.

Dated at Denver, Colorado,
this 8th day of March,1929.

(Decision No. 2095)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE UNLAWFUL MOTOR VEHICLE CARRIER)
OPERATIONS BY DAVID TROGLER, JR. OF) CASE NO. 383.
STEAMBOAT SPRINGS, COLORADO.)

March 12, 1929.

Appearances: Joseph K. Bozard, Esq., Steamboat Springs, Colorado, for respondent;
Elmer L. Brock, Esq., Denver, Colorado, for The Denver and Salt Lake Railway Company, protestant.

S T A T E M E N T

By the Commission:

On September 13, 1928, the Commission on its own motion issued a citation requiring the respondent herein to show cause why an order should not be entered by this Commission requiring him to cease and desist from operating as a motor vehicle carrier as defined under our law. This matter was set down for hearing in the court house in Steamboat Springs, Colorado, on September 26, 1928. An answer was filed by the respondent which, in order to dispose of the legal questions raised, will be considered as a motion to dismiss. No evidence was taken except that it was admitted that the respondent paid the tax under Chapter 135 of the Session Laws of Colorado for the year 1927.

The first question raised by the answer is that the statement and order does not state facts sufficient to constitute a cause of action, or upon which to base an order to show cause. This objection is good as to the first paragraph of the statement in which the respondent is only referred to as conducting motor vehicle operations for hire.

The Commission has jurisdiction only over motor vehicle carriers as defined in Chapter 134, Session Laws, 1927.

The second paragraph of the statement, however, contains allegations sufficient to base thereon an order of citation to show cause. It is alleged that the respondent is unlawfully operating as a motor vehicle carrier between Steamboat Springs, Colorado, and Denver, Colorado, without a certificate of public convenience and necessity and without payment of the tax imposed upon motor vehicle carriers as provided by law in House Bill No. 430 which is Chapter 134, Session Laws 1927.

The second point raised is that it does not appear from the order or from anything contained therein that this Commission has jurisdiction over any matters alleged in the order or statement. This Commission has jurisdiction to administer and enforce any and all provisions of the act. Furthermore, under the Public Utilities Act (Sec. 2947, C.L. Colo.1921) no informality in any proceeding before the Commission shall invalidate any order approved or confirmed by the Commission. It is our opinion, therefore, that there is no merit in respondent's contention that this Commission has no jurisdiction over the matters involved.

The tax paid by the respondent under Chapter 135 of the Session Laws of 1927 is no defense to this citation. The requirement of payment of this tax does not apply to motor vehicle carriers as defined in Chapter 134, Session Laws of 1927.

Under these circumstances an order will be entered overruling respondent's motion to dismiss.

O R D E R

IT IS THEREFORE ORDERED, That respondent's motion to dismiss be, and the same is hereby, overruled.

IT IS FURTHER ORDERED, That respondent may have ten days from

the date of this order to further answer the citation issued herein.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 12th day of March, 1929.

(Decision No. 2296)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF H. M. JEANS FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY. | APPLICATION NO. 1027.

March 12, 1929.

Appearances: H. M. Jeans, Elbert, Colorado, pro se.

STATEMENT

By the Commission:

This is an application for a certificate of public convenience and necessity, authorizing a motor vehicle carrier system for the transportation "of freight, express and farm products from the vicinity of, and from Elbert, Colorado, and territory adjacent thereto, to (and from) Colorado Springs, Colorado, and also to various intermediate shipping points."

Protest was filed by the County Commissioners of El Paso County against this application if the same would compete with the Rock Island Railway between Falcon and Colorado Springs. Protest was also filed by F. S. Harris of Strasburg, Colorado.

Hearing was had on this application at Colorado Springs on March 5, 1929. The applicant resides at Elbert, Colorado; is the owner of a ton and a half truck, valued at $1,000.00. His motor operations have consisted mainly of transporting freight within, and to and from within a radius of ten miles of the town of Elbert. From Elbert and the Table

Rock territory he transports agricultural products and livestock to Colorado Springs. The operations are not on regular schedule, but only when freight is offered for transportation. Practically none of the operations are in competition with the rail carrier. There is now no authorized motor vehicle carrier service offered to the public in that locality for the purpose shown. The applicant does not conflict at all with the operations of F. S. Merrick of Strasburg, Colorado.

After a careful consideration of all the evidence introduced in this hearing, the Commission is of the opinion, and so finds, that the public convenience and necessity requires the motor vehicle transportation system of the applicant for freight within, and within a radius of ten miles to and from, the town of Elbert, Colorado, and for the transportation of agricultural products, including livestock, between Elbert and the Table Rock territory and Colorado Springs.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle transportation system of the applicant, E. M. Jessup, for freight within, and within a radius of ten miles to and from, the town of Elbert, Colorado and for the transportation of agricultural products including livestock between Elbert, Colorado, and the Table Rock territory and Colorado Springs, and this order shall be taken, held and deemed to be a certificate of public convenience and necessity therefor, subject to the following conditions:

(a) That this operation shall not be conducted upon a regular schedule.

(b) That the applicant herein shall confine his operations solely to the territory described herein.

(c) That the applicant shall file tariffs of rates, rules and regulations and time schedules as required by the Rules and Regula-

tions of the Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

(4) That the applicant shall operate such motor vehicle carrier system according to the schedule filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

[illegible]

[illegible]

[illegible]
Commissioners.

(S E A L)

Dated at Denver, Colorado,
this 13th day of March, 1939.

ATTEST: A TRUE COPY.

Secretary.

(Decision No. 2097)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF W. F. CONWAY AND FRANK R. CONWAY, PARTNERS, DOING BUSINESS AS CONWAY BROTHERS, FOR AN INCREASE IN EQUIPMENT.

APPLICATION NO. 621-B.

- - - - - - - - - -

March 12, 1929.

- - - - - - - - - -

Appearances: Frank R. Conway, Esq., Colorado Springs, Colorado, for Conway Brothers;
F. C. Matthews, Esq., Colorado Springs, Colorado, for Pikes Peak Auto Company.

S T A T E M E N T

By the Commission:

The applicants herein conduct a sightseeing motor vehicle carrier operation in the Pikes Peak region. The certificate issued to them limits their equipment to fifteen automobiles. They ask for an increase in this equipment from fifteen to thirty automobiles.

A public hearing was had on this matter at Colorado Springs on March 6, 1929. The applicants give as a reason for the application that they have purchased the Alamo Hotel and, therefore, will need the additional equipment. The applicants operate also the Alta Vista Hotel and conduct a sightseeing service from that place.

The Commission assumed jurisdiction over the sightseeing motor vehicle operations in the Pikes Peak region after the decision by the Supreme Court of this State in the case of Greeley Transportation Company v. People, 79 Colo. 307, and on March 29,1927, issued a certificate of public convenience and necessity to practically all such motor vehicle operators who were then and for some time previously had been in this particular transportation business. The Commission in taking that view felt that under all the circumstances, as well as the record made in the hearings, that it would be fair and proper to issue a certificate to all sightseeing operators then engaged in the business,

limiting them, however, to the equipment they were then using. In 1927 the Commission issued certificates for one year only in order that they would have the benefit of one year's experience before issuing unlimited certificates as to time.

In 1928 further hearings were held on all applications and in that hearing the testimony showed that the applicants were operating 15 automobiles. Hence the Commission permitted them to use 15 automobiles but as in all other similar applications limited them to the equipment they were then using.

There is no testimony in the record that the present automobile equipment available to the sightseeing public at Colorado Springs is not sufficient to meet all needs. In fact, the testimony indicates that there now is sufficient equipment, except perhaps during peak loads, which would only be several days during the season. If the Commission would authorize an increase in equipment solely for the reason that the applicants have purchased a hotel, that would open up the door to an increase in equipment by certain operators conducting hotels and place in idleness equipment of other operators. This, in our opinion, would create an unhealthy situation and would tend to affect the financial dependability of certain authorized operators. Moreover, this Commission has no jurisdiction over the hotel business but is solely concerned with reasonable transportation conditions. Only when the equipment available to the sightseeing public is not sufficient to meet their reasonable demands, should this Commission grant an increase. In our opinion, the record does not disclose that the present available equipment for sightseeing operations is at this time insufficient and an order will, therefore, be entered denying the same.

O R D E R

IT IS THEREFORE ORDERED, That the application of W. F. Conway and

Frank R. Conway, doing business as Conway Brothers, No. 621-B, for an increase in equipment be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Brick

Dan S. Jones

Commissioners.

Dated at Denver, Colorado,
this 12th day of March, 1929.

(Decision No. 2098)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF CLARENCE R. BENDER FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1017

March 12, 1929.

Appearances: Clarence R. Bender, Fondis, Colorado, per se;
D. Edgar Wilson, Esq., Denver, Colorado, for The Chicago, Rock Island and Pacific Railway Company.

S T A T E M E N T

By the Commission:

This is an application for a certificate of public convenience and necessity, authorizing a motor vehicle system for the transportation of freight over the main road leading to and from Fondis, Colorado, and such other state and county roads as the public convenience and necessity require.

Protest was filed against this application by The Chicago, Rock Island and Pacific Railway Company.

A public hearing was had on this application at Colorado Springs, Colorado, on March 5, 1929. Fondis is located approximately 15 miles north of Calhan, which is the nearest railroad point. Calhan is located on the Chicago, Rock Island and Pacific Railway, approximately 38 miles from Colorado Springs. Calhan has a population of approximately 500. The population of Fondis is negligible, only a post office and one store being located there, agriculture and livestock being the only means of livelihood. The applicant has one Dodge truck, valued at approximately $1800.00.

The testimony shows that the motor operations conducted by the

applicant are approximately within a radius of 10 miles from Fondis to Calhan and return. The applicant also transports cream to Colorado Springs bi-weekly. In our opinion, however, the record does not warrant this Commission in finding that the transportation of cream to Colorado Springs is a public convenience and necessity. Furthermore, the application itself was not sufficiently definite to consider the transportation of cream between Colorado Springs and Fondis within the issues in this hearing.

After a careful consideration of the evidence introduced in this hearing, the Commission is of the opinion, and so finds, that the publin convenience and necessity requires the motor vehicle transportation system of the applicant for freight within a radius of 10 miles of Fondis to Calhan, Colorado, and return.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires the motor vehicle system of the applicant, Clarence R. Bender, for the transportation of freight within a radius of ten miles of Fondis to Calhan, Colorado and return and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor, subject to the following conditions:

(a) That the applicant herein shall confine his operations solely to the territory described herein.

(b) That the applicant shall file tariffs of rates, rules and regulations and time schedules as required by the Rules and Regulations of the Commission governing motor vehicle carriers, within a period not to exceed twenty days from the date hereof.

(c) That the applicant shall operate such motor vehicle carrier system according to the schedule filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant

with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado,
this 12th day of March, 1929.

(Decision No. 2099)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE UNLAWFUL MOTOR VEHICLE)
OPERATIONS OF JAKE WEILER AND) CASE NO. 403
FRED HAUF.)

March 16, 1929.

S T A T E M E N T.

By the Commission:

The respondents herein having purchased the operations of William Webber, authorized bus operator between Lafayette and the Clayton and Morrison Mines, an order will be entered dismissing this complaint.

O R D E R

IT IS THEREFORE ORDERED, That the above complaint be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 16th day of March, 1929.

U

(Decision No. 2100)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF FRANK LOWRY FOR A CERTIFICATE OF) APPLICATION NO. 1268
PUBLIC CONVENIENCE AND NECESSITY.)

March 16, 1929.

S T A T E M E N T

By the Commission:

The above applicant has filed a statement with this Commission requesting that the same be withdrawn.

O R D E R

IT IS THEREFORE ORDERED, That the above application be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 16th day of March, 1929.

(Decision No. 2101)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF WILLIAM WEBBER, JAKE WEILER AND FRED HAUF.) APPLICATION NO. 1038-A

March 16, 1929.

Appearances: Jake Weiler and Fred Hauf, Lafayette, Colorado, per se.

S T A T E M E N T

By the Commission:

This is an application for authority to assign and transfer certificate issued to William Webber on May 17, 1928, (Decision No. 1769) authorizing operation of a motor vehicle system for the transportation of passengers to and from Lafayette and the Columbine, State, Morrison and Imperial Mines and intermediate points including Canfield and Erie, Colorado. The testimony shows that Jake Weiler and Fred Hauf who desire to have this certificate assigned and transferred to them have as equipment to operate this system two passenger busses and one touring car valued at approximately $5,000.00. They are financially dependable. Moreover, they have had some experience in the operation of passenger busses.

After careful consideration of the evidence the Commission is of the opinion and so finds that the assignment and transfer in question should be authorized.

O R D E R

IT IS THEREFORE ORDERED, That William Webber be, and he is hereby, authorized to transfer to Jake Weiler and Fred Hauf certificate of public convenience and necessity issued to him on May 17, 1928, (Decision No. 1769).

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado,
this 16th day of March, 1929.

(Decision No. 2102)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF AN APPLICATION BY THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY FOR AN ORDER BY THE COMMISSION AUTHORIZING WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $531.30 ON 22 CARLOAD SHIPMENTS OF SHEEP FROM MALTA, COLORADO, TO PUEBLO, COLORADO, SEPTEMBER, 23, 1928.

APPLICATION NO. 1311

- - - - - - - -
March 16, 1929.
- - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company, by W. M. Carey, its Assistant General Freight Agent, under its Claim No. S-22482, for an order by the Commission authorizing the waiving collection of undercharges amounting to $531.30 on 22 double decked carload shipments of sheep, from J. H. Thatcher, Malta, Colorado, consigned to J. H. Thatcher, Pueblo, Colorado, September 23, 1928.

At the time these shipments moved the legal rate applicable was 35½¢ cwt., carload minimum weight, 23,000 pounds, Malta to Pueblo, as per Index 123, page 13, Supplement 20, effective August 3, 1928, to Freight Tariff D. & R. G. W. G.F.D. 5617-C, Colo. P.U.C. No. 48, effective November 12, 1922.

Upon arrival of these shipments at Pueblo the agent assessed the legal rate but was unable to make collection, owing to the fact that the consignee felt that this was an unreasonable rate, and he was negotiating with the General Agent of The Denver and Rio Grande Western Railroad Company, located at Pueblo, for a more favorable rate, on account of these sheep going back into pasture from Pueblo.

Effective October 6, 1928, in Amendment No. 86, to Freight Tariff

D. & R. G. W. G.F.D. 5617-C, supra, The Denver and Rio Grande Western Railroad Company published a rate of $57.50 per 36 foot, 7 inch, double decked car, on sheep from Malta to Pueblo, which rate is in effect at the present time.

It is admitted by The Denver and Rio Grande Western Railroad Company, by W. M. Carey, its Assistant General Freight Agent, that the charges to be collected are unreasonable, and upon authority of the Commission, it will waive collection of undercharges amounting to $531.30 on the shipments involved.

The Commission finds that the charges assessed on the basis of the legal rate were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of $57.50 per 36 foot, 7 inch, double decked car, and an order will be issued authorizing the waiving collection of the undercharges amounting to $531.30.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company be, and it is hereby, authorized and directed to waive collection of undercharges amounting to $531.30 on 22 double decked carload shipments of sheep from J. H. Thatcher, Malta, Colorado, consigned to J. H. Thatcher, Pueblo, Colorado, covered by Malta to Pueblo waybills Nos. 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, D40, 41, 42, 43, 44, 45, 46, 47 and 48, dated September 23, 1928, and

IT IS FURTHER ORDERED, That this rate shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Daniel Jones

Commissioners.

Dated at Denver, Colorado, this
16th day of March, 1929.

(Decision No. 2103)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

IN THE MATTER OF THE APPLICATION OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY FOR AN ORDER BY THE COMMISSION AUTHORIZING THE WAIVING COLLECTION OF UNDERCHARGES AMOUNTING TO $33.00 ON THREE CARLOAD SHIPMENTS OF SHEEP FROM MINTURN, COLORADO, TO GYPSUM, COLORADO, OCTOBER 8, 1928.

APPLICATION NO. 1312

- - - - - - -
March 16, 1929
- - - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company by W. M. Carey, its Assistant General Freight Agent, under its claim Nos. S-22601 and O-117105, for an order by the Commission authorizing the waiving collection of undercharges amounting to $33.00 on three double decked carload shipments of sheep (69,000 pounds), from F. A. Price, Minturn, Colorado consigned to F. A. Price, Gypsum, Colorado, October 8, 1929.

At the time these shipments moved the legal rate applicable was $31.00 per 36 foot, 7 inch double decked car, from Minturn to Gypsum, for 34 miles applicable for 33.87 miles, per table No. One, page 93, Freight Tariff D. & R. G. W. G.F.D. 5617-C, Colo. P.U.C. No. 48, effective November 12, 1922.

Thru error the agent at Gypsum collected charges on these shipments on the basis of $20.00 per car.

At that time there was in effect a rate of $19.00 per car from Gypsum to Minturn (the reverse direction of the movements in question) and the carrier evidently realized that the two rates should be on the same level.

Effective December 12, 1928, in Amendment No. 88, to Freight Tariff D. & R. G. W. G.F.D. 5617-C, Colo. P.U.C. No. 48, the D. & R. G. W. published a rate of $20.00 per 36 foot 7 inch, double decked car on sheep between Minturn and Gypsum.

It is admitted by The Denver and Rio Grande Western Railroad Company, by W. M. Carey, its Assistant General Freight Agent, that the charges to be collected are unreasonable and upon authority of the Commission it will waive collection of undercharges amounting to $33.00 on the shipments involved.

The Commission finds that the charges assessed on the basis of the legal rate were excessive and unreasonable to the extent that they exceeded the amount that would have accrued on the basis of $20.00 per 36 foot 7 inch, double decked car, and an order will be issued authorizing waiving collection of the undercharges amounting to $33.00.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company be, and it is hereby, authorized and directed to waive collection of undercharges amounting to $33.00 on three double decked carload shipments of sheep (69,000 pounds), from F. A. Price, Minturn, Colorado, consigned to F. A. Price, Gypsum, Colorado, covered by Minturn to Gypsum, waybills Nos. 12, 13 and 14, dated October 8, 1928, and

IT IS FURTHER ORDERED, That this rate shall not be exceeded for a period of one year from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Otto Bock

Dan S. Jones

Commissioners.

Dated at Denver, Colorado, this
16th day of March, 1929.

(Decision No. 2104)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF THE CAMP TOURS, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

APPLICATION NO. 1168

March 16, 1929.

Appearances: W. G. Elmslie, Esq., Colorado Springs, Colorado, attorney for applicant;
A. E. Custer, Esq., Colorado Springs, Colorado, attorney for The Hammond Scenic Auto Company;
Thos. L. Reasoner, Esq., Colorado Springs, Colorado, for The Gray Line Motor Tours;
F. C. Matthews, Esq., Colorado Springs, Colorado, for The Pikes Peak Automobile Company;
J. M. Buster, Esq., Colorado Springs, Colorado, for The Buster and Williams Touring Company.

S T A T E M E N T

By the Commission:

The Camp Tours, Inc. has been engaged for some five years in conducting motor vehicle sightseeing operations in the Pikes Peak region. The company uses in the service 4 automobiles of the market value of $2,000.00.

The stock in the applicant company is largely owned by the same people who own the stock in The Pikes Peak Cottage City, a corporation which owns and operates a cottage camp situated just outside of the city limits of Colorado Springs.

The applicant since its organization has transported on the various scenic tours in the region only those people who are guests in the said cottage camp. It proposes to limit its business to those guests. Because of the said limitation, it had for a long time the opinion that it was not a motor vehicle or common carrier. However, its attorney finally concluded

that it was operating as such a carrier, and the applicant thereupon immediately filed its application. The conduct of the applicant in operating without a certificate could not be termed flagrant. Therefore, the Commission feels that a certificate should not be denied on account of failure to apply for a certificate sooner.

If the applicant were a newcomer, the Commission would be more concerned about the question whether public convenience and necessity requires additional operations in the region. The applicant began operating during the year 1924, prior to the time any of the present certificate holders in the region secured certificates. Another important consideration is that no serious objection has been made by any of the certificate holders on the ground that the public convenience and necessity does not require the operations of the applicant.

There is, however, one question which has given the other operators in the district and this Commission very serious concern, and has caused it on its own motion to hold a second hearing. The applicant in the past has been operating, and proposes in the future to operate, on lower rates than are generally charged in the region. Of course the Commission is interested in securing rates as low as are reasonably possible. On the other hand, for years the motor vehicle sightseeing operators of the Pikes Peak region, being some 54 in number, were engaged in a bitter rate warfare which, to say nothing of the financial effect on the operators themselves, resulted to the great detriment of the State in general and the region in question in particular. One operator would contract to take certain sightseers on one or more of the trips. Some other operator would then get hold of the tourists, inform them how unfortunate they were in not having seen him first and allege that he would carry them for a much lower rate. This resulted in dissatisfaction, often causing abandonment of the plan to go with the first operator. Frequently tourists before making arrangements for a tour or tours were subject to a nagging, haggling, bargaining process by a great number of operators. The result was that the tourists had experiences which were far from conducive

to a favorable impression of the region. As an example of the rate cutting, the rate to the summit of Pikes Peak, an elevation in excess of 14,000 feet, reached after a hard, long climb, became as low as $3.00. It was generally understood that many of the rates at which passengers were transported were noncompensatory.

A careful study was made of the rates by the various operators, the Chief of Police of Colorado Springs, who for many years had been in close touch with the operations in question and the problems connected therewith, and the Rate Expert of this Commission. Finally the operators in an endeavor to establish reasonable rates and to create a better atmosphere and method of dealing with the public, agreed on a tariff of rates which in substance each and all of them filed.

The evidence shows that during the past year when the operators were charging uniform fares for the various trips, the situation was far more satisfactory than ever before.

It appears fairly clear that if the applicant is authorized to operate on lower rates than are charged by the other operators, the very unsatisfactory and deplorable condition of a few years ago probably will return. There are numerous camp grounds around Colorado Springs. Many of the motor vehicle operators serving these camp grounds operate also out of the city of Colorado Springs. It is obvious that if the applicant operates on a lower rate level, his competitors operating out of the other camp grounds will do the same. If those competitors cut their rates from the camp grounds they will be compelled to reduce them from Colorado Springs. Other operators confining their business to that originating in the city will thus be compelled to cut. Some of them probably would seek to cut the rates still lower than those of their competitors, and thus the whole vicious circle would be in full swing again.

The evidence on this rather short record shows moreover that the rates charged by the certificate holders are on the whole quite reasonable;

that there may be one or two or more that are possibly too low and one or two that may be too high. Of course these rates are always within the jurisdiction of the Commission.

The evidence shows also that frequently the operators in the district may have only one or two passengers for some rather long trip. The trip cannot be made except at a loss. The custom in those cases is for the operator to turn the passengers over to another operator who has other passengers. Thus a full load will be taken on the trip in question. The applicant herein frequently finds himself in the same position. He desires the privilege of turning customers over to other operators. The other operators cannot lawfully make one price to the passengers thus turned over and another price to their own customers. If the applicant should have lower rates than the other operators, we would have the situation of the guests whom his own company hauls paying one fare, while his guests whom he is compelled to turn over to other operators would have to pay another. This obviously would cause dissatisfaction and trouble.

Considerable stress was laid by the applicant upon its contention that mechanics, farmers and others with large families and limited financial resources cannot afford to pay many of the prevailing rates. It must be borne in mind that applicant's business is limited to the guests of an automobile camp. The guests all have their own automobiles. If it is necessary or desirable that they economize while on their vacation, the obviously desirable thing to do is to make the various trips in their own automobiles. Applicant's argument would have more weight if it were serving tourists coming to Colorado Springs by rail.

There was some evidence in the case of a determination by the applicant to keep most of its rates under whatever rates the other operators establish. However, we make no finding on this phase of the case.

The Commission is of the opinion that the applicant should

be authorized to operate for a test period of one year on the rates which the other operators are charging, and that after the expiration of the year, further hearing be held for the purpose of determining what the public convenience and necessity requires.

After a careful consideration of all the evidence and the questions raised thereby the Commission is of the opinion that the public convenience and necessity requires that the applicant herein receive a certificate of public convenience and necessity to operate a motor vehicle transportation system for the transportation of passengers in the sightseeing and tourist business for one year from the date of this order subject to such conditions as the Commission deems the public convenience and necessity requires. The Commission, however, will retain jurisdiction over this application for final determination sometime within the next year unless such time is further extended; and the record made in this application shall be taken into consideration in addition to such further record as may be deemed necessary before this application is finally determined.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires that a certificate of public convenience and necessity be issued to the applicant, The Camp Tours, Inc., herein for the term of one year to operate a motor transportation system for the transportation of passengers from the Pikes Peak Cottage City, El Paso County, Colorado, to the various scenic attractions in the Pikes Peak region and this order shall be deemed and held to be a certificate of public convenience and necessity therefor for one year from the date hereof subject to the following terms and conditions which in the opinion of the Commission the public convenience and necessity requires:

(a) That it shall file within 15 days from the date hereof a tariff of rates, rules and regulations in harmony and identical with the tariffs of the other operators now lawfully serving the sightseeing public in the Pikes Peak region.

(b) That all sightseeing and tourist operations by the applicant herein shall be limited to round trip operations originating and terminating at the point of origin of the service.

(c) That no one way transportation of passengers is permitted to any of the points in the Pikes Peak region.

(d) That the quantity of equipment to be used shall be limited to 4 automobiles as appears from the testimony adduced herein.

(e) That the certificate of public convenience and necessity hereby issued shall be good for one year only from the date hereof and that the Commission retains jurisdiction over the application herein for further hearing and determination and for such disposition as the Commission deems the public convenience and necessity shall require.

IT IS FURTHER ORDERED, That this certificate shall issue subject to compliance by the applicant with the rules and regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 16th day of March, 1929.

(Decision No. 2105)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * *

IN RE APPLICATION FOR ORDER)
TO MAKE COMBINATION TRIPS) CASE NO. 389
AND RATES.)

March 16, 1929.

Appearances: David P. Strickler, Esq., Colorado Springs, Colorado, attorney for petitioners;
Fred Matthews, Esq., Colorado Springs, Colorado, attorney for The Pikes Peak Automobile Company;
J. C. Williams, Colorado Springs, Colorado, for The Buster and Williams Touring Company.

S T A T E M E N T

By the Commission:

Some twenty-eight of the motor vehicle sightseeing operators of the Pikes Peak region filed a written instrument in the nature of a complaint and a petition. The sightseeing operators generally in that region have provided in their tariffs two trips as follows:

"5. CHEYENNE MOUNTAIN CIRCLE $ 3.00
Garden of the Gods,-Manitou,-So. Cheyenne Canon & Seven Falls,-Broadmoor-Cheyenne Mountain Highway."

"13. COMBINATION TRIP $ 4.00
Garden of the Gods,-Cave of the Winds,-So. Cheyenne Canon & Seven Falls,-Broadmoor-Cheyenne Mountain Highway."

It is generally understood and agreed that of the total fare for each of the said trips $1.00 is for that portion of the trip leading through Broadmoor up the Cheyenne Mountain Highway.

There is a highway from Colorado Springs to the Cripple Creek district which is constructed over the old right-of-way of the railroad line known as the Cripple Creek Short Line. This highway is known as the Corley Mountain

Highway and is privately owned by The Corley Mountain Highway Company, which charges a toll for its use.

Seven Falls is located in South Cheyenne Canon. The entrance to the canon is near the entrance to North Cheyenne Canon. The latter canon leads up a comparatively short distance to the Corley Mountain Highway. When descending from South Cheyenne Canon it is possible to turn up North Cheyenne Canon and return to Colorado Springs over the eastern portion of the Corley Mountain Highway instead of returning through the more level flat country to the east. The portion of the Corley highway thus traveled is called the "Short Corley," while the highway from end to end is called the "Long Corley."

The petition and complaint herein alleges that the rates specified for the two said trips "are unreasonable in that they do not permit the passengers to have the option of an additional trip over what is known as the 'Short Corley' upon the payment of an additional fare of $1.00 for each passenger,". The prayer reads:

> "WHEREFORE, Petitioners pray that all sightseeing operators in the Pikes Peak Region, other than your petitioners, be severally required to answer the charges herein, and that after due hearing and investigation an order be made requiring all operators in the Pikes Peak Region to include what is known as the Short Corley trip in their trips specified in their schedules Nos. 5, Cheyenne Mountain Circle, and 6, Cave of the Winds Circle, at the option of the passenger for an additional compensation of $1.00 per passenger, and to make said order effective as soon as may be deemed advisable by your Honorable Commission."

In years past tourists who have been transported up South Cheyenne Canon, whether on a single trip to the canon or on a combination trip thereto, have had the privilege of returning over the Short Corley for $1.00 extra fare. The trip from South Cheyenne Canon to Colorado Springs via the Short Corley is only five and a fraction miles longer than over the plains road. If a car making a trip to South Cheyenne Canon includes a trip to the summit of Cheyenne Mountain, some eighteen miles more are traveled. For some reason or other the combination trip via the Short Corley has been abandoned and does not appear in the tariffs of the various operators, while a combination trip to Cheyenne Mountain apparently has been substituted.

While many of the operators have signed the complaint and petition herein, the moving spirit appears to be The Corley Mountain Highway Company. It showed that its toll revenue for travel over the Short Corley in 1928 was some 50% less than when the Short Corley combination trip was offered.

There is provided in the various tariffs on file with the Commission a so-called Short Corley trip, the fare being $2.00. This trip leads to or near a point where passengers would come upon said highway after returning from South Cheyenne Canon.

It appeared in evidence that probably some of the operators had been returning to Colorado Sprngs from South Cheyenne Canon over the Short Corley making an extra charge of $2.00, although they have on file no such combination route or tariff therefor. The Commission doubts whether any combination trip not provided for in the tariffs should be made. It is quite clear from the evidence that if such a combination trip is made, an extra fare of $2.00 is unreasonable, because $2.00 is thus charged for only some five additional miles, while the mileage of the Short Corley trip alone is some three times as great.

The reason given why some operators do not want to make a combination trip over the Short Corley is that after passengers have traveled over a portion of the Corley Mountain Highway in returning from South Cheyenne Canon they do not desire to take the full trip over the Long Corley. These operators therefore prefer not to route any combination trips over the Short Corley.

This brings us to the most important question in the case, namely, whether the Commission has power or ought to require the carriers to make a certain trip which they do not desire to make. It is not merely a matter of rates.

Sec. 2934 (b), C. L. 1921, reads:

> "The commission shall have the power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, classification, rule, regulation, contract, or practice, or any number thereof, or the entire schedule or schedules of rates, fares, tolls,

rentals, charges, classifications, rules, regulations, contracts, and practices, or any thereof, of any public utility, and to establish new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices, or schedule or schedules, in lieu thereof."

There is serious question whether the authority contained in the matter just quoted is broad enough to authorize this Commission to require operators serving the public on certain trips to make any particular combination trips. Assuming, without deciding, that the Commission has the power, we are of the opinion that the public convenience and necessity does not require the exercise thereof in this case. As was stated, twenty-eight operators desire to offer the combination trips to the public. The public will thus at all times have an opportunity of taking the trips. We see no reason why the operators, who desire to make the combination trips, may not do so, even though some of the other operators do not see fit to follow suit.

However, no operators will be permitted to make the combination trips unless a tariff therefor is on file with the Commission.

The Commission finds that the extra fare charged for going to or returning from South Cheyenne Canon via the Short Corley should not exceed $1.00

O R D E R

IT IS THEREFORE ORDERED, That all of those operators in the Pikes Peak region who are parties hereto may, if they so desire, file a tariff providing for combination trips by which in going to or returning from South Cheyenne Canon the route shall lead over the Short Corley; that the increase in the fare on any such trip by reason of traveling over the Short Corley shall not exceed $1.00.

IT IS FURTHER ORDERED, That no combination trips over said highway as aforesaid shall be made unless a tariff providing therefor is

on file with this Commission.

IT IS FURTHER ORDERED, That the complaint insofar as it seeks an order requiring all said operators to make a combination trip by which sightseers going to or returning from South Cheyenne Canon shall be transported over the Corley Mountain Highway be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Walter Bruch

Dan S. Jones

Commissioners.

Dated at Denver, Colorado,
this 16th day of March, 1929.

Decisions Nos. 2106 and 2107 were not used.

(Decision No. 2108)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF THE COLORADO AND SOUTHERN RAILWAY)
COMPANY FOR AUTHORITY TO DISCONTINUE) I. & S. NO. 105
PASSENGER SERVICE BETWEEN FORT)
COLLINS AND GREELEY.)

March 21, 1929.

Appearances: J. Q. Dier, Esq., Denver, Colorado, for
The Colorado and Southern Railway Company;
Irwin M. Cunningham, Esq., Windsor, Colorado, and
E. H. Houtchens, Esq., Greeley, Colorado, for
the town of Windsor, et al., protestants;
Thomas Keeley, Esq., Denver, Colorado, for
The Colorado Motor Way, Inc.

S T A T E M E N T

By the Commission:

The Colorado and Southern Railway Company filed with the Commission a written instrument called a petition, in which it stated that it proposes to, and unless directed to the contrary by this Commission will, discontinue all its passenger service now being operated between Fort Collins and Greeley, Colorado, consisting "of two gasoline motor cars each way daily." The service for some time past has been rendered by one railroad motor car which has made two trips each way daily. The schedule has been as follows:

Leave Greeley 6:50 a. m.	Arrive Fort Collins 7:55 a. m.
Leave Fort Collins 11:00 a. m.	Arrive at Greeley 12:05 p.m.
Leave Greeley 2:05 p. m.	Arrive at Fort Collins 3:10 p.m.
Leave Fort Collins 5:45 p. m.	Arrive at Greeley 6:50 p.m.

The reasons alleged for said proposed discontinuance are that in 1923 this Commission granted to the Colorado Motor Way, Inc., a certificate authorizing the transportation by motor bus of passengers, parcels and small packages between Greeley and Fort Collins via Windsor; that at all times since, said Motor Way has maintained motor bus operations between Greeley and Fort Collins in accordance with the conditions of the certificate and the rules and regulations

of the Commission, said operations consisting until April 1, 1926, of two round trips daily; that on or about April 1, 1926, said Motor Way increased its service and since has been and is now operating three round trips daily upon approximately the following schedule:

Greeley:	Windsor:	Fort Collins:
Lv. 7:30 a. m.	Lv. 8:05 a. m.	Ar. 8:50 a. m.
Lv. 1:10 p. m.	Lv. 1:45 p. m.	Ar. 2:30 p. m.
Lv. 4:55 p. m.	Lv. 5:30 p. m.	Ar. 6:15 p. m.
Fort Collins:	**Windsor:**	**Greeley:**
Lv. 9:15 a. m.	Lv. 10:00 a. m.	Ar. 10:35 a. m.
Lv. 2:40 p. m.	Lv. 3:25 p. m.	Ar. 4:00 p. m.
Lv. 6:25 p. m.	Lv. 7:10 p. m.	Ar. 7:45 p. m.

It is further alleged that the operation by the petitioner of said passenger service between Fort Collins and Greeley has been unremunerative and conducted at a loss for a great many years; that the loss has increased since the inauguration of said bus service, particularly since the operation of three round trips daily; that such loss will be increased still more when the Motor Way places in service new parlor-coach type of equipment on its Greeley-Fort Collins route, as publicly announced to be its intention.

It is alleged also that the existing rail passenger service in view of the very slight public use thereof, constitutes and is an unjustiable and extravagant service, unwarranted and unnecessary so far as the public convenience and necessity is concerned and one which in the interest of honest, economical and efficient management should be discontinued; that there is not enough passenger traffic on the route in question to be divided between two common carriers; that the busses of the Motor Way can be operated much cheaper than the rail service of the petitioner, while three round trips by bus each day afford a much more convenient service than the two trips via the railroad; that it is therefore to the public interest, both from the standpoint of cost and convenience, that said passenger rail service be discontinued.

It is further stated that said Motor Way proposes, if said proposed passenger rail service is discontinued, to revise its schedules and operate its busses between Greeley and Fort Collins as follows:

Greeley to Fort Collins

Leave Greeley	Arrive and Leave Windsor	Arrive Fort Collins
7:00 a. m.	7:40 a. m.	8.15 a. m.
10:00 a. m.	10:40 a. m.	11.15 a. m.
4:15 p. m.	4.55 p. m.	5:30 p. m.

Fort Collins to Greeley

Leave Fort Collins	Arrive and Leave Windsor	Arrive Greeley.
8:30 a. m.	9:10 a. m.	9:45 a. m.
11:20 a. m.	12:00 Noon	12:35 p. m.
5:45 p. m.	6:25 p. m.	7:00 p. m.;

that the Motor way will also operate a truck for the transportation of heavy baggage, heavy express and bulky parcel post mail, leaving Greeley about 10:00 a. m. shortly after the arrival in Greeley at 9:45 a. m. of Union Pacific train No. 103 from Denver, and returning leaving Fort Collins at 5:50 p. m. or shortly after the arrival at Fort Collins at 5:40 p. m. of Colorado and Southern passenger train No. 23 from Denver, the running time in each direction of said truck to be about two hours; that light express, small parcels, newspapers and first class mail will be handled by the passenger busses.

Protests were filed by the Windsor Community Club, the Board of Trustees of the Town of Windsor by the Mayor of said town, the Chamber of Commerce of Fort Collins, and some 32 citizens of the town of Windsor.

An investigation and suspension order was issued and a hearing was had.

The protests state generally that the public convenience and necessity of the town of Windsor and its inhabitants require the continuance of the railroad passenger service; that the service of the Motor Way is not an adequate substitute for the rail service; that the financial strength of the Colorado and Southern is so much greater than that of the Motor Way and that the former's continued ability to serve is more certain; that the Motor Way is capable of making a sudden and complete withdrawal from its service; that during severe storms it would often be impossible for the bus company to maintain its service, whereas storms would not hinder travel by rail to any

substantial extent, and that the bus service offers a smaller degree of protection for valuable mail and express shipments than that afforded by the railroad company.

It is further alleged that so far as rail service is concerned, the abandonment of passenger service by the petitioner would make of Windsor an inland town which could not be reached by rail, resulting in the inability of persons outside of the State to find the name of Windsor on railroad guides and express rate books; that this would result in a decrease of the prestige of the town and in a decrease in value of the real estate of the town and a general business deflation therein, and more difficulty in attracting newcomers for business and residential purposes.

It is averred also that the petitioner having once established the service of a common carrier for the said town, thereby accepts the responsibility of continuing said service; that consistent earnings of the petitioner are sufficient to, and should be made to bear the loss of the particular passenger train service in question; that transfer from busses to the trains in Fort Collins and Greeley would be an inconvenience and would constitute a major deterrent to travelers planning trips to Windsor.

Further matter of a more or less argumentative nature is alleged, dealing with the greater taxes paid by the railroad company, the alleged insufficient taxes paid by the Motor Way, the damage to the highways caused by motor vehicles, the continued steady growth of the town of Windsor, the lack of responsibility on the part of the town for the loss suffered by the petitioner by reason of the operation of the motor busses, etc.

The following table shows a comparison of the passenger business done by the petitioner in the years 1923, 1927 and 1928.

	Total Number Passengers carried	Average Number of Passengers per Train	Average Revenue per Day.
1923	33,098	22 plus	$ 58.14
1927	10,048	7 plus	19.50
1928	7,038	4 plus	12.88

The Motor Way carried during the year 1928 11,456 passengers, as compared with 7,038 carried by the petitioner. However, the evidence shows that the Motor Way lost per trip in 1927 $2.58, in 1928 $2.94, and that its total net loss for 1927 was $5,646.16 and 1928, $6,445.21.

The highway traveled by the Motor Way busses between Greeley and Fort Collins parallels the railroad line, although the highway as it is at present laid out is at points some distance from the railroad line. However, there was no evidence showing that the stations of the railroad company are more convenient than the stopping places of the busses.

The Transportation Act of Congress, 1920, requires of railroads, such as the applicant, engaged in interstate commerce "efficient and economical management." The petitioner states that efficient and economical management requires the abandonment of the passenger service in question. The people of the town of Windsor, proceeding on the correct assumption that the abandonment of the passenger service can be made only if the public can reasonably well get along without the service, conclude to the contrary.

As we have heretofore pointed out, passenger transportation by rail has been and still is on a general decline in this State as well as in other parts of the country, especially as to short distances of travel. We have also expressed the opinion, which we still hold, that this decline is due principally to the use of privately owned automobiles. This is shown by the fact that in 1923 the total number of passengers carried by the petitioner on the branch line in question was 33,098, whereas the total number carried by it and the Motor Way, the only two common carriers operating in the territory in question, in 1928, was only 18,494, a total loss in five years of almost sixty per cent of the passenger business done in a territory with a growing population.

The fact that the carrier is losing money on its passenger service is not controlling. The real question is, is the passenger train service reasonably necessary in addition to other transportation facilities now offered.

If there were no other passenger facilities, the Commission's problem would be simple. Passenger service by rail doubtless would be held to be a necessity. However, if the transportation facilities offered by the Motor Way are reasonably sufficient to meet all the reasonable requirements of the public, then to require the railroad company to continue its passenger train service would be arbitrary and in violation of the duty of the Commission.

The railroad company has offered to carry Windsor in its passenger time table and to undertake to see that baggage and express are handled in the future, as they have been in the past, except only that transportation will be by bus instead of rail. The Motor Way undertakes to make desirable connections with the trains, both in Fort Collins and in Greeley.

The Motor Way is strong financially, and may not abandon service without authority from this Commission.

With respect to the fear of the Windsor people that snow will prevent regular operation by the Motor Way, the evidence shows that during the past winter up to February 14, the date of the hearing, there had been but one breakdown which caused a delay of forty minutes, and that only four times was a bus late. Moreover, while the Motor Way had been operating over the route in question between five and six years, there was no evidence of any serious interruption of service.

The Motor Way proposes, as is alleged in the petition, to operate a truck for the transportation of heavy baggage, parcel post and heavy express. The light baggage, express and parcel post will be carried in a compartment to be built in a 29-passenger bus, leaving 20 seats available for passengers

After careful consideration of the evidence, the Commission is of the opinion and so finds that the transportation facilities of Colorado Motor Way, Inc. will meet all the requirements of the traveling public between Fort Collins and Greeley beginning May 1, 1929. Out of an abundance

of caution it has concluded to retain jurisdiction over the case for one year and for such further time, if any, as shall be necessary to hear and dispose of any such application, as is hereinafter described, which may be filed asking for reinstatement of the passenger rail service.

It is of the opinion, however, that authority to abandon rail passenger service should be on conditions hereinafter imposed.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires that The Colorado and Southern Railway Company be, and it is hereby, authorized to discontinue its passenger and express service on the Fort Collins-Greeley branch subject to the following conditions:

(a) The Railway Company shall cause to be maintained by Colorado Motor Way to and from all points on said Fort Collins-Greeley branch situated on the Fort Collins-Greeley highway substantially the same express and baggage service as is now in effect by rail.

(b) The Railway Company shall cause to be maintained such express and excess baggage rates as will not exceed those that would exist with the continuance of the rail passenger service.

(c) The Railway Company shall restore said passenger rail service if and when the operation of motor bus service shall for any reason be discontinued, or shall at any time be found by this Commission to be inadequate, unsafe and/or insufficient to serve the needs of the territory involved.

IT IS FURTHER ORDERED, That the Commission, and it does hereby, retain jurisdiction over this matter for a period of one year from May 1, 1929, and for such additional period, if any, as shall be required to hear and dispose of any such application or applications as may be filed herein within one year from May 1, 1929, by the town of Windsor, the Windsor Community Club, Fort Collins Chamber of Commerce, or any twenty citizens

and taxpayers of the town of Windsor, asking for an order for the restoration of the rail passenger service.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 21st day of March, 1929.

Chairman Bock was out of the State when the foregoing order was prepared and signed.

(Decision No. 2109)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * * *

IN THE MATTER OF THE APPLICATION OF THE COLORADO AND SOUTHERN RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE CLOSING OF ITS AGENCY STATION IN SILVER PLUME.

APPLICATION NO. 1207

I. & S. No. 111

March 21, 1929.

Appearances: John Q. Dier, Esq., Denver, Colorado, attorney for The Colorado and Southern Railway Company, applicant;
J. J. White, Esq., Georgetown, Colorado, for the town of Silver Plume;
B. F. Napheys, Jr., Idaho Springs, Colorado, for the Board of County Commissioners of Clear Creek County.

STATEMENT

By the Commission:

The Colorado and Southern Railway Company filed its application with the Commission, alleging that the amount of business transacted by it through and by means of its agency station in Silver Plume in Clear Creek County, Colorado, is insufficient in volume to justify or warrant either in the public interest or in the interest of economical and efficient management, of the railroad, the continuance of said agency station, and that the applicant desires to make, and unless directed to the contrary by the Commission, it would close said station November 1, 1928. An investigation and suspension order followed. Thereafter the matter was heard.

The evidence shows that for the years 1923 to 1927 inclusive and for the first nine months of 1928, the total expense of repairs to the station building, salaries and wages, supplies, etc., amounted to $11934.22. The total passenger and baggage revenue accruing from the operation

of the station for the same period is $4,469.48. Of this total, $2020.36 was received during the year 1923, while only $10.14 was received for the nine months period ending September 30, 1928. These figures do not show the revenue from the passengers coming into Silver Plume.

In the year 1926, 44 carload shipments were received in Silver Plume and 85 forwarded out. In the year 1927, 27 were received and 17 forwarded. In the first nine months of 1928, 24 were received and 23 forwarded. The following table shows in tons and revenue the l.c.l. merchandise transported in and out of Silver Plume in the years 1923 to 1927 inclusive and the first nine months of 1928:

	TONS		REVENUE	
	Rec'd	For'd	Received	Forwarded.
1923	226	12	$2,721.15	$ 153.41
1924	99	5	1,269.33	62.50
1925	125	13	1,620.74	139.95
1926	140	15	1,744.76	150.93
1927	39	8	673.59	71.08
1928	35	4	462.13	48.63

Silver Plume has a population of some 175. There are ten telephones in the town, three of them being residence phones. The town is situated about 4 miles by railroad and, according to railroad witnesses, a little over one mile by highway from Georgetown, where a station agency is maintained. A mining engineer, familiar with the territory in question, testified that it is two miles by highway to Georgetown.

The regular passenger service was discontinued in June, 1927, although the freight train has been carrying a passenger car. In 1927, after discontinuance of regular passenger service, three passenger tickets were sold in Silver Plume. There are two regular bus runs daily each way between Silver Plume and Denver via Georgetown.

The freight conductor would be authorized, in the event of the abandonment of the station agency, to sign bills of lading. Cars may be ordered from the conductor. Empty cars are kept on tracks at all times. Merchandise shipments may be delivered to the conductor at Silver Plume. Of course, the agent at Georgetown could be dealt with in ordering cars and making of billing on carload shipments from Silver Plume.

The railroad referred the Commission to the order of the Commission authorizing the abandonment of the station at Central City which is situated about the same distance beyond Blackhawk by both rail and highway as Silver Plume is from Georgetown, and to the fact, as it claims, and so far as the Commission is advised, correctly, that there has been no complaint from the people of Central City of inadequacy of service.

The railroad proposes to carry Silver Plume as both a railroad and telegraph point.

Silver Plume is the terminal point of the branch line in question. A tri-weekly combination freight and passenger service is rendered by the railroad. The train arrives between two and five P. M. and leaves at seven A. M. So far as l.c.l. shipments are concerned, the people would have the same service that they have now except that they would be required to deliver their shipments to the conductor within a reasonably short time prior to 7:00 A. M., the time of the departure of the train.

Three witnesses testified in opposition to the abandonment of the agency. One is a mining engineer and manager. Another is a mine superintendent and mayor of the town of Silver Plume. The third is the superintendent of a mine. From their testimony it appears that it is inconvenient to have to deal with the agent at Georgetown; that they do not know when l.c.l. shipments will arrive; that it is difficult to make contact with train crews before seven o'clock because of the hours that miners go to work, etc. It was contended also that the abandonment of the agency gives a black eye to the promotion of the mining industry.

The Commission appreciates fully that it is considerably more convenient to be able to deal throughout the day with an agent in Silver Plume than to have the somewhat more restricted service resulting from the abandonment of the agency. However, the thing that is really vital to the people of Silver Plume, as well as to others living along the branch line in question, is the continuance of railroad operations over the line. The Commission feels that it owes a duty to those dependent upon the continued

operation of the line to permit the railroad to effect every economy possible, even though some of these economies necessarily result in some inconvenience to its patrons, to the end that all possible cause for an attempted abandonment may be removed.

After careful consideration of the evidence, the Commission is of the opinion and so finds that in the interest of economical and efficient management, and in order to contribute as much as possible to the continued operation of the line in question, the public interest requires that authority be granted to The Colorado and Southern Railway Company to close its agency station in Silver Plume, April 15, 1929, upon the conditions hereinafter mentioned.

However, the Commission is of the opinion and so finds that in view of the fact the company employs a watchman to care for its locomotive while remaining in Silver Plume three nights a week, public convenience and necessity requires that all l.c.l. shipments to Silver Plume be kept by the company under lock in its station in Silver Plume and that the watchman of the locomotive be required between the hours of five and seven o'clock P. M. on the days the locomotive is in Silver Plume, to make deliveries at the station of said shipments upon demand or order of the consignees.

O R D E R

IT IS THEREFORE ORDERED, That authority be, and the same is hereby, granted to The Colorado and Southern Railway Company to close its agency station in Silver Plume, Colorado, on April 15, 1929.

IT IS FURTHER ORDERED, That all l.c.l. shipments to Silver Plume be kept by the company under lock in its station in Silver Plume and that the watchman of the locomotive be required between the hours of five and seven o'clock P. M. on the days the locomotive is in Silver Plume, to make deliveries at the station of said shipments upon demand or order of the

consignees.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 21st day of March, 1929.

Commissioners.